

# Federal Register

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## THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

## WASHINGTON, DC

[Two Sessions]

- WHEN:** January 23, 1996 at 9:00 am and February 6, 1996 at 9:00 am
- WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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**Reader Aids**

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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**New Feature in the Reader Aids!**

Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.

The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.

The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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**Electronic Bulletin Board**

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202-275-1538 or 275-0920.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Proclamation 6861 of January 12, 1996

The President

Martin Luther King, Jr., Federal Holiday, 1996

By the President of the United States of America

## A Proclamation

Our country's motto, "E Pluribus Unum"—out of many, we are one—charges us to find common values among our varied experience and to forge a national identity out of our extraordinary diversity. Our great leaders have been defined not only by their actions, but also by their ability to inspire people toward a unity of purpose. Today we honor Dr. Martin Luther King, Jr., who focused attention on the segregation that poisoned our society and whose example moved our Nation to embrace a new standard of openness and inclusion.

From Montgomery to Birmingham, from the Lincoln Memorial to Memphis, Dr. King led us to see the great contradiction between our founders' declaration that "all men are created equal" and the daily reality of oppression endured by African Americans. His words have become such a part of our moral fabric that we may forget that only a generation ago, children of different races were legally forbidden to attend the same schools, that segregated buses and trains traveled our neighborhoods, and that African Americans were often prevented from registering to vote. Echoing Abraham Lincoln's warning that a house divided against itself cannot stand, Dr. King urged, "We must learn to live together as brothers, or we will perish as fools."

Martin Luther King, Jr.'s call for American society to truly reflect the ideals on which it was built succeeded in galvanizing a political and moral consensus that led to legislation guaranteeing all our citizens the right to vote, to obtain housing, to enter places of public accommodation, and to participate in all aspects of American life without regard to race, gender, background, or belief.

But despite the great accomplishments of the Civil Rights Movement, we have not yet torn down every obstacle to equality. Too many of our cities are still racially segregated, and remaining barriers to education and opportunity have caused an array of social problems that disproportionately affect African Americans. As a result, blacks and whites often see the world in strikingly different ways and too often view each other through a lens of mistrust or fear.

Today we face a choice between the dream of racial harmony that Martin Luther King, Jr., described and a deepening of the rift that divides the races in America. We must have the faith and wisdom that Dr. King preached and the convictions he lived by if we are to make this a time for healing and progress—and each of us must play a role. For only by sitting down with our neighbors in the workplace and classroom, reaching across racial lines in our places of worship and community centers, and examining our own most deep-seated beliefs, can we have the honest conversations that will enable us to understand the different ways we each experience the challenges of modern life. This is the peaceful process of reconciliation that Dr. King fought and died for, and we must do all we can to live and teach his lesson.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 15, 1996, as the Martin Luther King, Jr., Federal Holiday. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of January, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

A handwritten signature in black ink that reads "William J. Clinton". The signature is written in a cursive style with a large, prominent "W" and "C".

[FR Doc. 96-621  
Filed 1-17-96; 8:45 am]  
Billing code 3195-01-P

## Presidential Documents

Executive Order 12985 of January 11, 1996

### Establishing the Armed Forces Service Medal

By the authority vested in me as President by the Constitution and the laws of the United States of America, including my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

Section 1. *Establishment.* There is hereby established the Armed Forces Service Medal with accompanying ribbons and appurtenances, for award to members of the Armed Forces of the United States who, on or after June 1, 1992, in the opinion of the Joint Chiefs of Staff: (a) Participate, or have participated, as members of United States military units in a United States military operation in which personnel of any Armed Force participate that is deemed to be significant activity; and

(b) Encounter no foreign armed opposition or imminent hostile action.

Sec. 2. *Approval and Award.* The medal, with ribbons and appurtenances, shall be of an appropriate design approved by the Secretary of Defense and shall be awarded by the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, under uniform regulations, as prescribed by the Secretary of Defense. The regulations shall place the Armed Forces Service Medal in an order of precedence immediately before the Humanitarian Service Medal.

Sec. 3. *Criteria.* The medal shall be awarded only for operations for which no other United States service medal is approved. For operations in which personnel of only one Military Department or the Coast Guard participate, the medal shall be awarded only if there is no other suitable award available to the department or the Coast Guard. No more than one medal shall be awarded to any one person, but for each succeeding operation justifying such award a suitable device may be awarded to be worn on the medal or ribbon as prescribed by appropriate regulations.

Sec. 4. *Posthumous Provision.* The medal may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense or the Secretary of Transportation.



THE WHITE HOUSE,  
January 11, 1996.

# Rules and Regulations

Federal Register

Vol. 61, No. 12

Thursday, January 18, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 282

[FRL-5304-5]

#### Underground Storage Tank Program: Approved State Program for Louisiana

**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 Louisiana's underground storage tank program and incorporates by reference appropriate provisions of State statutes and regulations.

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

**ADDRESSES:** Comments may be mailed to the Docket Clerk, Underground Storage Tank Program, 6H-A, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-

2733. Comments received by EPA may be inspected in the public docket, located in the EPA Region 6 Library (12th floor) from 8 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank program. EPA published a Federal Register document announcing its decision to grant approval to Louisiana on July 24, 1992 (57 FR 34519). Approval was effective on September 4, 1992.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Louisiana underground storage tank program. This codification reflects the State program in effect at the time EPA granted Louisiana 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 Louisiana 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 Louisiana program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Louisiana, the status of federally approved requirements of the Louisiana program will be readily discernible. Only those provisions of the Louisiana

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 Louisiana's underground storage tank program, EPA has added § 282.68 to title 40 of the CFR. Section 282.68 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.68 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 Louisiana enforcement authorities will not be incorporated by reference. Section 282.68 lists those approved Louisiana 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 282.68 of the codification simply lists for reference and clarity the Louisiana statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

### Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made (57 FR 34519, July 24, 1992) to approve the Louisiana underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

### Compliance With Executive Order 12866

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

### Paperwork Reduction Act

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

### List of Subjects in 40 CFR Part 282

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

Dated: October 20, 1995.

A. Stanley Meiburg,  
*Acting Regional Administrator.*

For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

## **PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS**

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

### **Subpart B—Approved State Programs**

2. Subpart B is amended by adding § 282.68 to read as follows:

#### **§ 282.68 Louisiana State-Administered Program.**

(a) The State of Louisiana 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

Louisiana Department of Environmental Quality, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Louisiana program on July 24, 1992 and it was effective on September 4, 1992.

(b) Louisiana 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, Louisiana 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 Louisiana 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) Louisiana has final approval for the following elements submitted to EPA in Louisiana's program application for final approval and approved by EPA on July 24, 1992. Copies may be obtained from the Underground Storage Tank Program, Louisiana Department of Environmental Quality, 7290 Bluebonnet Road, Baton Rouge, LA 70810-1612.

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

(B) Louisiana 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) *Louisiana Revised Statutes, Title 30*
- § 2012 Enforcement Inspections
  - § 2025 Enforcement
  - § 2026 Citizen Suits
  - § 2077 Remediation of Pollution
  - § 2172 Policy and Purpose
  - § 2275 Demand by Secretary; Remedial Action

(B) The regulatory provisions include:

(1) *Louisiana Environmental Regulatory Code, Part XI: Underground Storage Tanks, Chapter 15—Enforcement:*

- § 1501 Inspection and Entry
- § 1503 Failure to Comply
- § 1505 Investigations: Purposes, Notice

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

(A) *Louisiana Environmental Regulatory Code, Part XI: Underground Storage Tanks*

(1) *Chapter 13—Certification Requirements for Persons Who Install, Repair, or Close Underground Storage Tank Systems* [Insofar as it applies to individuals other than UST owners and operators.]

- § 1301 Applicability
- § 1303 Definitions
- § 1305 Categories of Certification and Requirements for Issuance and Renewal of Certificates
- § 1307 Certification Examinations
- § 1309 Approval of Continuing Training Courses
- § 1311 Denial of Issuance or Renewal of a Certificate or Revocation of a Certificate
- § 1313 UST Certification Board

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Louisiana on September 12, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Louisiana to EPA, September 12, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application on October 15, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on October 15, 1991, though not incorporated by reference, are referenced as part of the approved underground storage tank program

under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region 6 and the Louisiana Department of Environmental Quality, signed by the EPA Regional Administrator on May 14, 1992, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to Part 282 is amended by adding in alphabetical order "Louisiana" and its listing.

