

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
129.140	Recordkeeping and reporting.	12/2/22	10/1/24, [INSERT FEDERAL REGISTER CITATION].	Controlling VOC emissions from conventional oil and natural gas sources.
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Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Subpart 7—Miscellaneous VOC Sources				
2105.87	Control of VOC Emissions from Unconventional and Conventional Oil and Natural Gas Industry Sources.	2/5/23	10/1/24, [INSERT FEDERAL REGISTER CITATION].	Incorporates by reference the Pennsylvania Department of Environmental Protection regulations for “unconventional” and “conventional” oil and natural gas sources promulgated at 52 Pa.B. 5287 and 52 Pa.B 7635 (both published on December 10, 2022). The SIP revision does not include the last sentence of §2105.87.a, which is noted in strikethrough.
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[FR Doc. 2024–22386 Filed 9–30–24; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA–R04–UST–2024–0279; FRL–12181–02–R4]

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

AGENCY: Environmental Protection Agency (EPA).
ACTION: Direct final rule.

SUMMARY: The State of North Carolina (North Carolina) has applied to the Environmental Protection Agency (EPA) for final approval of revisions to its Underground Storage Tank Program (UST Program) under subtitle I of the Resource Conservation and Recovery Act (RCRA). Pursuant to RCRA, the EPA is taking direct final action, subject to public comment, to approve revisions to the UST Program. The EPA has reviewed North Carolina’s revisions and has determined that these revisions satisfy all requirements needed for approval. In addition, this action also codifies the EPA’s approval of North Carolina’s revised UST Program and incorporates by reference those provisions of the State statutes and

regulations that the EPA has determined meet the requirements for approval.

DATES: This rule is effective December 2, 2024, unless the EPA receives adverse comment by October 31, 2024. If the EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 2024.

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

- *Federal eRulemaking Portal:* <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.
- *Email:* giri.upendra@epa.gov.

Include the Docket ID No. EPA–R04–UST–2024–0279 in the subject line of the message.

Instructions: Submit your comments, identified by Docket ID No. EPA–R04–UST–2024–0279, via the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.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: <https://www.epa.gov/dockets/commenting-epa-dockets>.

The EPA encourages electronic comment submissions, but if you are unable to submit electronically or need other assistance, please contact Upendra Giri, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. The index to the docket for this action and all documents that form the basis of this action and associated publicly available docket materials are available electronically in <https://www.regulations.gov>. The EPA encourages electronic reviewing of these documents, but if you are unable to review these documents electronically, please contact Upendra Giri for alternative access to docket materials.

Please also contact Upendra Giri if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you. For further information on EPA Docket

Center services please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Upendra Giri, RCRA Programs and Cleanup Branch, Land, Chemicals, and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; Phone number: (404) 562–8185; email address: giri.upendra@epa.gov. Please contact Upendra Giri by phone or email for further information.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to North Carolina's Underground Storage Tank Program

A. Why are revisions to State UST programs necessary?

States that have received final approval from the EPA under section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain a UST program that is no less stringent than the Federal program. When the EPA revises 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 title 40 of the Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their UST programs and these changes must then be approved by the EPA.

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

In accordance with 40 CFR 281.51(a), North Carolina submitted a complete program revision application (State Application) seeking approval of changes to its UST Program. The State Application was submitted on October 22, 2018, and amended on February 22, 2023, May 4, 2023, and June 24, 2024. The program revisions described in the State Application correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 State program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter from the Governor requesting approval; a description of the UST Program and operating procedures; a demonstration of the State of North Carolina's procedures to ensure adequate enforcement; a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency; an Attorney General's Statement; and copies of all

relevant North Carolina statutes and regulations. The EPA has reviewed the State Application and has determined that the revisions to North Carolina's UST Program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the North Carolina UST Program continues to provide adequate enforcement of compliance. Therefore, the EPA grants North Carolina final approval to operate its UST Program with the revisions described in the State Application, and as outlined below. The North Carolina Department of Environmental Quality (DEQ) (formerly the North Carolina Department of Environment and Natural Resources) is the lead implementing agency for the UST Program in North Carolina, except in Indian country as noted below in Section I.I.

C. What is the effect of this approval on the regulated community?

Section 9004(b) of RCRA, 42 U.S.C. 6991c(b), as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. With this approval, the changes described in the State Application will become part of the approved North Carolina UST Program, and therefore will be federally enforceable. North Carolina will continue to have primary enforcement authority and responsibility for its State UST Program. 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 North Carolina, and are not changed by this action. This action merely approves the existing North Carolina regulations as being no less stringent than the 2015 Federal Revisions and rendering 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 rule because we view this as a noncontroversial action and we anticipate no adverse comment. North Carolina addressed all comments it received during its comment period when the rules and regulations being considered in this document were proposed at the State level.

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

Along with this direct final rule, the EPA is simultaneously publishing a separate document in the "Proposed Rules" section of this **Federal Register** that serves as the proposal to approve North Carolina's UST Program revisions

and 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 make any further decision on approval of the State Application after considering all comments received during the comment period. The EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has North Carolina previously been approved?

On January 16, 1998, North Carolina submitted a complete State program approval application seeking approval of its UST Program under subtitle I of RCRA. Effective August 14, 2001, the EPA granted final approval for North Carolina to administer its UST Program in lieu of the Federal UST program and incorporated by reference and codified the federally approved North Carolina UST Program (66 FR 32564 and 32566, June 15, 2001). As a result of the EPA's approval, these provisions became subject to the EPA's corrective action, inspection, and enforcement authorities under RCRA sections 9003(h), 9005, and 9006, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions.

