

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 282**

[FRL-5617-2]

Underground Storage Tank Program: Approved State Program for Massachusetts**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the 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 40 CFR Part 282 the prior approval of Massachusetts's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation shall be effective December 30, 1996, unless EPA publishes a prior Federal Register notice withdrawing this immediate final rule. All comments on the codification of Massachusetts's underground storage tank program must be received by the close of business December 2, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of December 30, 1996, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. UST 5-5), Underground Storage Tank Program, HBO, U.S. EPA-New England, J.F.K. Federal Building, Boston, MA 02203-2211. Comments received by EPA may be inspected in the public docket, located in the Office of Site Remediation & Restoration Record Center, 90 Canal St., Boston, MA 02203 from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Myra Schwartz, Underground Storage Tank Program, HBO, U.S. EPA-New England, J.F.K. Federal Building, Boston, MA 02203-2211. Phone: (617) 573-5743.

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 Massachusetts. (60 FR 14371, March 17, 1995). 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 Massachusetts underground storage tank program. This codification reflects only the state underground storage tank program in effect at the time EPA granted Massachusetts approval under Section 9004(a), 42 U.S.C. 6991c(a). EPA provided notice and opportunity for comment earlier on the Agency's decision to approve the Massachusetts program. EPA is not now reopening that decision nor requesting comment on it.

Codification provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Massachusetts program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Massachusetts, the status of federally approved requirements of the Massachusetts program will be readily discernible. Only those provisions of the Massachusetts 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 Massachusetts' underground storage tank program, EPA has added Section 282.71 to Title 40 of the CFR. Section 282.71 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.71 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 State's underground storage tank program under Subtitle I of RCRA, but are not incorporated by reference with this codification.

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 in approved states. With respect to such an enforcement action, EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Massachusetts enforcement authorities are specifically not be incorporated by reference. Forty CFR Section 282.71 lists those approved Massachusetts authorities that would fall into this category.

The public also needs to be aware that certain provisions of Massachusetts's underground storage tank program are not part of the federally approved state program. These include, for example, requirements for new or replacement underground tanks for consumptive use on the premises.

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 282.71 of the codification simply lists for reference and clarity the Massachusetts 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

EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate underground storage tanks are already subject to the state requirements authorized by EPA under 40 CFR Part 281. EPA's codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities. Moreover, this codification will eliminate any confusion that owners and operators of underground storage tanks in Massachusetts may have regarding which set of requirements they must comply with in Massachusetts.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates Massachusetts' requirements, which have been authorized by EPA under 40 CFR Part 281, into the Code of Federal Regulations, thereby eliminating any confusion over the applicable requirements for owners and operators of underground storage tanks in Massachusetts. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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: September 2, 1996.

John P. DeVillars,
Regional Administrator.

For the reasons set forth in the preamble, 40 CFR Part 282 is proposed to be added 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.

Subpart B—Approved State Programs

2. Subpart B is amended by adding § 282.71 to read as follows:

§ 282.71 Massachusetts State-Administered Program.

(a) The State of Massachusetts 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 Massachusetts Department of Public Safety (now called the Massachusetts Department of Fire Services) and the Massachusetts Department of Environmental Protection, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR Part 281 EPA approved the Massachusetts program on March 3, 1995, which was effective on April 17, 1995.

(b) Massachusetts 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 RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, Massachusetts 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 Massachusetts 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) Massachusetts has final approval for the following elements submitted to EPA in Massachusetts' program application for final approval and approved by EPA on March 3, 1995. Copies may be obtained from the Underground Storage Tank Program, Massachusetts Department of Environmental Protection, 1 Winter Street, Boston, MA 02108 or Massachusetts Department of Fire Services, P.O. Box 1025, State Road,

Stowe, MA 01775. The elements are listed below:

(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) Massachusetts Statutory Requirements Applicable to the Underground Storage Tank Program at Massachusetts General Laws, Chapter 148, Section 13 Paragraph 3 and Sections 38, 38A–38C, and 38E; Massachusetts General Laws, Chapter 21E, Sections 2, 3A(e) and 3(c), 4, 5, 6, 8.

(B) Massachusetts Regulatory Requirements Applicable to the Underground Storage Tank Program at 527 CMR 9.00–9.02 and 9.05, 9.06(C), (D) and (E), and 9.07(A)–(I) and 9.07(K)–(L); and those provisions of 310 CMR Sections 40.0000 subparts A–O only insofar as they pertain to the regulation of underground storage tanks in Massachusetts and only insofar as they are not broader in scope than the federal requirements. Note that reserved sections of 310 CMR 40.0000 *et seq.* are not incorporated by reference.

(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: Massachusetts General Laws, Chapter 148, Section 4; Sections 38D, 38F, 38I through 38H; Massachusetts General Law, Chapter 21E, The Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, Amended 1992 Massachusetts General Laws, Sections 7, 9, and 11, and Chapter 21J, Sections 2–4; and, Massachusetts General Law, Chapter 185, Section 3.

(B) The regulatory provisions include: Massachusetts Board of Fire Prevention Rules, 527 CMR Sections 9.07(J); and, Massachusetts Environmental Protection Rules, and those provisions of 310 CMR Sections 40.0000 Subparts A–O only insofar as they pertain to the regulation of underground storage tanks in Massachusetts and are not incorporated by reference and only insofar as they are not broader in scope than the federal requirements.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, and are not incorporated by reference herein for enforcement purposes.