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

\* \* \* \* \*

##### Louisiana

(a) The statutory provisions include:

1. *Louisiana Environmental Quality Act, Louisiana Revised Statutes Title 30*
  - § 2194 Underground Storage Tanks; Registration
  - § 2195 Underground Storage Tank Trust Fund
    - § 2195.1 Underground Motor Fuel Storage Tank Remediation Agreements
    - § 2195.2 Uses of the Trust
    - § 2195.3 Source of Funding; Limitations on Disbursements from the Trust; Limit on Amount in Trust
    - § 2195.4 Procedures for Disbursements from the Fund Trust
    - § 2195.5 Audits
    - § 2195.6 Ownership of Trust
    - § 2195.7 No Inference of Liability on the Part of the State
    - § 2195.8 Advisory Board
    - § 2195.9 Financial Responsibility
    - § 2195.10 Voluntary Cleanup, Private Contracts; Exemptions

(b) The regulatory provisions include:

1. *Louisiana Environmental Regulatory Code, Part XI: Underground Storage Tanks, Chapter 1—Program Applicability and Definitions*
  - § 101 Applicability
  - § 103 Definitions
2. *Chapter 3—Registration Requirements, Standards, and Fee Schedule*
  - § 301 Registration Requirements
  - § 303 Standards for UST Systems
  - § 305 Interim Prohibitions for Deferred UST Systems
  - § 307 Fee Schedule
3. *Chapter 5—General Operating Requirements*
  - § 501 Spill and Overfill Control
  - § 503 Operation and Maintenance of Corrosion Protection
  - § 505 Compatibility
  - § 507 Repairs Allowed
  - § 509 Reporting and Recordkeeping
4. *Chapter 7—Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response*
  - § 701 Methods of Release Detection

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      - § 1137 Release from the Requirements
      - § 1139 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance
      - § 1141 Replenishment of Guarantees, Letters of Credit, or Surety Bonds

[FR Doc. 96-524 Filed 1-17-96; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 282

[FRL-5304-6]

#### Underground Storage Tank Program: Approved State Program for Arkansas

**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 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 Arkansas' 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 Arkansas' underground storage tank program must be received by the close of business February 20, 1996. The incorporation by reference of certain publications listed in the regulations, is approved by the Director of the Federal Register, as of March 18, 1996, in accordance with 5 U.S.C. 552(a).

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

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

**SUPPLEMENTARY INFORMATION:** Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991(c), 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 Arkansas on February 14, 1995 (60 FR 10331). Approval was effective on April 25, 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. 6991(d) and 6991(e), and other

applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Arkansas underground storage tank program. This codification reflects the state program in effect at the time EPA granted Arkansas 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 Arkansas 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 Arkansas program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Arkansas, the status of federally approved requirements of the Arkansas program will be readily discernible. Only those provisions of the Arkansas 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 Arkansas' underground storage tank program, EPA has added § 282.53 to title 40 of the CFR. Section 282.53 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.53 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 Arkansas enforcement authorities will not be incorporated by reference. Section 282.53 lists those approved Arkansas 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 282.53 of the codification simply lists for reference and clarity the Arkansas 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 10331, February 14, 1995) to approve the Arkansas underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### Compliance With Executive Order 12866

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

#### Paperwork Reduction Act

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

#### List of Subjects in 40 CFR Part 282

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

Dated: October 20, 1995.

A. Stanley Meiburg,  
*Acting Regional Administrator.*

For the reasons set forth in the preamble, 40 CFR Part 282 is amended as follows:

### **PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS**

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

#### **Subpart B—Approved State Programs**

2. Subpart B is amended by adding § 282.53 to read as follows:

#### **§ 282.53 Arkansas State-Administered Program.**

(a) The State of Arkansas 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 Arkansas Department of Pollution Control and Ecology, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Arkansas program on February 14, 1995 and it was effective on April 25, 1995.

(b) Arkansas 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, Arkansas 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 Arkansas 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) Arkansas has final approval for the following elements submitted to EPA in Arkansas' program application for final approval and approved by EPA on February 14, 1995. Copies may be obtained from the Underground Storage Tank Program, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, AR 72219-8913.

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

(B) Arkansas 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) *Arkansas Code Annotated, Title 8, Chapter 1, Subchapter 1—General Provisions:*

(i) § 8-1-107 Inspections—Definitions—Investigations—Inspection Warrant—Exceptions—Penalties

(2) *Arkansas Code Annotated, Title 8, Chapter 4, Subchapter 1—General Provisions:*

(i) § 8-4-103 Criminal, Civil, and Administrative Penalties

(3) *Arkansas Code Annotated, Title 8, Chapter 7, Subchapter 8—Regulated Substance Storage Tanks:*

(i) § 8-7-802 Department and commission—powers and duties

(ii) § 8-7-806 Penalties

(iii) § 8-7-809 Corrective actions—Orders of director

(B) The regulatory provisions include:

(1) *Arkansas Department of Pollution Control and Ecology Regulation Number 12—Storage Tank Regulation:*

(i) Chapter 2, Section 4: Access to Records

(ii) Chapter 2, Section 5: Entry and Inspection of Underground Storage Tank Facilities

(iii) Chapter 8, Section 1: Violations

(iv) Chapter 8, Section 2: Penalty Policy and Administrative Procedures

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

(A) Statutes.

(1) *Arkansas Code Annotated, Title 8, Chapter 7, Subchapter 8—Regulated Substance Storage Tanks.*

(i) § 8-7-802 Department's Powers and Duties (Insofar as it applies to aboveground storage tanks.)

(ii) § 8-7-805 License Requirement (Insofar as it applies to individuals other than UST owners and operators.)

(2) *Arkansas Code Annotated, Title 8, Chapter 7, Subchapter 9—Petroleum Storage Tank Trust Fund Act.*

(i) § 8-7-903 Rules and Regulations—Powers of department

(Insofar as (c) addresses aboveground storage tanks.)

(ii) Reserved.

(B) Regulations.

(1) *Arkansas Department of Pollution Control and Ecology Regulation Number 12—Storage Tank Regulation.*

(i) Chapter 2, Section 6: Entry and Inspection of Aboveground Storage Tank Facilities (Insofar as it applies to aboveground storage tanks.)

(ii) Chapter 3, Section 1: Underground and Aboveground Storage Tank Registration Fees (Insofar as it applies to aboveground storage tanks.)

(iii) Chapter 5: Licensing of Tank Installers and Service Personnel (Insofar as it applies to individuals other than UST system owners and operators.)

Section 1: Purpose

Section 2: Definitions

Section 3: Applicability

Section 4: General Requirements

Section 5: Contractor Licensing

Section 6: Individual Licensing

Section 7: Experience Requirements

Section 8: Written Examination

Section 9: Approval of Comparable Licensing Programs

Section 10: Reciprocity

Section 11: Denial of Licenses

Section 12: Renewal of Licenses

Section 13: Duties and Obligations

Section 14: Department Approval of Training and Continuing Education

Section 15: Complaints

Section 16: Investigations; Enforcement; Penalties

Section 17: Department Actions Against Licenses.

(iv) Chapter 6: Licensing of Tank Testers (Insofar as it applies to individuals other than UST system owners and operators.)

Section 1: Purpose

Section 2: Definitions

Section 3: Applicability

Section 4: General Requirements

Section 5: Company Licensing

Section 6: Individual Licensing

Section 7: Experience Requirements

Section 8: Approval of Comparable Licensing Programs

Section 9: Reciprocity

Section 10: Denial of Licenses

Section 11: Renewal of Licenses

Section 12: Duties and Obligations

Section 13: Department Approval of Training and Continuing Education

Section 14: Complaints

Section 15: Investigation; Enforcement; Penalties

Section 16: Department Actions Against Licenses

(2) *Statement of legal authority.* (i)

“Attorney General’s Statement for Final Approval”, signed by the Attorney General of Arkansas on September 21,

1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Arkansas to EPA, September 21, 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the original application on September 26, 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on September 26, 1994, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the Arkansas Department of Pollution Control and Ecology, signed by the EPA Regional Administrator on February 14, 1995, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by adding in alphabetical order “Arkansas” and its listing.

