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[FR Doc. 96-521 Filed 1-17-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 282

[FRL-5304-3]

Underground Storage Tank Program: Approved State Program for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's

inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of Oklahoma's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective March 18, 1996, unless EPA publishes a prior Federal Register notice withdrawing this immediate final rule. All comments on the codification of Oklahoma's underground storage tank program must be received by the close of business February 20, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of March 18, 1996, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to the Docket Clerk, Underground Storage Tank Program, 6H-A, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733. Comments received by EPA may be inspected in the public docket, located in the EPA Region 6 Library (12th floor) from 8 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Fisher, Underground Storage Tank Program, 6H-A, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733. Phone: (214) 665-8048.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a Federal Register document announcing its decision to grant approval to Oklahoma on August 12, 1992 (57 FR 41874). Approval was effective on October 14, 1992.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Oklahoma underground storage tank program. This codification reflects the state program in effect at the time EPA granted Oklahoma approval under section 9004(a), 42

U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Oklahoma program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Oklahoma program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Oklahoma, the status of federally approved requirements of the Oklahoma program will be readily discernible. Only those provisions of the Oklahoma underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of Oklahoma's underground storage tank program, EPA has added § 282.86 to title 40 of the CFR. Section 282.86 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.86 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 underground storage tank program under subtitle I of RCRA.

The Agency 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 in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Oklahoma enforcement authorities will not be incorporated by reference. Section 282.86 lists those approved Oklahoma authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.86 of the codification simply lists for reference

and clarify the Oklahoma 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 today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made (57 FR 41874, August 12, 1992) to approve the Oklahoma underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: October 20, 1995.

A. Stanley Meiburg,
Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 282 is amended 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. Subpart B is amended by adding § 282.86 to read as follows:

Subpart B—Approved State Programs

§ 282.86 Oklahoma State-Administered Program.

(a) The State of Oklahoma 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 Oklahoma Corporation Commission, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Oklahoma program on August 12, 1992 and it was effective on October 14, 1992.

(b) Oklahoma has primary responsibility for enforcing its 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 other statutory and regulatory provisions.

(c) To retain program approval, Oklahoma 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 Oklahoma 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) Oklahoma has final approval for the following elements submitted to EPA in Oklahoma's program application for final approval and approved by EPA on August 12, 1991. Copies may be obtained from the Underground Storage Tank Program, Oklahoma Corporation Commission, Jim Thorpe Building, Room 238, Oklahoma City, OK 73105.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Oklahoma Statutory Requirements Applicable to the Underground Storage Tank Program, 1995.

(B) Oklahoma Regulatory Requirements Applicable to the Underground Storage Tank Program, 1995.

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include:

(1) *Oklahoma Statutes, Chapter 14: Oklahoma Underground Storage Tank Regulation Act*

§ 306 Corporation Commission—Powers and Duties

§ 310 Inspections and Investigations—Violations—Notice—Failure To Take Corrective Action—Notice and Hearing—Orders—Service of Instruments—Notice to Real Property Owner and Opportunity for Hearing

§ 312 Enforcement of Actions and Remedies—Action for Equitable Relief—Jurisdiction—Relief

(B) The regulatory provisions include:

(1) *Oklahoma Annotated Code, Chapter 25: Underground Storage Tanks, Subchapter 9: Inspections, Testing, and Monitoring*

Part 1: Inspections

Part 5: Penalties

Part 7: Field Citations

Part 9: Shutdown of Operations

(2) *Oklahoma Annotated Code, Chapter 27: Petroleum Storage Tank Release Indemnity Program, Subchapter 9: Administrative Provisions*

§ 165:27-9-1 Hearing, Orders, and Appeals

§ 165:27-9-2 Changes to Rules

§ 165:27-9-3 Notices

§ 165:27-9-4 Severability

(iii) 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 for enforcement purposes.

(A) *Oklahoma Statutes, Chapter 14: Oklahoma Underground Storage Tank Regulation Act*

§ 308 Permits—Necessity—Application—Issuance—Fees—Denial, Refusal to Issue, Suspension or Revocation—Financial Responsibility Coverage (Insofar as (B) applies to individuals other than UST system owners and operators.)

§ 318 Program for Certification of Underground Storage Tank Professionals—Meeting Training and Other Requirements for Federal Law and Regulations and State Statutes (Insofar as it applies to individuals other than UST owners and operators.)

(B) *Oklahoma Annotated Code, Chapter 25: Underground Storage Tanks*

(1) *Subchapter 1: General Provisions*

Part 9: Notification and Reporting Requirements (Insofar as 165:25-1-45 requires owners of exempt USTs to notify the Commission of the existence of such systems.)