G. What changes is the EPA approving with this action and what standards do we use for review?

In order to be approved, each State program revision application must meet the general requirements in 40 CFR 281.11 (General Requirements), and the 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).

As more fully described below, North Carolina has made changes to its UST Program to reflect the 2015 Federal Revisions. These changes are included in North Carolina's UST Rules at North Carolina Administrative Code (N.C.A.C.), Title 15A, Chapter 2, Subchapter 2N (2023), and the North Carolina General Statutes (N.C.G.S.) sections 143–215.94NN through 143–215.94UU (2018). The EPA is approving North Carolina's changes because they are no less stringent than the Federal UST program, and because the revised North Carolina UST Program will continue to provide for adequate enforcement of compliance as required

by 40 CFR 281.11(b) and part 281, subparts C and D, after this approval.

DEQ continues to be the lead implementing agency for the UST Program in North Carolina. DEQ has broad statutory and regulatory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, under the Chapter 143 of the N.C.G.S., Article 21A, Parts 2A (Leaking Petroleum Underground Storage Tank Cleanup), 2B (Underground Storage Tank Regulation), and 2D (Training of Underground Storage Tank Operators) (2018); and Title 15A of the North Carolina Administrative Code, Chapter 2, Subchapters 2L, 2N, 2O, and 2P (2023).

The following North Carolina authorities provide authority for compliance monitoring as required pursuant to 40 CFR 281.40: N.C.G.S. sections 143–215.3(a) through (d), 143–215.79, 143–215.94T; N.C.G.S. section 143B–282; and 15A N.C.A.C. 02N .0101(b) and .0405.

The following North Carolina authorities provide authority for enforcement response as required pursuant to 40 CFR 281.41: N.C.G.S. sections 143–215.2, 143–215.3(a), 143.215.3(c), 143–215.3(f), 143–215.6A, 143–215.94F, 143–215.94J, 143–215.94K, 143–215.94U, 143–215.94V(b) through (h), 143–215.94W, 143–215.94X, 143–215.94Y, and 143–215.94TT; N.C.G.S. section 143B–282; and 15A N.C.A.C. 02N .0101(b).

The following North Carolina authorities provide authority for enabling public participation in the State enforcement process, including citizen intervention and filing of complaints, required pursuant to 40 CFR 281.42: Rule 24(a)(2) of the North Carolina Rules of Civil Procedure (2024); and N.C.G.S. sections 150B–23 and 143–215.94L. Further, through a Memorandum of Agreement between DEQ and the EPA, effective October 12, 2018, North Carolina maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public, and DEQ will not oppose citizen intervention on the ground that the applicant's interest is adequately represented by the State. The following North Carolina authorities provide authority for enabling the sharing of information in the State files obtained or used in the administration of the North Carolina UST Program with the EPA as required by 40 CFR 281.43: N.C.G.S. sections 132–1 through 132–1.14. Further, through the Memorandum of Agreement between DEQ and the EPA, effective October 12, 2018, North Carolina agrees to furnish the EPA,

upon request, any information in State files obtained or used in the administration of the State UST Program.

To qualify for final approval, revisions to a State's UST program must be 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. North Carolina adopted all of the required 2015 Federal Revisions in Title 15A of the North Carolina Administrative Code, Chapter 2, Subchapter 2N (2023), and N.C.G.S. sections 143–215.94NN through 143–215.94UU (2018).

As part of the State Application, the North Carolina Attorney General has certified that the State regulations provide for adequate enforcement of compliance and meet the no less stringent criteria in 40 CFR part 281, subparts C and D. The EPA is relying on this certification, in addition to the analysis submitted by the State, in approving the State's changes.

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

States may enact laws that are more stringent than their Federal counterparts. See RCRA section 9008, 42 U.S.C. 6991g. When an approved State program includes requirements that are considered more stringent than those required by Federal law, the more stringent requirements become part of the federally approved program in accordance with 40 CFR 281.12(a)(3)(i). The EPA has determined that some of North Carolina's regulations are considered more stringent than the Federal program, and upon approval, they will become part of the federally approved North Carolina UST Program and therefore federally enforceable.

In addition, States may enact laws which are broader in scope than their Federal counterparts in accordance with 40 CFR 281.12(a)(3)(ii). State requirements that go beyond the scope of the Federal program are not part of the federally approved program and the EPA cannot enforce them. Although these requirements are enforceable by the State in accordance with North Carolina law, they are not Federal RCRA

requirements. The EPA considers the following North Carolina requirements to be broader in scope than the Federal program and therefore not part of the federally approved State UST Program:

Statutory Broader in Scope Provisions

General Statutes of North Carolina, Chapter 143; Article 21, Part 1. Organization and Powers Generally; Control of Pollution (2018).

(i) N.C.G.S. section 143–215.3(e), insofar as it provides for the granting of variances which are not available to UST owners and operators as these terms are defined in 40 CFR 280.12.

General Statutes of North Carolina, Chapter 143; Article 21A, Part 2A. Leaking Petroleum UST Tank Cleanup (2018).

(ii) N.C.G.S. section 143–215.94A(2)c., as to the definition of “Commercial underground storage tank,” insofar as it includes certain heating oil tanks and connected piping that are excluded by the Federal program.

(iii) N.C.G.S. section 143–215.94B, insofar as it provides for the creation of the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund (State Fund) and criteria for the expenditure of funds.

(iv) N.C.G.S. section 143–215.94C, insofar as it requires owners and operators to pay an annual operating fee to the State Fund.

(v) N.C.G.S. sections 143–215.94E(b) through (k), insofar as these provisions relate to the State Fund.

(vi) N.C.G.S. section 143–215.94G, insofar as it provides for DEQ to perform cleanups and provides for reimbursement from the State Fund.