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

\* \* \* \* \*

##### Arkansas

(a) The statutory provisions include:

1. *Arkansas Code Annotated, Title 8, Chapter 7, Subchapter 8—Regulated Substance Storage Tanks:*

§ 8-7-801 Definitions and exceptions

§ 8-7-803 Regulations generally

§ 8-7-804 Procedures of department generally

§ 8-7-807 Responsibility and liability of owner

§ 8-7-808 Regulated Substance Storage Tank Program Fund

§ 8-7-810 Insurance pools

§ 8-7-811 Trade secrets

§ 8-7-812 Subchapter controlling over other laws

- § 8-7-813 Registration
2. *Arkansas Code Annotated, Title 8, Chapter 7, Subchapter 9—Petroleum Storage Tank Trust Fund Act:*
- § 8-7-901 Title
- § 8-7-902 Definitions
- § 8-7-903 Rules and Regulations—  
Powers of department [Except (c), which addresses aboveground storage tanks.]
- § 8-7-904 Advisory committee
- § 8-7-905 Petroleum Storage Tank Trust Fund
- § 8-7-906 Petroleum environmental assurance fee
- § 8-7-907 Payments for corrective action
- § 8-7-908 Third-party claims
- § 8-7-909 Confidential treatment of information
- (b) The regulatory provisions include:
1. *Arkansas Department of Pollution Control and Ecology Regulation Number 12—Storage Tank Regulation:*
- a. Chapter 1: General Provisions
- Section 1: Purpose
- Section 2: Authority
- Section 3: Short Title
- b. Chapter 2: Regulations Promulgated Under Acts 172 and 173 of 1989 and Act 65 of the Third Extraordinary Session of 1989 for Administration of the State Regulated Storage Tank Program
- Section 1: Incorporation of Federal Regulations
- Section 2: Arkansas Petroleum Storage Tank Trust Fund Act
- Section 3: Definitions
- c. Chapter 3: Fees
- Section 1: Underground and Aboveground Storage Tank Registration Fees [Except insofar as it applies to aboveground storage tanks.]
- Section 2: Underground Storage Tank Licensing Fees
- Section 3: Late Payment Penalties
- Section 4: Refusal or Failure to Pay Fees
- d. Chapter 4: Petroleum Storage Tank Trust Fund Release Reimbursement
- Section 1: Purpose
- Section 2: Amount of Reimbursement
- Section 3: Initial Fund Eligibility
- Section 4: Loss and Restoration of Initial Fund Eligibility
- Section 5: Corrective Action Reimbursement Procedure
- Section 6: Reimbursement Application Review
- Section 7: Allowable Costs
- Section 8: Reasonable Costs
- Section 9: Audits
- Section 10: Deductible
- Section 11: Third Party Claim Reimbursement Procedure
- Section 12: Compliance
- Section 13: Fund Availability
- Section 14: Cost Recovery
- e. Chapter 7: Confidentiality
- Section 1: Confidentiality Requests
- Section 2: Responsibility
- Section 3: Submission Procedure
- Section 4: Requirements for Protection
- Section 5: Acceptability of Information
- Section 6: Security
- f. Chapter 9: Severability
- g. Chapter 10: Effective Date

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## 40 CFR Part 282

[FRL-5304-2]

### Underground Storage Tank Program: Approved State Program for New Mexico

**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 New Mexico's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

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

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

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

#### SUPPLEMENTARY INFORMATION:

##### Background

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

underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a Federal Register document announcing its decision to grant approval to New Mexico on August 21, 1990 (55 FR 38064). Approval was effective on November 16, 1990.

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 New Mexico underground storage tank program. This codification reflects the state program in effect at the time EPA granted New Mexico 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 New Mexico 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 New Mexico program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in New Mexico, the status of federally approved requirements of the New Mexico program will be readily discernible. Only those provisions of the New Mexico 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 New Mexico's underground storage tank program, EPA has added section 282.81 to title 40 of the CFR. Section 282.81 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.81 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 New Mexico enforcement authorities will not be incorporated by reference. Section 282.81 lists those approved New Mexico 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 282.81 of the codification simply lists for reference and clarity the New Mexico 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 (55 FR 38064, August 21, 1990) to approve the New Mexico underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### Compliance With Executive Order 12866

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

#### Paperwork Reduction Act

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

#### List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State

program approval, Underground storage tanks, Water pollution control.

Dated: October 20, 1995.

A. Stanley Meiburg,  
*Acting Regional Administrator.*

For the reasons set forth in the preamble, 40 CFR Part 282 is amended as follows:

### **PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS**

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

#### **Subpart B—Approved State Programs**

2. Subpart B is amended by adding § 282.81 to read as follows:

#### **§ 282.81 New Mexico State-Administered Program.**

(a) The State of New Mexico 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 New Mexico Environmental Improvement Board, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the New Mexico program on August 21, 1990 and it was effective on November 16, 1990.

(b) New Mexico 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, New Mexico 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 New Mexico 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) New Mexico has final approval for the following elements submitted to EPA in New Mexico's program application for final approval and approved by EPA on August 21, 1990. Copies may be obtained from the

Underground Storage Tank Program, New Mexico Environmental Improvement Board, 1190 St. Francis Drive, Santa Fe, NM 87503.

(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) New Mexico Statutory Requirements Applicable to the Underground Storage Tank Program, 1995.

(B) New Mexico 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) *New Mexico Statutes 1978*

*Annotated, Chapter 74, Environmental Improvement.*

(i) Article 4: Hazardous Wastes.

74-4-4.2 Permits; Issuance; Denial; Modification; Suspension; Revocation

74-4-4.3 Entry; Availability of Records

74-4-10 Enforcement; Compliance Orders; Civil Penalties

74-4-11 Penalty; Criminal

74-4-12 Penalty; Civil

74-4-13 Imminent Hazards;

Authority of Director; Penalties

74-4-14 Administrative Actions;

Judicial Review

(ii) Article 6: Water Quality.

74-6-7 Administrative Action;

Judicial Review

74-6-10 Penalties Enforcement;

Compliance Orders; Penalties;

Assurance of Discontinuance

74-6-10.1 Civil Penalties

74-6-10.2 Criminal Penalties

74-6-11 Emergency; Powers of

Delegated Constituent Agencies; Penalties

(iii) Article 6B: Ground Water

Protection.

74-6B-5 Department's Right of

Entry and Inspection

(B) The regulatory provisions include:

(1) *State of New Mexico Environmental Improvement Board Underground Storage Tank Regulations.*

(i) Part X: Administrative Review.

§ 1000 Informal Review

§ 1001 Review By the Director on Written Memoranda

§ 1002 Public Participation

(2) *New Mexico Rules Governing Appeals From Compliance Orders Under the Hazardous Waste Act and the Solid Waste Act.*

- (i) Part I: General Provisions.  
 § 101 Authority  
 § 102 Scope of Rules; Applicability of Rules of Civil Procedure  
 § 103 Definitions  
 § 104 Use of Number and Gender  
 § 105 Powers and Duties of the Director, Hearing Officer, and Hearing Clerk  
 § 106 Computation and Extension of Time  
 § 107 Ex Parte Discussions  
 § 108 Examination of Documents Filed  
 § 109 Settlement; Consent Agreement  
 (ii) Part II: Document Requirements.  
 § 201 Filing, Service, and Form of Documents  
 § 202 Filing and Service of Documents Issued by Hearing Officer  
 § 203 Compliance Order  
 § 204 Request for Hearing; Answer to Compliance Order  
 § 205 Notice of Docketing; Notice of Hearing Officer Assignment  
 § 206 Motions  
 (iii) Part III: Prehearing Procedures and Discovery.  
 § 301 General Rules Regarding Discovery  
 § 302 Identity of Witnesses  
 § 303 Production of Documents  
 § 304 Request for Admissions  
 § 305 Subpoenas  
 § 306 Other Discovery  
 (iv) Part IV: Hearing Procedures.  
 § 401 Scheduling the Hearing  
 § 402 Evidence  
 § 403 Objections and Offers of Proof  
 § 404 Burden of Presentation; Burden of Persuasion  
 (v) Part V: Post-Hearing Procedures.  
 § 501 Filing the Transcript  
 § 502 Proposed Findings, Conclusions and Orders  
 § 503 Recommended Decision  
 § 504 Final Order by Director  
 § 505 Judicial Review  
 (vi) Part VI: Miscellaneous Provisions.  
 § 601 Liberal Construction  
 § 602 Severability  
 § 603 Supersession of Prior Rules  
 § 604 Savings Clause  
 (iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.  
 (A) New Mexico Statutes 1978 Annotated, Chapter 74, Environmental Improvement.  
 (1) 74-4-4.4 Underground Storage Tanks; Registration; Installer Certification; Fees [Insofar as it applies to individuals other than UST owners and operators.]  
 (B) State of New Mexico Environmental Improvement Board Underground Storage Tank Regulations.  
 (1) Part I: General Provisions.  
 § 103 Applicability [Insofar as it does not exclude UST systems with *de minimis* concentrations of regulated substances; emergency spill or overflow containment UST systems expeditiously emptied after use; UST systems that are part of emergency generator systems at nuclear power generation facilities; airport hydrant fuel distribution systems; and UST systems with field-constructed tanks; and does not defer emergency power generator UST systems.]  
 (2) Part XIV: Certification of Tank Installers [Insofar as it applies to individuals other than UST owners and operators.]  
 § 1400 Purpose  
 § 1401 Legal Authority  
 § 1402 Definitions  
 § 1403 Applicability  
 § 1404 General Requirements  
 § 1405 Contractor Certification  
 § 1406 Individual Certification  
 § 1407 Experience Requirements  
 § 1408 Written Examination  
 § 1409 On-Site Examination  
 § 1410 Approval of Comparable Certification Programs  
 § 1411 Denial of Certificates  
 § 1412 Renewal of Certificates  
 § 1413 Installer Duties and Obligations  
 § 1414 Division Approval of Training and Continuing Education  
 § 1415 Complaints  
 § 1416 Investigations, Enforcement, Penalties  
 § 1417 Division Actions Against Certificates  
 (2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of New Mexico on June 25, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*  
 (ii) Letter from the Attorney General of New Mexico to EPA, June 25, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*  
 (3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application on September 25, 1989, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*  
 (4) *Program Description.* The program description and any other material submitted as part of the original application on September 25, 1990, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*  
 (5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the New Mexico Environmental Improvement Board, signed by the EPA Regional Administrator on September 13, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*  
 3. Appendix A to Part 282 is amended by adding in alphabetical order "New Mexico" and its listing.
- Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations**
- \* \* \* \* \*
- New Mexico*
- (a) The statutory provisions include:
1. New Mexico Statutes 1978 Annotated, Chapter 74, Environmental Improvement (1993 Replacement Pamphlet and 1994 Supplement)
    - a. Article 4: Hazardous Wastes
      - 74-4-1 Short Title
      - 74-4-2 Purpose
      - 74-4-3 Definitions
        - 74-4-3.1 Application of Act
        - 74-4-3.3 Hazardous Wastes of Other States
        - 74-4-4 Duties and Powers of the Board
          - 74-4-4.1 Hazardous Agricultural Waste; Duties and Responsibilities of the Department of Agriculture
          - 74-4-4.4 Underground Storage Tanks; Registration; Installer Certification; Fees [Except insofar as it applies to individuals other than UST owners and operators.]
          - 74-4-4.5 Hazardous Waste Fund Created; Appropriation
          - 74-4-4.7 Permit Applicant Disclosure
          - 74-4-4.8 Underground Storage Tank Fund Created; Appropriation
          - 74-4-5 Adoption of Regulations; Notice and Hearing
          - 74-4-7 Containment and Cleanup of Hazardous Substance Incidents; Division Powers
          - 74-4-8 Emergency Fund
          - 74-4-9 Existing Hazardous Waste Facilities; Interim Status
          - 74-4-10.1 Hazardous Waste Monitoring; Analysis and Testing
      - b. Article 6: Water Quality

