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.

SUPPLEMENTAL 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.
authorized analogs to these provisions. Therefore, the approved Texas enforcement authorities will not be incorporated by reference. Section 282.93 lists those approved Texas 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 282.93 of the codification simply lists for reference and clarity the Texas 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 (60 FR 14373, March 7, 1995) to approve the Texas 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.

Date: October 20, 1995.

A. Stanley Melburg,
Acting Regional Administrator.

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

Subpart B—Approved State Programs

2. Subpart B is amended by adding §282.93 as read to read as follows:

§282.93 Texas State-Administered Program.

(a) The State of Texas 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 Texas Natural Resource Conservation Commission, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Texas program on March 7, 1995, and it was effective on April 17, 1995.

(b) Texas 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, Texas 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 Texas 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) Texas has final approval for the following elements submitted to EPA in Texas’ program application for final approval and approved by EPA on March 7, 1995. Copies may be obtained from the Underground Storage Tank Program, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, TX 78711–3087.

(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) Texas Statutory Requirements Applicable to the Underground Storage Tank Program, 1995

(B) Texas 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) Texas Water Code, Title 2, Subtitle D, Chapter 26—State Water Administration.

§26.013 Research, Investigations
§26.014 Power to Enter Property
§26.015 Power to Examine Records
§26.016 Enforcement Proceedings
§26.017 Cooperation
§26.019 Orders
§26.020 Hearing Powers
§26.021 Delegation of Hearing Powers
§26.022 Notice of Hearings; Continuance
§26.042 Monitoring and Reporting
§26.121 Unauthorized Discharges Prohibited
§26.122 Civil Penalty
§26.123 Enforcement by Commission
§26.124 Enforcement by Others
§26.125 Venue and Procedure
§26.126 Disposition of Civil Penalties
§26.136 Administrative Penalty
§26.212 Criminal Offense
§26.213 Criminal Penalty
§26.268 Penalties
§26.353 Commission Orders
§26.354 Emergency Orders
§26.356 Inspections, Monitoring, and Testing

(B) The regulatory provisions include:

(1) 31 Texas Administrative Code, Chapter 334—Underground and Aboveground Storage Tanks.

Subchapter A: General Provisions

§334.11 Enforcement
§334.14 Memorandum of Understanding between the Attorney General of Texas and the Texas Natural Resource Conservation Commission

(2) 31 Texas Administrative Code, Chapter 337—Enforcement

(i) Subchapter A: Enforcement Generally.

§337.1 Enforcement Orders
The final 1993 theft data indicate a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1992. The final theft rate for MY 1993 passenger vehicles stolen in calendar year 1993 decreased to 3.98 thefts per thousand vehicles produced. Publication of these data fulfills NHTSA’s statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment. The data was calculated for informational purposes only.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Gray’s telephone number is (202) 366-1740. Her fax number is (202) 493-2739.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually since 1983/84. Continuing to fulfill the § 33104(b)(4) mandate, this document reports the final theft data for MY 1993, the most recent calendar year for which data are available.

In calculating the 1993 theft rates, NHTSA followed the same procedures it used in calculating the MY 1992 theft rates. (For 1992 theft data calculations, see 60 FR 1824, January 5, 1995). As in all previous reports, NHTSA’s data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1993 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1993 vehicles of that line stolen during calendar year 1993, by the total number of vehicles in that line manufactured for MY 1993, as reported to the Environmental Protection Agency. The final 1993 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1992. The final theft rate for MY 1993 passenger vehicles stolen in CY 1993 decreased to 3.98 thefts per thousand vehicles produced, a decrease of 7.7 percent from the rate of 4.31 thefts per thousand vehicles experienced by MY 1992 vehicles in CY 1992. For MY 1993 vehicles, out of a total of 213 vehicle lines, 97 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 97 vehicle lines with a theft rate higher than 3.5826, 76 are passenger car lines, 17 are multipurpose passenger vehicle lines, and 4 are light-duty truck lines.

On Tuesday, September 12, 1995, NHTSA published the preliminary theft rates for CY 1993 passenger motor vehicles in the Federal Register (60 FR 47429). The agency tentatively ranked each of the MY 1993 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data, and to provide final production figures for individual vehicle lines. In response to the September 1995 notice, the agency received written comments from Ford Motor Company (Ford), General Motors Corporation (GM), and Mercedes-Benz of North America, Inc. (Mercedes-Benz). In its comments, all three manufacturers provided corrected production figures for their vehicle lines. (The written corrections are available at the docket number cited at the beginning of this notice.) The updated production figures from those manufacturers affected the theft rates of the vehicle lines of each manufacturer as follows: The Ford Taurus, E150 Van, F150 Pickup Truck, and Mercury Capri have been amended. In addition, the General Motors Geo Metro and Tracker are revised. Likewise, the Mercedes-Benz 124 (E-Class), 129 (SL-Class), 140 (S-Class), and 201 have also been revised.

The agency used all written comments to make the necessary adjustments to its data. As a result of the adjustments, the final theft rate and ranking of the vehicle lines changed from those published in the September 1995 notice. The Ford E150 Van previously ranked at No. 37, with a theft rate of 6.4963, is now ranked at No. 26, with a theft rate of 7.5873; the Ford F150 Pickup Truck, previously ranked at No. 195, with a theft rate of 0.6147, is now ranked at No. 159, with a theft rate...