(vii) N.C.G.S. section 143–215.94N, insofar as it relates to the State Fund.

(viii) N.C.G.S. section 143–215.94P, insofar as it provides for the creation of the Groundwater Protection Loan Fund and promulgation of regulations regarding such fund.

General Statutes of North Carolina, Chapter 143; Article 21A, Part 2D. Training of UST Operators (2018).

(ix) N.C.G.S. section 143–215.94OO(4), as to the definition of “Underground storage tank system” or “tank system,” insofar as it includes dispensers as part of the system.

General Statutes of North Carolina, Chapter 143B; Article 7, Part 1. General Provisions (2018).

(x) N.C.G.S. section 143B–279.9, insofar as it regulates releases from sources that are not underground storage tanks and entities that are not owners and operators as these terms are defined in 40 CFR 280.12.

(xi) N.C.G.S. section 143B–279.11, insofar as it regulates releases from

sources that are not underground storage tanks and entities that are not owners and operators as these terms are defined in 40 CFR 280.12.

Regulatory Broader in Scope Provisions

North Carolina Administrative Code, Title 15A—Environmental Quality; Chapter 2, Environmental Management; Subchapter 2L, Groundwater Classification and Standards (2023).

(i) 15A N.C.A.C. 02L .0100, including .0101 through .0115, insofar as these provisions provide general considerations for groundwater classification and standards.

(ii) 15A N.C.A.C. 02L .0200, including .0201 through .0202, insofar as these provisions establish underground water classifications and quality standards.

(iii) 15A N.C.A.C. 02L .0300, including .0301 through .0319, insofar as these provisions assign underground water classifications.

(iv) 15A N.C.A.C. 02L .0403, insofar as it defines a “responsible party” to include persons other than owners and operators as these terms are defined in 40 CFR 280.12.

(v) 15A N.C.A.C. 02L .0415, insofar as it regulates releases from sources other than underground storage tank systems.

(vi) 15A N.C.A.C. 02L .0500, including .0501 through .0515, insofar as these provisions regulate aboveground storage tanks and sources.

North Carolina Administrative Code, Title 15A—Environmental Quality; Chapter 2, Environmental Management; Subchapter 2N, Underground Storage Tanks (2023).

(vii) 15A N.C.A.C. 02N .0201(1), insofar as it regulates underground storage tanks containing de minimis concentrations of regulated substances.

(viii) 15A N.C.A.C. 02N .0203(a)(1), as to the definition of “UST system” or “Tank system,” insofar as it includes dispensers as part of the system.

(ix) 15A N.C.A.C. 02N .0504(c), insofar as it relates to the permitting of monitoring wells.

(x) 15A N.C.A.C. 02N .0802, insofar as it regulates underground storage tanks containing de minimis amounts of regulated substances.

(xi) 15A N.C.A.C. 02N .0901(d), insofar as it requires dispensers to have more than under-dispenser containment.

North Carolina Administrative Code, Title 15A—Environmental Quality; Chapter 2, Environmental Management; Subchapter 2P, Leaking Petroleum Underground Storage Tank Cleanup Funds (2023).

(xii) 15A N.C.A.C. 02P, including .0101 through .0408, except .0302, insofar as these provisions relate to the

State Fund and the collection of annual operating fees.

I. How does this action affect Indian country (18 U.S.C. 1151) in North Carolina?

The EPA’s approval of North Carolina’s UST Program does not extend to Indian country as defined in 18 U.S.C. 1151. The EPA will retain responsibility under RCRA for underground storage tanks in Indian country. Therefore, this action has no effect in Indian country. See 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing citations and references to a State’s statutes and regulations that comprise a State’s approved UST program into the CFR. The EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference State statutes and regulations that the EPA can enforce, after the approval is final, under sections 9005 and 9006 of RCRA, and any other applicable statutory provisions. The incorporation by reference of EPA-approved State programs in the CFR should substantially enhance the public’s ability to discern the status of the approved State UST programs 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 North Carolina’s UST Program?

In 2001, the EPA incorporated by reference and codified North Carolina’s approved UST Program at 40 CFR 282.83 (66 FR 32566, June 15, 2001). Through this action, the EPA is amending 40 CFR 282.83 to incorporate by reference and codify North Carolina’s revised UST Program.

C. What codification decisions is the EPA making in this rule?

In this rule, the EPA is finalizing regulatory text that incorporates by reference the federally approved North Carolina UST Program, including the revisions made to the UST Program based on the 2015 Federal Revisions. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference North Carolina’s statutes and regulations as described in the amendments to 40 CFR part 282 set forth below. These documents are available through <https://www.regulations.gov>. This codification reflects the State UST Program that will be in effect at the time the EPA’s

approval of the revisions to the North Carolina UST Program addressed in this direct final rule becomes final. If, however, the EPA receives substantive comment on the proposed rule, the EPA will withdraw this direct final rule and this codification will not take effect. The EPA will consider all comments and will make a decision on program approval and codification in a future final rule. By codifying the approved North Carolina UST Program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the North Carolina UST Program.

Specifically, in 40 CFR 282.83(d)(1)(i), the EPA is incorporating by reference the EPA-approved North Carolina UST Program. Section 282.83(d)(1)(ii) identifies the State’s statutes and regulations that are part of the approved North Carolina UST Program, although not incorporated by reference for enforcement purposes, unless they impose obligations on the regulated entity. Section 282.83(d)(1)(iii) identifies the State’s statutory and regulatory provisions that are broader in scope or external to the State’s approved UST Program and therefore not incorporated by reference. Sections 282.83(d)(2) through (5) reference the Attorney General’s Statement, Demonstration of Adequate Enforcement Procedures, Program Description, and Memorandum of Agreement, which are part of the State Application and part of the North Carolina UST Program under subtitle I of RCRA.