- 74-6-1 Short Title  
74-6-2 Definitions  
74-6-3 Water Quality Control Commission Created  
74-6-3.1 Legal Advice  
74-6-4 Duties and Powers of Commission  
74-6-5 Permits; Certification; Appeals to Commission  
74-6-5.1 Disclosure Statements  
74-6-5.2 Water Quality Management Fund Created  
74-6-6 Adoption of Regulations and Standards; Notice and Hearing  
74-6-8 Duties of Constituent Agencies  
74-6-9 Powers of Constituent Agencies  
74-6-12 Limitations  
74-6-13 Construction  
74-6-14 Recompiled  
74-6-15 Confidential Information; Penalties  
74-6-16 Effect and Enforcement of Water Quality Act During Transition  
74-6-17 Termination of Agency Life; Delayed Repeal  
c. Article 6B: Ground Water Protection  
74-6B-1 Short Title  
74-6B-2 Findings; Purpose of Act  
74-6B-3 Definitions  
74-6B-4 Underground Storage Tank Committee; Creation; Terms; Powers and Duties  
74-6B-6 Civil Liability for Damage to Property from Leaking Underground Storage Tank  
74-6B-7 Corrective Action Fund Created; Authorization for Expenditures  
74-6B-8 Liability; Cost Recovery  
74-6B-9 Underground Storage Tank Fee; Deposit in Underground Storage Tank Fund  
74-6B-10 Act Does not Create Insurance Company or Fund  
74-6B-12 Early Response Team Created  
74-6B-13 Payment Program  
74-6B-14 State Liability; Insufficient Balance in the Fund  
(b) The regulatory provisions include:  
1. State of New Mexico Environmental Improvement Board Underground Storage Tank Regulations  
a. Part I: General Provisions  
§ 100 Purpose  
§ 101 Legal Authority  
§ 102 Definitions  
§ 103 Applicability  
b. Part II: Registration of Tanks  
§ 200 Existing Tanks  
§ 201 Transfer of Ownership  
§ 202 New UST System  
§ 203 Substantially Modified UST Systems  
§ 204 Notification of Spill or Release  
§ 205 Emergency Repairs and Tank Replacement  
§ 206 Application Forms  
§ 207 Registration Certificate  
c. Part III: Annual Fee  
§ 300 Payment of Fee  
§ 301 Amount of Fee  
§ 302 Late Payment Penalties  
d. Part IV: New and Upgraded UST Systems: Design, Construction, and Installation  
§ 400 Performance Standards for New UST Systems  
§ 401 Upgrading of Existing UST Systems  
§ 402 Certificate of Compliance; Notification Requirements  
e. Part V: General Operating Requirements  
§ 500 Spill and Overfill Control  
§ 501 Operation and Maintenance of Corrosion Protection  
§ 502 Compatibility  
§ 503 Repairs Allowed  
§ 504 Reporting and Recordkeeping  
§ 505 Inspections, Monitoring and Testing  
f. Part VI: Release Detection  
§ 600 General Requirements for All UST Systems  
§ 601 Requirements for Petroleum UST Systems  
§ 602 Requirements for Hazardous Substance UST Systems  
§ 603 Methods of Release Detection for Tanks  
§ 604 Methods of Release Detection for Piping  
§ 605 Release Detection Recordkeeping  
g. Part VII: Release Reporting, Investigation, and Confirmation  
§ 700 Reporting of Suspected Releases  
§ 701 Investigation Due to Off-Site Impacts  
§ 702 Release Investigation and Confirmation Steps  
§ 703 Reporting and Cleanup of Spills and Overfills  
h. Part VIII: Out-of-Service Systems and Closure  
§ 800 Temporary Closure  
§ 801 Permanent Closure and Changes-in-Service  
§ 802 Assessing the Site at Closure or Change-in-Service  
§ 803 Applicability to Previously Closed UST Systems  
§ 804 Closure Records  
i. Part IX: Financial Responsibility  
§ 900 Applicability  
§ 901 Compliance Dates  
§ 902 Definition of Terms  
§ 903 Amount and Scope of Required Financial Responsibility  
§ 904 Allowable Mechanisms and Combinations of Mechanisms  
§ 905 Financial Test of Self-Insurance  
§ 906 Guarantee  
§ 907 Insurance and Risk Retention Group Coverage  
§ 908 Surety Bond  
§ 909 Letter of Credit  
§ 910 Use of State-Required Mechanism  
§ 911 State Fund or Other State Assurance  
§ 912 Trust Fund  
§ 913 Standby Trust Fund  
§ 914 Substitution of Financial Assurance Mechanisms by Owner or Operator  
§ 915 Cancellation or Nonrenewal by a Provider of Financial Assurance  
§ 916 Reporting by Owner or Operator  
§ 917 Recordkeeping  
§ 918 Drawing on Financial Assurance Mechanisms  
§ 919 Release from the Requirements  
§ 920 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance  
§ 921 Replenishment of Guarantees, Letters of Credit, or Surety Bonds  
§ 922 Suspension of Enforcement [reserved]  
j. Part XI: Miscellaneous  
§ 1100 Compliance with Other Regulations  
§ 1101 Construction  
§ 1102 Severability  
k. Part XII: Corrective Action for UST Systems Containing Petroleum  
§ 1200 General  
§ 1201 Definitions  
§ 1202 Initial Response  
§ 1203 Initial Abatement  
§ 1204 72 Hour and 7 Day Reporting Requirements  
§ 1205 On-Site Investigation  
§ 1206 Report on the On-Site Investigation  
§ 1207 Split Samples and Sampling Procedures  
§ 1208 Free Product Removal  
§ 1209 Treatment of Highly Contaminated Soils  
§ 1210 Hydrogeologic Investigation  
§ 1211 Review and Approval of Hydrogeologic Investigation  
§ 1212 Reclamation Proposal  
§ 1213 Public Notice of Reclamation Proposal  
§ 1214 Review and Approval of Reclamation Proposal  
§ 1215 Implementation of Reclamation Proposal  
§ 1216 Quarterly Reports  
§ 1217 Evaluation of Corrective Action System  
§ 1218 Modification of Reclamation Proposal  
§ 1219 Termination of Reclamation  
§ 1220 Technical Infeasibility for Completion of Reclamation  
§ 1221 Request for Extension of Time  
§ 1222 Request for Variance  
l. Part XIII: Corrective Action for UST Systems Containing Other Regulated Substances  
§ 1300 General  
§ 1301 Definitions  
§ 1302 Initial Response  
§ 1303 Initial Abatement  
§ 1304 72 Hour and 7 Day Reporting Requirements  
§ 1305 On-Site Investigation  
§ 1306 Report on the On-Site Investigation  
§ 1307 Split Samples and Sampling Procedures  
§ 1308 Hydrogeologic Investigation  
§ 1309 Review and Approval of Hydrogeologic Investigation  
§ 1310 Reclamation Proposal  
§ 1311 Public Notice of Reclamation Proposal  
§ 1312 Review and Approval of Reclamation Proposal  
§ 1313 Implementation of Reclamation Proposal  
§ 1314 Quarterly Reports  
§ 1315 Evaluation of Corrective Action System  
§ 1316 Modification of Reclamation Proposal  
§ 1317 Termination of Reclamation  
§ 1318 Additional Water Quality Standards  
§ 1319 Request for Extension of Time