(2) Subchapter 3: Release Prevention, Detection, and Correction

Part 9: Installation of Underground Storage Tank Systems (Insofar as 165:25-3-48 applies to individuals other than UST owners and operators.)

Part 19: Certification for UST Consultants (Insofar as it applies to individuals other than UST owners and operators.)

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Oklahoma on June 21, 1990, 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.*

(ii) Letter from the Attorney General of Oklahoma to EPA, June 21, 1990, 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 original application on June 25, 1989, 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 25, 1989, 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 6 and the Oklahoma Corporation Commission, signed by the EPA Regional Administrator on April 8, 1992, 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. Appendix A to part 282 is amended by adding in alphabetical order "Oklahoma" and its listing.

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

* * * * *

Oklahoma

(a) The statutory provisions include

1. Oklahoma Statutes, Chapter 14: Oklahoma Underground Storage Tank Regulation Act

§ 301 Short Title

§ 303 Definitions

§ 304 Exemptions

§ 305 Corporation Commission Designated as State Agency to Administer Certain Federal Programs

§ 307 Corporation Commission—Promulgation of Rules Governing Underground Storage Tank Systems

§ 308 Permits—Necessity—Application—Issuance—Fees—Denial, Refusal to Issue, Suspension or Revocation—Financial Responsibility Coverage (Except (B), which applies to individuals other than UST owners and operators.)

§ 308.1 Underground Storage Tank Systems for Petroleum Products—Permit Fee—Penalty—Suspension or Nonrenewal of Permit

§ 309 Release from Underground Storage Tank System—Reports—Corrective Action—Powers, Duties and Procedures of Corporation Commission

§ 313 Records, Reports and Informations—Public Inspection—Confidentiality—Disclosure to Federal or State Representatives

§ 315 Corporation Commission Underground Storage Tank Regulation Revolving Fund

§ 316 Ordinance or Regulations in Conflict with Act Prohibited

§ 340 Storage Tank Advisory Council—Members—Quorum—Authority—Rules—Expenses

2. Oklahoma Statutes, Chapter 15: Oklahoma Petroleum Storage Tank Release Indemnity Program

§ 350 Short Title—Maintenance, Operation and Administration

§ 352 Definitions

§ 353 Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund

§ 354 Assessments on Motor Fuels, Diesel Fuel and Blending Materials—Exemptions—Deposits in Funds

§ 356 Collection, Remittance and Reporting of Assessments

§ 356.1 Confidentiality of Records, Reports or Information—Schedule of Reimbursable Fees

§ 357 Payment of Claim Subject to Indemnity Fund Acquiring Subrogation Rights—Administrator to Protect Indemnity Fund in Judicial and Administrative Proceedings—Notice of Lawsuit—Enforcement of Third Party Claim

§ 358 Annual Reports

§ 359 Audit Relating to Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund

§ 360 Limitation on Expenditures for Administrative Costs—Reports

§ 361 Appointment of Administrator—Hiring of Employees—Temporary Workers and Contract Labor

§ 365 Oklahoma Leaking Underground Storage Tank Trust Fund—Oklahoma Leaking Underground Storage Tank Revolving Fund—Appropriation, Budgeting and Expenditure of Monies—Payments from Funds—Costs of Actions—Emergencies—Reimbursement of Funds—Administrative Penalties
(b) The regulatory provisions include

1. Oklahoma Annotated Code, Chapter 25: Underground Storage Tanks

a. Subchapter 1: General Provisions

Part 1: Purpose and Statutory Authority

Part 3: Definitions

Part 5: Scope of Rules

Part 7: National Industry Codes

Part 9: Notification and Reporting Requirements (Except 165:25-1-45, insofar as it requires owners of exempt USTs to notify the Commission of the existence of such systems.)

b. Subchapter 3: Release Prevention, Detection, and Correction

Part 1: Release Prohibition, Reporting and Investigation

Part 3: Recordkeeping

Part 5: Spill and Overfill Prevention Requirements

Part 7: Compatibility

Part 9: Installation of Underground Storage Tank Systems (Except 165:25-3-48, which applies to individuals other than UST owners and operators.)