D. What is the effect of the EPA’s codification of the federally approved North Carolina 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 North Carolina, the EPA will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures rather than the North Carolina analogs. Therefore, the EPA is not incorporating by reference North Carolina’s procedural and enforcement authorities, although they are listed in 40 CFR 282.83(d)(1)(ii).

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

As discussed in section I.H. above, some provisions of North Carolina’s

UST Program are not part of the federally approved State UST Program because they are broader in scope than the Federal UST Program. Where an approved State program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, North Carolina provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of enforcement in part 282. See 40 CFR 281.12(a)(3)(ii). In addition, provisions that are external to the State UST program approval requirements, but included in the North Carolina's State Application, are also being excluded from incorporation by reference in part 282. For reference and clarity, 40 CFR 282.83(d)(1)(iii) lists the North Carolina statutory and regulatory provisions which are broader in scope than the Federal program or external to State UST program approval requirements. These provisions are, therefore, not part of the approved UST Program that the EPA is codifying. Although these provisions cannot be enforced by the EPA, the State will continue to implement and enforce such provisions under State law.

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

The EPA's actions merely approve and codify North Carolina's revised UST Program requirements pursuant to RCRA section 9004, and do not impose additional requirements other than those imposed by State law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are not subject to the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with RCRA;

- Do not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14096 (88 FR 25251, April 26, 2023).

- Do not apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. The rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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). This final action will be effective December 2, 2024.

List of Subjects in 40 CFR Parts 281 and 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Indian country, Petroleum, Reporting and recordkeeping requirements, State program approval, Underground storage tanks.

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

Dated: September 25, 2024.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

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. Revise § 282.83 to read as follows:

§ 282.83 North Carolina State-Administered Program.

(a) *History of the approval of North Carolina's program.* The State of North Carolina (State) is approved to administer and enforce an underground storage tank (UST) 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 Underground Storage Tank Program (UST Program), as administered by the North Carolina Department of Environmental Quality (DEQ), was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the North Carolina UST Program on June 15, 2001, and it was effective on August 14, 2001. A subsequent program revision was approved by EPA and became effective December 2, 2024.

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

(c) *Retention of program approval.* To retain program approval, North Carolina must revise its approved UST 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 North Carolina obtains approval for 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.* North Carolina has final approval for the following elements of its UST Program submitted to EPA and approved effective August 14, 2001, and the program revisions approved by EPA effective on December 2, 2024.

(1) *State statutes and regulations—(i) Incorporation by reference.*

The North Carolina materials cited in this paragraph (d)(1)(i), and listed in appendix A to this part, are incorporated by reference as part of the UST Program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the North Carolina statutes and regulations that are incorporated by reference in this paragraph (d)(1)(i) from the North Carolina Department of Environmental Quality, 217 West Jones Street, Raleigh, North Carolina 27603 (physical address); 1646 Mail Service Center, Raleigh, North Carolina 27699-1646 (mailing address); Phone number: (919) 707-8200; website: <https://www.deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/underground-storage-tanks-rules>.

(A) “North Carolina Statutory Requirements Applicable to the Underground Storage Tank Program,” dated August 15, 2024.

(B) “North Carolina Regulatory Requirements Applicable to the Underground Storage Tank Program,” dated August 15, 2024.

(ii) *Legal basis.* EPA considered the following statutes and regulations which provide the legal basis for the State’s implementation of the UST Program, but do not replace Federal authorities. Further, these provisions are not being incorporated by reference, unless the provisions place requirements on regulated entities.

(A) *General Statutes of North Carolina, Chapter 132—Public Records (2018).*

Sections 132-1 through 132-1.14, insofar as these provisions provide for information sharing with EPA and the State’s Public Records laws.

(B) *General Statutes of North Carolina, Chapter 143; Article 21, Part 1. Organization and Powers Generally; Control of Pollution (2018).*

(1) Section 143-215.2, insofar as it provides for enforcement response, issuance of orders, injunctive relief, public notice and review of orders, proceedings before the North Carolina Environmental Management Commission (Commission), and procedures to contest orders.

(2) Section 143-215.3(a), insofar as it provides additional general authorities to the Commission pertaining to the State UST Program.

(3) Section 143-215.3(b), insofar as it provides for compliance monitoring and establishes authority to conduct research, investigations, and requires cooperation from other State departments.

(4) Section 143-215.3(c), insofar as it provides authority to participate in Federal programs.

(5) Section 143-215.3(d), insofar as it establishes procedures for consulting with other States on regulations.

(6) Section 143-215.3(f), insofar as it provides enforcement response and establishes authorities for groundwater corrective action.

(7) Section 143-215.6A, insofar as it provides for enforcement response, assessment of penalties, and procedures for contesting penalties.

(C) *General Statutes of North Carolina, Chapter 143; Article 21A, Part 1. General Provisions (2018).*

Section 143-215.79, insofar as it provides for compliance monitoring and establishes authority for inspections and the right to enter property to conduct inspections.

(D) *General Statutes of North Carolina, Chapter 143; Article 21A, Part 2A. Leaking Petroleum UST Tank Cleanup (2018).*

(1) Section 143-215.94F, insofar as it provides for enforcement response and establishes a limitation of liability.

(2) Section 143-215.94J, insofar as it provides for enforcement response and establishes a limitation of liability for the State.

(3) Section 143-215.94K, insofar as it provides for enforcement response, civil penalties, criminal penalties, and injunctive relief.