- § 1320 Request for Variance
- m. Part XV: Ground Water Protection Act Regulations
- § 1500 Purpose
- § 1501 Legal Authority
- § 1502 Definitions
- § 1503 Construction
- § 1504 Permissible Fund Expenditures
- § 1505 Priorities for Fund Expenditures
- § 1506 Site-Specific Allocation of Fund Monies
- § 1507 Reserved and Dedicated Fund Monies
- § 1508 Minimum Site Assessment
- 2. Corrective Action Fund Payment and Reimbursement Regulations
  - a. Part I: General Provisions
    - § 101 Authority
    - § 102 Purpose
    - § 103 Applicability
    - § 104 Definitions
  - b. Part II: Compliance Determinations
    - § 201 General
    - § 202 Determination of Compliance under Section 74-6B-8
    - § 203 Compliance Determination Following Written Submission
  - c. Part III: Eligible and Ineligible Costs
    - § 301 Minimum Site Assessment
    - § 302 Corrective Action
  - d. Part IV: Application, Payment, and Reimbursement
    - § 401 Application, Payment, and Reimbursement Process
  - e. Part V: Administrative Review
    - § 501 Review by the Director on Written Submittal
    - § 502 Request for Hearing on Determinations of Compliance and Cost Eligibility
    - § 503 Notice of Docketing and Hearing Officer Assignment; Motions; Prehearing Procedures and Discovery; Hearing and Post-Hearing Procedures
  - f. Part VI: Miscellaneous Provisions
    - § 601 Liberal Construction
    - § 602 Severability
    - § 603 Compliance

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

BILLING CODE 6560-50-P

## 40 CFR Part 282

[FRL-5304-3]

### Underground Storage Tank Program: Approved State Program for Oklahoma

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

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

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

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

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

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

#### SUPPLEMENTARY INFORMATION:

##### Background

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

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

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

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

To codify EPA's approval of Oklahoma's underground storage tank program, EPA has added § 282.86 to title 40 of the CFR. Section 282.86 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.86 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Oklahoma enforcement authorities will not be incorporated by reference. Section 282.86 lists those approved Oklahoma authorities that would fall into this category.

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

and clarify the Oklahoma statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

#### Certification Under the Regulatory Flexibility Act

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

#### Compliance With Executive Order 12866

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

#### Paperwork Reduction Act

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

#### List of Subjects in 40 CFR Part 282

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

Dated: October 20, 1995.

A. Stanley Meiburg,  
*Acting Regional Administrator.*

For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

### **PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS**

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Subpart B is amended by adding § 282.86 to read as follows:

#### **Subpart B—Approved State Programs**

##### **§ 282.86 Oklahoma State-Administered Program.**

(a) The State of Oklahoma is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Oklahoma Corporation Commission, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Oklahoma program on August 12, 1992 and it was effective on October 14, 1992.

(b) Oklahoma has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, Oklahoma must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Oklahoma obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the Federal Register.

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

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

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

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

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

(A) The statutory provisions include:

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

§ 306 Corporation Commission—Powers and Duties

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

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

(B) The regulatory provisions include:

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

Part 1: Inspections

Part 5: Penalties

Part 7: Field Citations

Part 9: Shutdown of Operations

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

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

§ 165:27-9-2 Changes to Rules

§ 165:27-9-3 Notices

§ 165:27-9-4 Severability

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

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

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

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

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

(1) *Subchapter 1: General Provisions*

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

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

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

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

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Oklahoma on June 21, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Oklahoma to EPA, June 21, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application on June 25, 1989, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on June 25, 1989, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the Oklahoma Corporation Commission, signed by the EPA Regional Administrator on April 8, 1992, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by adding in alphabetical order "Oklahoma" and its listing.

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

\* \* \* \* \*

Oklahoma

(a) The statutory provisions include

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

§ 301 Short Title

§ 303 Definitions

§ 304 Exemptions

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

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

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

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

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

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

§ 315 Corporation Commission Underground Storage Tank Regulation Revolving Fund

§ 316 Ordinance or Regulations in Conflict with Act Prohibited

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

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

§ 350 Short Title—Maintenance, Operation and Administration

§ 352 Definitions

§ 353 Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund

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

§ 356 Collection, Remittance and Reporting of Assessments

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

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

§ 358 Annual Reports

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

§ 360 Limitation on Expenditures for Administrative Costs—Reports

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

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

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

a. Subchapter 1: General Provisions

Part 1: Purpose and Statutory Authority

Part 3: Definitions

Part 5: Scope of Rules

Part 7: National Industry Codes

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

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

Part 1: Release Prohibition, Reporting and Investigation

Part 3: Recordkeeping

Part 5: Spill and Overfill Prevention Requirements

Part 7: Compatibility

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

Part 11: Repairs to Underground Storage Tank Systems

Part 13: Removal and Closure of Underground Storage Tank Systems

Part 15: Corrective Action Requirements

Part 17: Requirements for Corrosion Protection Systems

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

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

Part 1: Design, Construction, and Installation Requirements

Part 3: General Release Detection Methods and Service

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

e. Subchapter 9: Inspections, Testing, and Monitoring

Part 3: Fees

f. Subchapter 11: Administrative Provisions

g. Subchapter 13: Financial Responsibility Requirements

Part 1: Applicability

Part 3: Definitions

Part 5: Amount and Scope of Coverage

Part 7: Financial Assurance

Part 9: Financial Test of Self-Insurance

Part 11: Guarantee

Part 13: Insurance and Risk Retention Group Coverage

Part 15: Surety Bond

Part 17: Letter of Credit

Part 19: State Fund or Other State Assurance

Part 21: Trust Fund  
 Part 23: Standby Trust Fund  
 Part 25: Substitution of Financial Assurance Mechanisms  
 Part 27: Cancellation or Nonrenewal  
 Part 29: Reporting  
 Part 31: Recordkeeping  
 Part 33: Drawing on Financial Assurance Mechanisms  
 Part 35: Release from Subchapter 11 Requirements  
 Part 37: Bankruptcy or Other Incapacity of Owner/Operator or Provider of Financial Assurance  
 Part 39: Replenishment of Guarantees, Letters of Credit, or Surety Bonds

h. Subchapter 15: Circle K Settlement Fund  
 Part 1: General Provisions  
 Part 3: Definitions  
 Part 5: Eligibility Requirements  
 Part 7: Reimbursement

i. Appendices  
 Appendix A: Letter From Chief Financial Officer  
 Appendix B: Guarantee  
 Appendix C: Endorsement  
 Appendix D: Certificate of Insurance  
 Appendix E: Performance Bond  
 Appendix F: Irrevocable Standby Letter of Credit  
 Appendix G: Trust Agreement  
 Appendix H: Certification of Financial Responsibility  
 Appendix I: Certification of Valid Claim  
 Appendix J: Soil and Groundwater Remediation Index  
 Appendix K: Soil Cleanup Levels  
 Appendix L: Mean Annual Precipitation  
 Appendix M: Hydrologically Sensitive Area  
 Appendix N: Field Citation Fines

*2. Oklahoma Annotated Code, Chapter 27: Indemnity Fund*

a. Subchapter 1: General Provisions  
 § 165:27-1-1 Purpose  
 § 165:27-1-2 Definitions  
 § 165:27-1-3 Scope  
 § 165:27-1-4 Authority  
 § 165:27-1-5 Citation of Rules  
 § 165:27-1-6 Prescribed Forms

b. Subchapter 3: Eligibility Requirements  
 § 165:27-3-1 General Requirements  
 § 165:27-3-2 Eligible Person  
 § 165:27-3-3 Eligible Release

c. Subchapter 5: Qualifications for Reimbursement  
 § 165:27-5-1 Qualifications for Reimbursement  
 § 165:27-5-2 Application for Reimbursement  
 § 165:27-5-3 Application for Supplemental Reimbursement

d. Subchapter 7: Reimbursement  
 § 165:27-7-1 Reimbursable Expenses  
 § 165:27-7-2 Total Reimbursement  
 § 165:27-7-5 Methods for Reimbursement  
 § 165:27-7-6 Conditions for Reimbursement  
 § 165:27-7-7 Exclusions from Reimbursement  
 § 165:27-7-8 Withholding Reimbursement

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BILLING CODE 6560-50-P

**40 CFR Part 282**

[FRL-5304-4]

**Underground Storage Tank Program: Approved State Program for Texas**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

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

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

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

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

**SUPPLEMENTARY INFORMATION:**

**Background**

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

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

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

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

To codify EPA's approval of Texas' underground storage tank program, EPA has added section 282.93 to title 40 of the CFR. Section 282.93 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.93 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state

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.