Part 11: Repairs to Underground Storage Tank Systems

Part 13: Removal and Closure of Underground Storage Tank Systems

Part 15: Corrective Action Requirements

Part 17: Requirements for Corrosion Protection Systems

c. Subchapter 5: Requirements for Existing Underground Storage Tank Systems

d. Subchapter 7: Requirements for New Underground Storage Tank Systems

Part 1: Design, Construction, and Installation Requirements

Part 3: General Release Detection Methods and Service

Part 5: Release Detection Methods and Devices for Petroleum Underground Storage Tank Systems

e. Subchapter 9: Inspections, Testing, and Monitoring

Part 3: Fees

f. Subchapter 11: Administrative Provisions

g. Subchapter 13: Financial Responsibility Requirements

Part 1: Applicability

Part 3: Definitions

Part 5: Amount and Scope of Coverage

Part 7: Financial Assurance

Part 9: Financial Test of Self-Insurance

Part 11: Guarantees

Part 13: Insurance and Risk Retention Group Coverage

Part 15: Surety Bond

Part 17: Letter of Credit

Part 19: State Fund or Other State Assurance

Part 21: Trust Fund
 Part 23: Standby Trust Fund
 Part 25: Substitution of Financial Assurance Mechanisms
 Part 27: Cancellation or Nonrenewal
 Part 29: Reporting
 Part 31: Recordkeeping
 Part 33: Drawing on Financial Assurance Mechanisms
 Part 35: Release from Subchapter 11 Requirements
 Part 37: Bankruptcy or Other Incapacity of Owner/Operator or Provider of Financial Assurance
 Part 39: Replenishment of Guarantees, Letters of Credit, or Surety Bonds
 h. Subchapter 15: Circle K Settlement Fund
 Part 1: General Provisions
 Part 3: Definitions
 Part 5: Eligibility Requirements
 Part 7: Reimbursement
 i. Appendices
 Appendix A: Letter From Chief Financial Officer
 Appendix B: Guarantee
 Appendix C: Endorsement
 Appendix D: Certificate of Insurance
 Appendix E: Performance Bond
 Appendix F: Irrevocable Standby Letter of Credit
 Appendix G: Trust Agreement
 Appendix H: Certification of Financial Responsibility
 Appendix I: Certification of Valid Claim
 Appendix J: Soil and Groundwater Remediation Index
 Appendix K: Soil Cleanup Levels
 Appendix L: Mean Annual Precipitation
 Appendix M: Hydrologically Sensitive Area
 Appendix N: Field Citation Fines

2. Oklahoma Annotated Code, Chapter 27: Indemnity Fund

a. Subchapter 1: General Provisions
 § 165:27-1-1 Purpose
 § 165:27-1-2 Definitions
 § 165:27-1-3 Scope
 § 165:27-1-4 Authority
 § 165:27-1-5 Citation of Rules
 § 165:27-1-6 Prescribed Forms
 b. Subchapter 3: Eligibility Requirements
 § 165:27-3-1 General Requirements
 § 165:27-3-2 Eligible Person
 § 165:27-3-3 Eligible Release
 c. Subchapter 5: Qualifications for Reimbursement
 § 165:27-5-1 Qualifications for Reimbursement
 § 165:27-5-2 Application for Reimbursement
 § 165:27-5-3 Application for Supplemental Reimbursement
 d. Subchapter 7: Reimbursement
 § 165:27-7-1 Reimbursable Expenses
 § 165:27-7-2 Total Reimbursement
 § 165:27-7-5 Methods for Reimbursement
 § 165:27-7-6 Conditions for Reimbursement
 § 165:27-7-7 Exclusions from Reimbursement
 § 165:27-7-8 Withholding Reimbursement

[FR Doc. 96-522 Filed 1-17-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 282

[FRL-5304-4]

Underground Storage Tank Program: Approved State Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of Texas' underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective March 18, 1996, unless EPA publishes a prior Federal Register notice withdrawing this immediate final rule. All comments on the codification of Texas' underground storage tank program must be received by the close of business February 20, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of March 18, 1996, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to the Docket Clerk, Underground Storage Tank Program, 6H-A, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733. Comments received by EPA may be inspected in the public docket, located in the EPA Region 6 Library (12th floor) from 8 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Fisher, Underground Storage Tank Program, 6H-A, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733. Phone: (214) 665-8048.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to

operate in the state in lieu of the federal underground storage tank program. EPA published a Federal Register document announcing its decision to grant approval to Texas on March 7, 1995 (60 FR 14373). Approval was effective on April 17, 1995.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Texas underground storage tank program. This codification reflects the state program in effect at the time EPA granted Texas approval under section 9004(a), 42 U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Texas program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Texas program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Texas, the status of federally approved requirements of the Texas program will be readily discernible. Only those provisions of the Texas underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of Texas' underground storage tank program, EPA has added section 282.93 to title 40 of the CFR. Section 282.93 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.93 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 underground storage tank program under subtitle I of RCRA.

The Agency 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 in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state