(4) Section 143-215.94L, insofar as it establishes authority to adopt regulations necessary to implement the State UST Program.

(E) *General Statutes of North Carolina, Chapter 143; Article 21A, Part 2B. UST Regulation (2018).*

(1) Section 143-215.94T, insofar as it provides for compliance monitoring, and the promulgation of regulations for the implementation of the State UST Program.

(2) Section 143-215.94U, insofar as it provides for delivery prohibition and enforcement of the State UST Program.

(3) Section 143-215.94V(b) through (h), insofar as these provisions provide for enforcement response and establish authorities for corrective action.

(4) Section 143-215.94W, insofar as it provides for enforcement response and civil penalties.

(5) Section 143-215.94X, insofar as it provides for enforcement response and criminal penalties.

(6) Section 143-215.94Y, insofar as it provides for enforcement response and injunctive relief.

(F) *General Statutes of North Carolina, Chapter 143; Article 21A, Part 2D. Training of UST Operators (2018).*

Section 143-215.94TT, insofar as it provides for enforcement response, civil penalties, criminal penalties, and injunctive relief.

(G) *General Statutes of North Carolina, Chapter 143B; Article 7, Part 4. Environmental Management Commission (2018).*

Section 143B-282, insofar as it creates the Environmental Management Commission and provides the Commission with the powers and duty to promulgate rules pertaining to the State UST Program.

(H) *General Statutes of North Carolina, Chapter 150B—Administrative Procedure Act (2024).*

Section 150B-23, insofar as it provides for public intervention and procedures for administrative hearings.

(I) *North Carolina Administrative Code, Title 15A, Chapter 2, Subchapter 2N (2023).*

(1) 15A N.C.A.C. 02N .0101(b), insofar as it provides authority to administer the State UST Program.

(2) 15A N.C.A.C. 02N .0405, insofar as it provides for compliance monitoring and establishes authority to conduct inspections, tests, and obtain information from owners.

(J) *Rule 24(a)(2) of the North Carolina Rules of Civil Procedure (2024)*, insofar as it provides for citizen intervention and public participation in the State enforcement process.

(iii) *Other provisions not incorporated by reference.* The following statutory and regulatory provisions applicable to the North Carolina UST Program are broader in scope than the Federal program or external to the State UST program approval requirements. Therefore, these provisions are not part of the approved UST Program and are not incorporated by reference in this section:

(A) *General Statutes of North Carolina, Chapter 143; Article 21, Part 1. Organization and Powers Generally; Control of Pollution (2018).*

Section 143-215.3(e) is broader in scope insofar as it provides for the granting of variances which are not available to UST owners and operators as these terms are defined in 40 CFR 280.12.

(B) *General Statutes of North Carolina, Chapter 143; Article 21A, Part*

2A. Leaking Petroleum UST Tank Cleanup (2018).

(1) Section 143–215.94A(2)c. is broader in scope as to the definition of “Commercial underground storage tank,” insofar as it includes certain heating oil tanks and connected piping that are excluded by the Federal program.

(2) Section 143–215.94B is broader in scope insofar as it provides for the creation of the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund (State Fund) and criteria for the expenditure of funds.

(3) Section 143–215.94C is broader in scope insofar as it requires owners and operators to pay an annual operating fee to the State Fund.

(4) Sections 143–215.94E(b) through (k) are broader in scope insofar as these provisions relate to the State Fund.

(5) Section 143–215.94G is broader in scope insofar as it provides for DEQ to perform cleanups and provides for reimbursement from the State Fund.

(6) Section 143–215.94M is external insofar as it contains reporting obligations on the State agency, not a regulated entity.

(7) Section 143–215.94N is broader in scope insofar as it relates to the State Fund.

(8) Section 143–215.94P is broader in scope insofar as it provides for the creation of the Groundwater Protection Loan Fund and promulgation of regulations regarding such fund.

(C) *General Statutes of North Carolina, Chapter 143; Article 21A; Part 2B. UST Regulation (2018).*

Section 143–215.94V(a) is external insofar as it pertains to legislative findings and intent.

(D) *General Statutes of North Carolina, Chapter 143; Article 21A, Part 2D. Training of UST Operators (2018).*

Section 143–215.94OO(4) is broader in scope as to the definition of “Underground storage tank system” or “tank system,” insofar as it includes dispensers as part of the system.

(E) *General Statutes of North Carolina, Chapter 143B; Article 7, Part 4. Environmental Management Commission (2018).*

(1) Section 143B–279.9 is broader in scope insofar as it regulates releases from sources that are not underground storage tanks and entities that are not owners and operators as these terms are defined in 40 CFR 280.12.

(2) Section 143B–279.11 is broader in scope insofar as it regulates releases from sources that are not underground storage tanks and entities that are not owners and operators as these terms are defined in 40 CFR 280.12.

(F) *North Carolina Administrative Code, Title 15A—Environmental*

Quality; Chapter 2, Environmental Management; Subchapter 2L, Groundwater Classification and Standards (2023).

(1) 15A N.C.A.C. 02L .0100, including .0101 through .0115, is broader in scope insofar as it provides general considerations for groundwater classification and standards.

(2) 15A N.C.A.C. 02L .0200, including .0201 through .0202, is broader in scope insofar as it establishes underground water classifications and quality standards.

(3) 15A N.C.A.C. 02L .0300, including .0310 through .0319, is broader in scope insofar as it assigns underground water classifications.

(4) 15A N.C.A.C. 02L .0403 is broader in scope insofar as it defines a “responsible party” to include persons other than owners and operators as these terms are defined in 40 CFR 280.12.

(5) 15A N.C.A.C. 02L .0410 is external insofar as it contains reporting obligations on the State agency, not a regulated entity.