Dated: October 20, 1995.

A. Stanley Meiburg,  
*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 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

- § 337.2 Hearings on Violations
- § 337.3 Legal Proceedings
- § 337.4 Complaint File
- § 337.5 Confidentiality of Enforcement Information
- § 337.6 Force Majeure
- (ii) Subchapter B: Enforcement Hearings.
- § 337.31 Purpose
- § 337.32 Remedies
- § 337.33 Definitions
- § 337.34 Substantial Noncompliance and Emergency Conditions
- § 337.35 Emergencies
- § 337.36 Preliminary Enforcement Report
- § 337.37 Notice
- § 337.38 Answer
- § 337.39 Commission Action
- § 337.40 Appeals of Administrative Penalties
- (iii) Subchapter C: Water Rights Enforcement.
- § 337.51 Show-Cause Enforcement Procedures
- § 337.52 Notice
- § 337.53 Enforcement of Commission Orders
- § 337.54 Enforcement
- (3) 31 Texas Administrative Code, Chapter 265—Procedures Before Public Hearing.
- § 265.1 Initial Pleadings
- § 265.2 Executive Director Forwards Initial Pleadings to the Commission
- § 265.3 Acceptance for Filing
- § 265.4 Affidavit of Publication
- § 265.5 Effect of Failure to Furnish Affidavit
- § 265.6 Conference Before Hearing
- § 265.7 Recordation of Conference Action
- § 265.8 Prefiled Testimony and Exhibits
- § 265.9 Written Protest
- § 265.10 Discovery
- § 265.11 Forms of Discovery
- § 265.12 Scope of Discovery
- § 265.13 Exceptions
- § 265.14 Protective Orders
- § 265.15 Duty to Supplement
- § 265.16 Discovery of Documents and Things
- § 265.17 Interrogatories to Parties
- § 265.18 Admission of Facts and Genuineness of Document
- § 265.19 Requests for Requests for Information
- § 265.20 Sanctions for Failure to Comply with Discovery Ruling
- (4) 31 Texas Administrative Code, Chapter 267—Procedures During Public Hearing.
- § 267.1 Designation of Parties
- § 267.2 Statutory Parties
- § 267.3 Rights of Parties at the Hearing
- § 267.4 Persons Not Parties
- § 267.5 Effect of Postponement
- § 267.6 Furnishing Copies of Pleadings
- § 267.7 Conference During Hearing
- § 267.8 Recordation of Hearing Conference Action
- § 267.9 Agreements to be in Writing
- § 267.10 Rulings in Commission Evidentiary Hearings
- § 267.11 Order of Presentation
- § 267.12 Alignment of Participants
- § 267.13 General Admissibility of Evidence
- § 267.14 Objections
- § 267.15 Interlocutory Appeals
- § 267.16 Cross-Examination of Witnesses
- § 267.17 Stipulation
- § 267.18 Exhibits
- § 267.19 Copies of Exhibits
- § 267.20 Abstracts of Documents
- § 267.21 Excluding Exhibits
- § 267.22 Official Notice
- § 267.23 Parties to be Informed of Material Officially Noticed
- § 267.24 Continuance
- § 267.25 Oral Argument
- § 267.26 Submittal of Findings of Fact and Conclusions of Law
- (5) 31 Texas Administrative Code, Chapter 273—Procedures After Final Decision.
- § 273.1 Motion for Rehearing
- § 273.2 Reply to Motion for Rehearing
- § 273.3 Granting of Motion for Rehearing
- § 273.4 Modification of Time Limits
- § 273.5 Decision Final and Appealable
- § 273.6 Appeal
- § 273.7 The Record
- § 273.8 Costs of Record on Appeal
- (iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.
- (A) Texas Water Code, Title 2, Subtitle D, Chapter 26—State Water Administration.
- (1) Subchapter I: Underground and Aboveground Storage Tanks.
- § 26.341 Purpose (Insofar as it applies to aboveground storage tanks.)
- § 26.342 Definitions (Insofar as (10) and (12) apply to aboveground storage tanks.)
- § 26.344 Exemptions (Insofar as (a), (d), and (f) apply to aboveground storage tanks.)
- § 26.3441 Aboveground Storage Tanks (Insofar as it applies to aboveground storage tanks.)
- § 26.345 Administrative Provisions (Insofar as (a) and (e) apply to aboveground storage tanks.)
- § 26.346 Registration Requirements (Insofar as (a) applies to aboveground storage tanks.)
- § 26.349 Reporting of Releases and Corrective Action (Insofar as (a) applies to aboveground storage tanks.)
- § 26.351 Corrective Action (Insofar as it applies to aboveground storage tanks.)
- § 26.3511 Corrective Action by the Commission (Insofar as it applies to aboveground storage tanks.)
- § 26.3514 Limits on Liability of Lender (Insofar as it applies to aboveground storage tanks.)
- § 26.3515 Limits on Liability of Corporate Fiduciary (Insofar as it applies to aboveground storage tanks.)
- § 26.355 Recovery of Costs (Insofar as it applies to aboveground storage tanks.)
- § 26.358 Storage Tank Fund; Fees (Insofar as it applies to aboveground storage tanks.)
- (B) 31 Texas Administrative Code, Chapter 334—Underground and Aboveground Storage Tanks.
- (1) Subchapter A: General Provisions.
- (i) Insofar as § 334.1(a)(1), (c), and (d)(2) apply to aboveground storage tanks.
- (ii) Insofar as § 334.3(b) applies release reporting and corrective action requirements to certain hydraulic lift tanks that are exempt under the federal program.
- (iii) Insofar as § 334.4 does not exclude airport hydrant fuel distribution systems and UST systems with field-constructed tanks; excludes only *sumps* less than 110 gallons, as opposed to all tanks; and does not provide a release detection deferral for UST systems that store fuel solely for use by emergency power generators.
- (iv) Insofar as § 334.4 subjects wastewater treatment tank systems that are deferred in the federal rules to the registration, general operating requirements, and corrective action requirements.
- (v) Insofar as § 334.4 requires USTs that store radioactive substances or are part of a nuclear power plant to comply with registration and general operating requirements.
- (vi) Insofar as § 334.4 applies release reporting and corrective action requirements to certain hydraulic lift tanks that are exempt under the federal program.
- (2) Subchapter F: Aboveground Storage Tanks (Insofar as it applies to aboveground storage tanks)
- § 334.121 Purpose and Applicability

- § 334.122 Definitions
- § 334.123 Statutory Exemptions
- § 334.124 Commission Exclusions
- § 334.125 General Prohibitions and Requirements
- § 334.126 Installation Notification
- § 334.127 Registration
- § 334.128 Annual Facility Fees
- § 334.129 Release Reporting and Corrective Action
- § 334.130 Reporting and Recordkeeping
- § 334.131 Enforcement
- § 334.132 Other General Provisions
- (3) Subchapter I: Underground Storage Tank Contractor Certification and Installer Licensing (Insofar as it applies to individuals other than UST owners and operators)
- § 334.401 Certificate of Registration for UST Contractor
- § 334.402 Application for Certificate of Registration
- § 334.403 Issuance of Certificate of Registration
- § 334.404 Renewal of Certificate of Registration
- § 334.405 Denial of Certificate of Registration
- § 334.406 Fee Assessments for Certificate of Registration
- § 334.407 Other Requirements
- § 334.408 Exception to Registration Requirements
- § 334.409 Revocation, Suspension or Reinstatement of Certification of Registration and License
- § 334.410 Notice of Hearings
- § 334.411 Type of Hearing
- § 334.412 Subchapter I Definitions
- § 334.413 License for Installers and On-Site Supervisors
- § 334.414 License for Installers and On-Site Supervisors
- § 334.415 License A and License B
- § 334.416 Requirements for Issuance of License A and License B
- § 334.417 Application for License A and License B
- § 334.418 Notification of Examination
- § 334.419 License A and License B Examination
- § 334.420 Issuance of License A or License B
- § 334.421 Renewal of License
- § 334.422 Denial of License A or License B
- § 334.423 Fees Assessments for License A and License B
- § 334.424 Other Requirements for a License A and License B
- § 334.425 Exceptions to License A and License B Requirements
- § 334.426 Revocation, Suspension, or Reinstatement of a License A and License B
- § 334.427 Notice of Hearings
- § 334.428 Type of Hearing