(A) Massachusetts Board of Fire Prevention Rules, Sections 9.03 through 9.04 which pertain to aboveground tanks; 9.05A(4) insofar as it refers to

upgrade requirements for new or replacement underground tanks for consumptive use on the premises; 9.06 (A) and (B) insofar as they refer to aboveground tanks; and 9.07(J) insofar as it refers to aboveground tanks, and those provisions of 310 CMR 40.0000 Subparts A–O insofar as they do not relate to underground storage tanks and with respect to underground storage tanks insofar as they are broader in scope than the federal requirements.

(2) *Statement of legal authority.* (i) “Attorney General’s Statement for Final Approval”, signed by the Attorney General of Massachusetts on August 18, 1993, though not incorporated by reference, is 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 Massachusetts to EPA, August 18, 1993, though not incorporated by reference, is 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 in December 1991, though not incorporated by reference, is 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 (PD) and any other material submitted as part of the original application in December 1991, though not incorporated by reference, are 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 April 30, 1995, EPA and the Massachusetts Department of Public Safety and the Massachusetts Department of Environmental Protection Memorandum of Agreement (MOA), though not incorporated by reference, is 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 “Massachusetts” and its listing to read as follows:

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

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Massachusetts

(a) The statutory provisions include: General Laws of Massachusetts, Chapter 148, Section 38, 38A, B, C, and E:

Chapter 148

Section 38—Rules and Regulations

Section 38A—Prohibition of Removal of

Certain Gasoline Tanks without Permit

Section 38B—Underground Storage Tanks; Definitions

Section 38C—Notification of Department of Public Health by Owners of Underground Storage Tanks

Section 38E—Regulations Governing Underground Storage Tanks

Massachusetts General Law, Chapter 21E, The Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, July 1, 1992.

Section 1—Title of Chapter

Section 2—Definitions

Section 3—Securing of benefits of FWPCA, CERCLA, etc. Massachusetts Contingency Plan; promulgation of necessary regulations

Section 4—Response actions to release or threatened release of oil or hazardous material; assessment, containment, and removal actions in accordance with Massachusetts contingency plan

Section 5—Liability of release or threat of release of oil or hazardous material; apportionment of costs; treble damages; nullification of indemnification, hold harmless, or similar agreements

Section 6—Prevention of control of release of hazardous materials; regulations of department; contingency plans; monitoring equipment

Section 7—Notice of requirements; release or threat of release of oil or hazardous material; exceptions

(b) The regulatory provisions include: State of Massachusetts, Board of Fire Prevention Regulations, 527 CMR 9.00–9.02 and 9.05, 9.06(C)–(E), and 9.07(A)–(I) and (K)–(L) (effective July 3, 1993); and Massachusetts Environmental Protection Rules, 310 CMR 40.0000 Subparts A–O insofar as they pertain to underground storage tanks and are not broader in scope than the federal requirements, as set forth below:

(1) State of Massachusetts, Board of Fire Prevention Regulations, 527 CMR 9.00: Tanks and Containers, (effective July 3, 1993):

Section 9.01—Purpose and Scope

Section 9.02—Definitions

Section 9.05—Underground Storage Tanks

Section 9.05(A)(1)–(3) and (5)–(8)—Design and Construction of New or Replacement Underground Tanks

Section 9.05(B)—Underground Piping

Section 9.05(C)—Underground Tank

Installation

Section 9.05(D)—Leak Detection Equipment, Testing and/or Inventory Requirements for Underground Tanks

Section 9.05(E)—Inventory Methods for Underground Tanks

Section 9.05(F)—Testing for Tightness of Underground Storage Facilities

Section 9.05(G)—Upgrading of Existing Underground Storage Tank Systems

Section 9.06(C)—Upgrade of Existing Underground Waste Oil Storage Tank Systems

Section 9.06(D)—Product Transfer

Section 9.06(E)—Non-Flammable Hazardous Substances

Section 9.07—General Provisions

Section 9.07(A)—Material and Construction of All Tanks and Containers

Section 9.07(B)—Fill and Vent Pipes for All Tanks and Containers

Section 9.07(C)—Piping for All Tanks

Section 9.07(D)—Pumping System

Section 9.07(E)—Pressure Vessels

Section 9.07(F)—Response to Leaks

Section 9.07(G)—Tank Repair and Relining

Section 9.07(H)—Tanks Abandoned and

Temporarily Out of Service

Section 9.07(I)—Tank Removal

Section 9.07(K)—Permits

Section 9.07(L)—Financial Responsibility Requirements

(2) Massachusetts Environmental Protection Rules, 310 CMR, Section 40.000, Massachusetts Contingency Plan, (effective October 1, 1993) only insofar as they pertain to the regulation of underground storage tanks in Massachusetts and only insofar as they are incorporated by reference and are not broader in scope than the federal requirements. Note that reserved sections of 310 CMR 40.0000 *et seq.* are not incorporated by reference:

Subpart A—General Provisions

Subpart B—Organization and Responsibility

Subpart C—Notification of Releases and Threats of Release of Oil and Hazardous Material; Identification and Listing of Oil and Hazardous Materials

Subpart D—Preliminary Response Action and Risk Reduction Measures

Subpart E—Tier Classification and Response Action Deadlines

Subpart F—Transition Provisions

Subpart G—Tier I Permits

Subpart H—Comprehensive Response Action

Subpart I—Risk Characterization

Subpart J—Response Action Outcomes

Subpart K—Audits and Compliance Assistance

Subpart L—Cost Recovery, Lien Hearings and Petitions for Reimbursement of Incurred Costs

Subpart M—Administrative Record

Subpart N—Public Involvement and

Technical Grants

Subpart O—Numerical Ranking System and Scoring Instructions

[FR Doc. 96–27585 Filed 10–30–96; 8:45 am]

BILLING CODE 6560–50–P