(6) 15A N.C.A.C. 02L .0414 is external insofar as it regulates entities other than owners or operators as these terms are defined in 40 CFR 280.12.

(7) 15A N.C.A.C. 02L .0415 is broader in scope insofar as it regulates releases from sources other than underground storage tank systems.

(8) 15A N.C.A.C. 02L .0500, including .0501 through .0515, is broader in scope insofar as it regulates aboveground storage tanks and sources.

(G) *North Carolina Administrative Code, Title 15A—Environmental Quality; Chapter 2, Environmental Management; Subchapter 2N, Underground Storage Tanks (2023).*

(1) 15A N.C.A.C. 02N .0201(1) is broader in scope insofar as it regulates underground storage tanks containing de minimis concentrations of regulated substances.

(2) 15A N.C.A.C. 02N .0203(a)(1) is broader in scope as to the definition of “UST system” or “Tank system,” insofar as they include dispensers as part of the system.

(3) 15A N.C.A.C. 02N .0504(c) is broader in scope insofar as it relates to the permitting of monitoring wells.

(4) 15A N.C.A.C. 02N .0802 is broader in scope insofar as it regulates underground storage tanks containing de minimis amounts of regulated substances.

(5) 15A N.C.A.C. 02N .0901(d) is broader in scope insofar as it requires dispensers to have more than under-dispenser containment.

(6) Note to paragraph (e) of Section 15A N.C.A.C. 02N .0901 is external

insofar as it regulates entities other than owners or operators as these terms are defined in 40 CFR 280.12.

(H) *North Carolina Administrative Code, Title 15A—Environmental Quality; Chapter 2, Environmental Management; Subchapter 2P, Leaking Petroleum Underground Storage Tank Cleanup Funds (2023).*

15A N.C.A.C. 02P, including .0101 through .0408, except .0302, insofar as these provisions relate to the State Fund and the collection of annual operating fees.

(2) *Statement of legal authority.* The Attorney General’s Statement, signed by independent legal counsel for the State on behalf of the North Carolina Attorney General on October 11, 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 Adequate Enforcement Procedures” submitted in the application dated October 22, 2018, as amended on February 22, 2023, May 4, 2023, and June 24, 2024, 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 submitted in the application dated October 22, 2018, as amended on February 22, 2023, May 4, 2023, and June 24, 2024, 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.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 4 and the DEQ, signed by the EPA Regional Administrator on October 12, 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. Amend appendix A to part 282 by revising the entry for North Carolina to read as follows:

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

* * * * *

North Carolina

(a) The statutory provisions include: *General Statutes of North Carolina, Chapter 143; Article 21A, Part 2A. Leaking Petroleum UST Tank Cleanup (2018):*

143–215.94A Definitions, except “by four or fewer households” in (2)(c).