- (4) Subchapter J: Registration of Corrective Action Specialists and Project Managers for Product Storage Tank Remediation Projects (Insofar as it applies to individuals other than UST owners and operators)
- § 334.451 Applicability of Subchapter J
- § 334.452 Exemptions from Subchapter J
- § 334.453 General Requirements and Prohibitions
- § 334.454 Exception for Emergency Abatement Actions
- § 334.455 Notice to Owner or Operator
- § 334.456 Application for Certificate of Registration for Corrective Action Specialist
- § 334.457 Application for Certificate of Registration for Corrective Action Project Manager
- § 334.458 Review and Issuance of Certificates of Registration
- § 334.459 Continuing Education Requirements for Corrective Action Project Managers
- § 334.460 Renewal of Certificate of Registration for Corrective Action Specialist and Corrective Action Project Manager
- § 334.461 Denial of Certificate of Registration
- § 334.462 Other Requirements
- § 334.463 Grounds for Revocation or Suspension of Certificate of Registration
- § 334.465 Procedures for Revocation or Suspension of Certificate of Registration
- § 334.466 Reinstatement of a Certificate of Registration
- (2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Texas on January 11, 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*
- (ii) Letter from the Attorney General of Texas to EPA, January 11, 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*
- (3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application on April 28, 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*
- (4) *Program Description.* The program description and any other material

submitted as part of the original application on April 28, 1994, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the Texas Natural Resource Conservation Commission, signed by the EPA Regional Administrator on January 13, 1995, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to Part 282 is amended by adding in alphabetical order "Texas" and its listing.

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

\* \* \* \* \*

*Texas*

(a) The statutory provisions include

*1. Texas Water Code, Title 2, Subtitle D, Chapter 26—State Water Administration*

a. Subchapter I: Underground and Aboveground Storage Tanks

- § 26.341 Purpose (Except insofar as it applies to aboveground storage tanks.)
- § 26.342 Definitions (Except insofar as (10) and (12) apply to aboveground storage tanks.)
- § 26.343 Regulated Substances
- § 26.344 Exemptions (Except insofar as (a), (d), and (f) apply to aboveground storage tanks.)
- § 26.345 Administrative Provisions (Except insofar as (a) and (e) apply to aboveground storage tanks.)
- § 26.346 Registration Requirements (Except insofar as (a) applies to aboveground storage tanks.)
- § 26.347 Tank Standards
- § 26.348 Leak Detection and Record Maintenance
- § 26.349 Reporting of Releases and Corrective Action (Except insofar as (a) applies to aboveground storage tanks.)
- § 26.350 Tank Closure Requirements
- § 26.351 Corrective Action (Except insofar as it applies to aboveground storage tanks.)
- § 26.3511 Corrective Action by the Commission (Except insofar as it applies to aboveground storage tanks.)
- § 26.3512 Owner or Operator Responsibility; Limitations on Fund Payments for Corrective Action
- § 26.3513 Liability and Costs: Multiple Owners and Operators
- § 26.3514 Limits on Liability of Lender (Except insofar as it applies to aboveground storage tanks.)

- § 26.3515 Limits on Liability of Corporate Fiduciary (Except insofar as it applies to aboveground storage tanks.)
- § 26.352 Financial Responsibility
- § 26.355 Recovery of Costs (Except insofar as it applies to aboveground storage tanks.)
- § 26.357 Standards and Rules
- § 26.3571 Eligible Owner or Operator
- § 26.3572 Groundwater Protection Cleanup Program
- § 26.3573 Petroleum Storage Tank Remediation Fund
- § 26.35735 Claims Audit
- § 26.3574 Fee on Delivery of Certain Petroleum Products
- § 26.358 Storage Tank Fund; Fees (Except insofar as it applies to aboveground storage tanks.)
- § 26.359 Local Regulation or Ordinance
- (b) The regulatory provisions include
1. 31 Texas Administrative Code, Chapter 334—Underground and Aboveground Storage Tanks
- a. Subchapter A: General Provisions
- § 334.1 Purpose and Applicability (Except insofar as § 334.1(a)(1), (c), and (d)(2) apply to aboveground storage tanks.)
- § 334.2 Definitions
- § 334.3 Statutory Exemptions (Except insofar as § 334.3(b) applies release reporting and corrective action requirements to certain hydraulic lift tanks that are exempt under the federal program.)
- § 334.4 Commission Exclusions (Except insofar as § 334.4: (1) Does not exclude airport hydrant fuel distribution systems and UST systems with field-constructed tanks; excludes only *sumps* less than 110 gallons, as opposed to all tanks; and does not provide a release detection deferral for UST systems that store fuel solely for use by emergency power generators; (2) Subjects wastewater treatment tank systems that are deferred in the federal rules to the registration requirements, general operating requirements, and corrective action requirements; (3) Requires USTs that store radioactive substances or are part of a nuclear power plant to comply with registration and general operating requirements; and (4) Applies release reporting and corrective action requirements to certain hydraulic lift tanks that are exempt under the federal program.)
- § 334.5 General Prohibitions
- § 334.6 Construction Notification
- § 334.7 Registration
- § 334.8 Certification
- § 334.9 Seller's Disclosure
- § 334.10 Reporting and Recordkeeping
- § 334.12 Other General Provisions
2. Subchapter B: Underground Storage Tank Fees
- § 334.21 Fee Assessment
- § 334.22 Failure to Make Payment
- § 334.23 Disposition of Fees, Interest and Penalties
3. Subchapter C: Technical Standards
- § 334.41 Applicability
- § 334.42 General Standards
- § 334.43 Variances and Alternative Procedures
- § 334.44 Implementation Schedules
- § 334.45 Technical Standards for New UST Systems
- § 334.46 Installation Standards for New UST Systems
- § 334.47 Technical Standards for Existing UST Systems
- § 334.48 General Operating and Management Requirements
- § 334.49 Corrosion Protection
- § 334.50 Release Detection
- § 334.51 Spill and Overfill Prevention and Control
- § 334.52 UST System Repairs and Relining
- § 334.53 Reuse of Used Tanks
- § 334.54 Temporary Removal from Service
- § 334.55 Permanent Removal from Service
4. Subchapter D: Release Reporting and Corrective Action
- § 334.71 Applicability
- § 334.72 Reporting of Suspected Releases
- § 334.73 Investigation Due to Off-Site Impacts
- § 334.74 Release Investigation and Confirmation Steps
- § 334.75 Reporting and Cleanup of Surface Spills and Overfills
- § 334.76 Initial Response to Releases
- § 334.77 Initial Abatement Measures and Site Check
- § 334.78 Initial Site Characterization
- § 334.79 Free Product Removal
- § 334.80 Investigation for Soil and Groundwater Cleanup
- § 334.81 Corrective Action Plan
- § 334.82 Public Participation
- § 334.83 Emergency Orders
- § 334.84 Corrective Action by the Commission
- § 334.85 Management of Wastes
5. Subchapter E: Financial Responsibility
- § 334.91 Applicability
- § 334.92 Compliance Dates
- § 334.93 Amount and Scope of Required Financial Responsibility
- § 334.94 Allowable Mechanisms and Combinations of Mechanisms
- § 334.95 Financial Test of Self-Insurance
- § 334.96 Guarantee
- § 334.97 Insurance and Risk Retention Group Coverage
- § 334.98 Surety Bond
- § 334.99 Letter of Credit
- § 334.100 Trust Fund
- § 334.101 Standby Trust Fund
- § 334.102 Substitution of Financial Assurance Mechanisms by Owner or Operator
- § 334.103 Cancellation or Nonrenewal by a Provider of Financial Assurance
- § 334.104 Reporting by Owner or Operator
- § 334.105 Financial Assurance Recordkeeping
- § 334.106 Drawing on Financial Assurance Mechanisms
- § 334.107 Release from the Requirements
- § 334.108 Bankruptcy or Other Incapacity of Owner or Operator of Provider of Financial Assurance
- § 334.109 Replenishment of Guarantees, Letters of Credit, or Surety Bonds
6. Subchapter H: Interim Reimbursement Program
- § 334.301 Applicability of this Subchapter
- § 334.302 General Conditions and Limitations Regarding Reimbursement—Interim Period
- § 334.303 Time to File Application—Interim Period
- § 334.304 Who May File Application—Interim Period
- § 334.305 Where and How Documents Must Be Filed—Interim Period
- § 334.306 Form and Contents of Application—Interim Period
- § 334.307 Technical Information Required—Interim Period
- § 334.308 Allowable Costs and Restrictions on Allowable Costs—Interim Period
- § 334.309 Reimbursable Costs—Interim Period
- § 334.310 Requirements for Eligibility—Interim Period
- § 334.311 Determining the Number of Occurrences—Interim Period
- § 334.312 Owner/Operator Contribution
- § 334.313 Review of Application by Executive Director—Interim Period
- § 334.314 Executive Director's Fund Payment Report—Initial Period
- § 334.315 Protest of Fund Payment Report—Interim Period
- § 334.316 Formal Petition—Interim Period
- § 334.317 Hearing by the Commission—Interim Period
- § 334.318 Recovery of Costs—Interim Period
- § 334.319 Administrative Penalties and Other Actions—Initial Period
- § 334.320 Responsibilities of Owners and Operators—Interim Period
- § 334.321 Corrective Action by the Commission—Interim Period
- § 334.322 Subchapter H Definitions
7. Subchapter K: Petroleum Substance Waste
- § 334.481 Definitions
- § 334.482 General Prohibitions
- § 334.483 Disposal by Generator
- § 334.484 Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities
- § 334.485 Authorization for Class C and Class D Facilities
- § 334.486 Exemptions
- § 334.487 Notification and Mobilization Requirements for Class B Facilities
- § 334.488 Effect on Existing Facilities
- § 334.489 Notice to Owners and Operators
- § 334.490 Public Notice
- § 334.491 Public Meetings for Class A Facilities
- § 334.492 Closure and Facility Expansion
- § 334.493 Location Standards for Class A Petroleum-Substance Waste Storage or Treatment Facilities
- § 334.494 Shipping Procedures Applicable to Generators of Petroleum-Substance Waste
- § 334.495 Recordkeeping and Reporting Procedures Applicable to Generators
- § 334.496 Shipping Requirements Applicable to Transporters of Petroleum-Substance Waste
- § 334.497 Shipping Requirements Applicable to Owners or Operators of Storage Treatment or Disposal Facilities