- 143–215.94E Rights and obligations of the owner or operator, except (b) through (k).
- 143–215.94H Financial responsibility.
- 143–215.94I Insurance pools authorized; requirements.
- General Statutes of North Carolina, Chapter 143; Article 21A, Part 2D. Training of UST Operators (2018):*
- 143–215.94NN Applicability.
- 143–215.94OO Definitions, except “dispenser” in (4).
- 143–215.94PP Designation of operators to be trained.
- 143–215.94QQ Training requirements for primary operators.
- 143–215.94RR Training requirements for emergency response operators.
- 143–215.94SS Tank systems for emergency power generators.
- 143–215.94UU Effect on other laws.
- General Statutes of North Carolina, Chapter 143B; Article 7, Part 1. General Provisions (2018):*
- 143B–279.9 Land-use restrictions may be imposed to reduce danger to public health at contaminated sites, except for “Except with respect to land contaminated from a discharge or release of petroleum from an underground storage tank, the imposition of restrictions on the current or future use of real property on sites contaminated by the discharge or release of petroleum from an aboveground storage tank, or another petroleum source, from which contamination has migrated to off-site properties, as that term is defined under G.S. 130A–310.65(3a), shall only be allowed as provided in G.S. 143–215.104AA or G.S. 130A–310.73A, as applicable” in (b).
- 143B–279.11 Recordation of residual petroleum from underground or above ground storage tanks or other sources, except “or from an aboveground storage tank or other petroleum source pursuant to Part 7 of Article 21A of Chapter 143 of the General Statutes” in (a); “aboveground storage tank, or other petroleum source” in (b) and (d); (e); and (h).
- (b) The regulatory provisions include:
- North Carolina Administrative Code, Title 15A-Environmental Quality; Chapter 2, Environmental Management; Subchapter 2L, Groundwater Classification and Standards (2023):*
- 15A N.C.A.C. 02L .0401 Purpose.
- 15A N.C.A.C. 02L .0402 Definitions.
- 15A N.C.A.C. 02L .0403 Rule
- Application, except “a landowner seeking reimbursement from the Commercial Leaking Underground Storage Tank Fund or the Noncommercial Leaking Underground Storage Tank Fund under G.S. 143–215.94E, and any other person responsible for the assessment or cleanup of a discharge or release from an underground storage tank, including any person who has conducted or controlled an activity that results in the discharge or release of petroleum or petroleum products as defined in G.S. 143–215.94A(10) to the groundwaters of the State or in proximity thereto.”
- 15A N.C.A.C. 02L .0404 Required initial abatement actions by responsible party.
- 15A N.C.A.C. 02L .0405 Requirements for limited site assessment.
- 15A N.C.A.C. 02L .0406 Discharge or release classifications.
- 15A N.C.A.C. 02L .0407 Reclassification of risk levels.
- 15A N.C.A.C. 02L .0408 Assessment and remediation procedures.
- 15A N.C.A.C. 02L .0409 Notification requirements.
- 15A N.C.A.C. 02L .0411 Establishing maximum soil contamination concentrations.
- 15A N.C.A.C. 02L .0412 Analytical procedures for soil samples.
- 15A N.C.A.C. 02L .0413 Analytical procedures for groundwater samples.
- North Carolina Administrative Code, Title 15A-Environmental Quality; Chapter 2, Environmental Management; Subchapter 2N, Underground Storage Tanks (2023):*
- 15A N.C.A.C. 02N .0101 General, except for (b).
- 15A N.C.A.C. 02N .0102 Copies of referenced federal regulations.
- 15A N.C.A.C. 02N .0104 Identification of tanks.
- 15A N.C.A.C. 02N .0201 Applicability, except (1).
- 15A N.C.A.C. 02N .0202 Installation requirements for partially excluded UST systems.
- 15A N.C.A.C. 02N .0203 Definitions, except “dispenser” in (a)(1).
- 15A N.C.A.C. 02N .0301 Performance standards for UST system installations or replacements completed after December 22, 1988 and before November 1, 2007.
- 15A N.C.A.C. 02N .0302 Upgrading of existing UST systems after December 22, 1998 and before November 1, 2007.
- 15A N.C.A.C. 02N .0303 Notification requirements.
- 15A N.C.A.C. 02N .0304 Implementation schedule for performance standards for new UST systems and upgrading requirements for existing UST systems located in areas defined in Rule .0301(D).
- 15A N.C.A.C. 02N .0401 Spill and overflow control.
- 15A N.C.A.C. 02N .0402 Operation and maintenance of corrosion protection.
- 15A N.C.A.C. 02N .0403 Compatibility.
- 15A N.C.A.C. 02N .0404 Repairs allowed.
- 15A N.C.A.C. 02N .0405 Reporting and recordkeeping.
- 15A N.C.A.C. 02N .0406 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overflow prevention equipment.
- 15A N.C.A.C. 02N .0407 Periodic operation and maintenance walkthrough inspections.
- 15A N.C.A.C. 02N .0501 General Requirements for all UST systems.
- 15A N.C.A.C. 02N .0502 Requirements for petroleum UST systems.
- 15A N.C.A.C. 02N .0503 Requirements for hazardous substance UST systems.
- 15A N.C.A.C. 02N .0504 Methods of release detection for tanks, except (c).
- 15A N.C.A.C. 02N .0505 Methods of release detection for piping.
- 15A N.C.A.C. 02N .0506 Release detection recordkeeping.
- 15A N.C.A.C. 02N .0601 Reporting of suspected releases.
- 15A N.C.A.C. 02N .0602 Investigation due to off-site impacts.
- 15A N.C.A.C. 02N .0603 Release investigation and confirmation steps.
- 15A N.C.A.C. 02N .0604 Reporting and cleanup of spills and overfills.
- 15A N.C.A.C. 02N .0701 General.
- 15A N.C.A.C. 02N .0702 Initial response.
- 15A N.C.A.C. 02N .0703 Initial abatement measures and site check.
- 15A N.C.A.C. 02N .0704 Initial site characterization.
- 15A N.C.A.C. 02N .0705 Free product removal.
- 15A N.C.A.C. 02N .0706 Investigations for soil and groundwater cleanup.
- 15A N.C.A.C. 02N .0707 Corrective action plan.
- 15A N.C.A.C. 02N .0708 Public participation.
- 15A N.C.A.C. 02N .0801 Temporary closure.
- 15A N.C.A.C. 02N .0802 Permanent closure and change-in-service, except for “except that an UST system containing de minimis concentrations of a regulated substance shall meet the closure requirements of this Rule within 12 months of January 1, 1991.”
- 15A N.C.A.C. 02N .0803 Assessing the site at closure or change-in-service.
- 15A N.C.A.C. 02N .0804 Applicability to previously closed UST Systems.
- 15A N.C.A.C. 02N .0805 Closure records.
- 15A N.C.A.C. 02N .0901 General requirements, except “dispensers” in (d); and Note to Paragraph (e).
- 15A N.C.A.C. 02N .0902 Notification.
- 15A N.C.A.C. 02N .0903 Tanks.
- 15A N.C.A.C. 02N .0904 Piping.
- 15A N.C.A.C. 02N .0905 Containment sumps.
- 15A N.C.A.C. 02N .0906 Spill buckets.
- 15A N.C.A.C. 02N .0907 National codes of practice and industry standards.
- 15A N.C.A.C. 02N .1001 Definitions.
- 15A N.C.A.C. 02N .1002 General requirements.
- 15A N.C.A.C. 02N .1003 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.
- North Carolina Administrative Code, Title 15A-Environmental Quality; Chapter 2, Environmental Management; Subchapter 2O, Financial Responsibility Requirements for Owners and Operators of Underground Storage Tanks (2023):*
- 15A N.C.A.C. 02O .0101 General.
- 15A N.C.A.C. 02O .0102 Financial responsibility.
- 15A N.C.A.C. 02O .0203 Definitions.
- 15A N.C.A.C. 02O .0204 Amount and scope of required financial responsibility.
- 15A N.C.A.C. 02O .0302 Self insurance.
- 15A N.C.A.C. 02O .0304 Insurance and risk retention group coverage.
- 15A N.C.A.C. 02O .0308 Insurance pools.
- 15A N.C.A.C. 02O .0402 Record keeping.
- 15A N.C.A.C. 02O .0503 Incapacity of owner or operator or provider of assurance.
- 15A N.C.A.C. 02O .0504 Replenishment.
- North Carolina Administrative Code, Title 15A-Environmental Quality; Chapter 2, Environmental Management; Subchapter 2P, Leaking Petroleum Underground Storage Tank Cleanup Funds (2023):*
- 15A N.C.A.C. 02P .0302 Notification.
- (c) Copies of the North Carolina statutes and regulations that are incorporated by

reference are available from the North Carolina Department of Environmental Quality, 217 West Jones Street, Raleigh, North Carolina, 27603 (physical address); 1646 Mail Service Center, Raleigh, North Carolina 27699-1646 (mailing address); Phone number: (919) 707-8200; *website*: <https://www.deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/underground-storage-tanks-rules>.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS-1810-CN]

RIN 0938-AV29

Medicare Program; FY 2025 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, and Hospice Quality Reporting Program Requirements; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors in the final rule that appeared in the August 6, 2024 *Federal Register* titled “Medicare Program; FY 2025 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, and Hospice Quality Reporting Program Requirements”.

DATES: This correction is effective on October 1, 2024.

FOR FURTHER INFORMATION CONTACT:

For questions regarding the hospice wage index, contact Chantelle Caldwell, (410) 786-8743.

For general questions about hospice payment policy, contact the hospice mailbox at: hospicepolicy@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2024-16910 of August 6, 2024 (89 FR 64202), there were a number of technical and typographical errors that are identified and corrected in this correcting document. The provisions in this correction document are effective as if they had been included in the final rule that appeared in the August 6, 2024 *Federal Register*. Accordingly, the corrections are effective October 1, 2024.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 64207, we made a typographical error in the reported core-based statistical area (CBSA) name and wage index value for CBSA 25980, Hinesville, Georgia. We reported the CBSA name as Hinesville-Fort Stewart, Georgia instead of Hinesville, Georgia, and the FY 2025 hospice wage index value as 0.8872, instead of 0.8886.

On page 64210, in Table 3, titled “Urban Counties that Would Change to Rural Status”, we inadvertently omitted FIPS county 09015 Windham County from the list of counties that were previously urban but would gain rural status beginning in FY 2025. Table 3 contains the FIPS codes, county name, current CBSA number and name of the counties that will gain rural status in FY 2025. Windham County was previously designated in CBSA 49340 Worcester, MA-CT. However, beginning in FY 2025 this county is redesignated into rural Connecticut (rural area 99907). Accordingly, we are adding FIPS 09015 Windham County to the list of counties that will gain rural status beginning in FY 2025. We also reported a total of 53 counties and county equivalents that are currently considered urban that would be considered rural beginning in FY 2025. Therefore, with the addition of Windham County to the list, we are correcting that number to 54 counties and county equivalents.

Windham County is also experiencing a change to its county name beginning in FY 2025, as described in the FY 2025 hospice final rule (89 FR 64209) and will transition from FIPS county 09015 Windham County to 09150 Northeastern Connecticut planning region.

On page 64222, in Table 8, titled “Counties That Will Use a Wage Index Transition Code”, we inadvertently omitted FIPS county 09150 “Northeastern Connecticut Planning Region” from the list of counties that will use a transition code on hospice claims for FY 2025 instead of the CBSA number. Table 8 contains the FIPS codes, county name, current CBSA number and name, the redesignated FY 2025 CBSA number and name and the corresponding “500XX” transition code that must be submitted on hospice claims for FY 2025 to ensure that hospice providers who provide services in certain counties receive that county’s appropriate wage index value. The omission of the Northeastern planning region from Table 8 and the subsequent unassigned transition code for that region resulted in two wage index values being assigned to statewide rural area 99907 in the FY 2025 hospice final

wage index file located at: <https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice/hospice-wage-index>. However, for hospice claims processing, each CBSA or statewide rural area can have only one wage index value assigned to that CBSA or statewide rural area. Therefore, hospices that serve beneficiaries in the Northeastern Connecticut planning region must use transition code 50030, instead of the rural statewide code 99907, on hospice claims beginning in FY 2025. Accordingly, we are adding FIPS county 09150 “Northeastern Connecticut Planning Region” to the list of counties in Table 8 that will use a transition code on hospice claims for FY 2025 instead of the CBSA number.

This correction does not represent a change in policy and is consistent with the finalized transition policy outlined in the FY 2025 Hospice final rule (89 FR 64220-64224), where beginning in FY 2025, certain counties must use a 500XX transition code on hospice claims instead of the statewide rural area or CBSA code in circumstances where a county was redesignated into a new CBSA or rural area and has a different wage index than the constituent counties that make up that CBSA or rural area due to the calculation of the 5-percent cap.

On page 64239, we made a typographical error. We inadvertently included the word “Proposed” in the title of Section III.D.2, which therefore incorrectly read: “Implementation of Two Process Quality Measures Based on Proposed HOPE Data Collection”. As HOPE is finalized as of the FY 2025 final rule, it should not be referred to as “proposed”. Therefore, the title of this Section III.D.2 is corrected to read: “Implementation of Two Process Quality Measures Based on HOPE Data Collection.”

On page 64240, we made a typographical error in the sentence “CMS maintains to avoid creating unnecessary burden for hospice providers.” The sentence is corrected to read: “CMS maintains its commitment to avoid creating unnecessary burden for hospice providers.”

On page 64242, we made a typographical error in the sentence “Theses (SFVs) may be performed by RNs or LPNs/LVNs.” The sentence is corrected to read: “These SFVs may be performed by RNs or LPNs/LVNs.”

On page 64244, under the undesignated heading “Public Availability of Data Submitted”, we made two typographical errors. We stated the following: “We are finalizing the decision that the data from the first quarter Q4 CY 2025, if HOPE data