- § 334.498 Recordkeeping Requirements  
Applicable to Owners or Operators of  
Storage Treatment or Disposal Facilities
- § 334.499 Additional Reports
- § 334.500 Design and Operating  
Requirements of Stockpiles and Land  
Surface Treatment Units
- § 334.501 Reuse of Petroleum-Substance  
Waste
- § 334.502 Contaminant Assessment  
Program and Corrective Action
- § 334.503 Security
- § 334.504 Contingency Plan
- § 334.505 Emergency Procedures
- § 334.506 Closure Requirements Applicable  
to Class A and Class B Facilities
- § 334.507 General Requirements for  
Financial Assurance
- § 334.508 Mechanisms for Financial  
Assurance
- § 334.509 Liability Requirements for Class  
A and B Facilities
- § 334.510 Incapacity of Owners or  
Operators, Guarantors, or Financial  
Institutions
- 8. Subchapter L: Overpayment Prevention*
- § 334.530 Purpose and Applicability of the  
Subchapter
- § 334.531 Responsibility of Recipients of  
Money from the PSTR Fund and Persons  
Paid by Recipients of Money from the  
PSTR Fund
- § 334.532 Payments
- § 334.533 Audits
- § 334.534 Notice of Overpayment
- § 334.535 Objections to the Notice of  
Overpayment and Formal Petition for  
Hearing
- § 334.536 Hearing by the Commission
- § 334.537 Failure to Return Overpayment or  
Cooperative with Audit or Investigation
- § 334.538 Administrative Penalties and  
Other Actions
- 9. Subchapter M: Reimbursable Cost  
Guidelines for the Petroleum Storage Tank  
Reimbursement Program*
- § 334.560 Reimbursable Cost Guidelines

[FR Doc. 96-523 Filed 1-17-96; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 541

[Docket No. 95-63; Notice 04]

RIN 2127-AE92

#### Final Theft Data; Motor Vehicle Theft Prevention Standard

**AGENCY:** National Highway Traffic  
Safety Administration (NHTSA),  
Department of Transportation.

**ACTION:** Publication of final theft data.

**SUMMARY:** This document publishes the  
final data on thefts of model year (MY)  
1993 passenger motor vehicles that

occurred in calendar year (CY) 1993. 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 CY 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

of 1.9652; the Ford Mercury Capri previously ranked at No. 116, with a theft rate of 3.1364, is now ranked at No.132, with a theft rate of 2.7083; the Ford Taurus previously ranked at No. 136, with a theft rate of 2.5996, remains at No. 136, with a theft rate of 2.4923; the General Motors Geo Tracker previously ranked at No. 29, with a theft rate of 7.3293, remains at No. 29 with a theft rate of 7.3383; the General Motors Geo Metro previously ranked at No. 129, with a theft rate of 2.8258, is now ranked at No. 134, with a theft rate

of 2.5975; the Mercedes-Benz 124 line (E-Class) previously ranked at No.179, with a theft rate of 1.3839, is now ranked at No. 174, with a theft rate of 1.5325; the Mercedes-Benz 129 line (SL-Class) previously ranked No. 3 with a theft rate of 19.2308, is now ranked No. 71, with a theft rate of 4.6425; the Mercedes-Benz 140 line (S-Class), previously ranked at No. 30, with a theft rate of 7.2457, is now ranked at No. 65, with a theft rate of 4.9328; and the Mercedes-Benz 201 line, previously ranked at No. 73, with a theft rate of

4.5638, is now ranked at No. 152, with a theft rate of 2.1154;

The following list represents NHTSA's final calculation of theft rates for all 1993 passenger motor vehicle lines. This list is intended to inform the public of calendar year 1993 motor vehicle thefts of model year 1993 vehicles, and does not have any affect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

## THEFT RATES OF MODEL YEAR 1993 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1993

Manufacturer	Make/Model (line)	Thefts 1993	Production (mfr's) 1993	1993 (per 1,000 Vehicles Produced) Theft Rate
1. MITSUBISHI	MONTERO	296	11,221	26.3791
2. CHRYSLER CORP	LEBARON COUPE/CONVERTIBLE	631	26,789	23.5544
3. FORD MOTOR CO	MUSTANG	1,935	110,616	17.4929
4. VOLKSWAGEN	CABRIOLET	48	2,991	16.0481
5. CHRYSLER CORP	IMPERIAL	89	6,235	14.2743
6. NISSAN	300ZX	115	8,300	13.8554
7. CHRYSLER CORP	PLYMOUTH ACCLAIM	604	49,611	12.1747
8. CHRYSLER CORP	PLYMOUTH SUNDANCE	600	59,749	10.0420
9. MITSUBISHI	PRECIS	16	1,612	9.9256
10. NISSAN	PATHFINDER	394	41,215	9.5596
11. MITSUBISHI	DIAMANTE	235	24,846	9.4583
12. GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA	1,272	135,272	9.4033
13. GENERAL MOTORS	OLDSMOBILE SILHOUETTE APV	98	10,465	9.3645
14. CHRYSLER CORP	DODGE SPIRIT	714	76,503	9.3330
15. NISSAN NX	COUPE	17	1,910	8.9005
16. MITSUBISHI	GALANT/SIGMA	98	11,282	8.6864
17. TOYOTA	4-RUNNER	367	42,257	8.6850
18. HONDA	PRELUDE	187	22,123	8.4527
19. CHRYSLER CORP	DODGE SHADOW	843	102,186	8.2497
20. NISSAN	INFINITI Q45	37	4,517	8.1913
21. GENERAL MOTORS	GMC JIMMY S-15	353	43,412	8.1314
22. NISSAN	MAXIMA	543	67,075	8.0954
23. HYUNDAI	SONATA	125	15,452	8.0896
24. HONDA/ACURA	LEGEND	300	37,488	8.0026
25. CHRYSLER CORP	JEEP WRANGLER	459	59,412	7.7257
26. FORD MOTOR CO	E150 VAN	60	7,908	7.5873
27. HONDA	ACCORD	2,290	304,032	7.5321
28. CHRYSLER CORP	LEBARON SEDAN	243	32,480	7.4815
29. GENERAL MOTORS	GEO TRACKER	258	35,158	7.3383
30. CHRYSLER CORP	DODGE DYNASTY	421	58,401	7.2088
31. GENERAL MOTORS	PONTIAC TRANS SPORT APV	184	26,442	6.9586
32. HYUNDAI	EXCEL	294	42,632	6.8962
33. MITSUBISHI	3000GT	83	12,266	6.7667
34. CHRYSLER CORP	JEEP CHEROKEE	2,312	345,277	6.6961
35. MAZDA	RX-7	67	10,035	6.6766
36. GENERAL MOTORS	CHEVROLET LUMINA APV	260	40,613	6.4019
37. HONDA/ACURA	VIGOR	68	10,695	6.3581
38. NISSAN	SENTRA	830	130,991	6.3363
39. GENERAL MOTORS	BUICK CENTURY	764	120,599	6.3350
40. GENERAL MOTORS	OLDSMOBILE BRAVADA	61	9,671	6.3075
41. CHRYSLER CORP	NEW YORKER SALON	131	20,852	6.2824
42. PORSCHE	911	10	1,600	6.2500
43. PORSCHE	928	1	163	6.1350
44. FORD MOTOR CO	LINCOLN TOWN CAR	684	113,596	6.0213
45. MITSUBISHI	MIRAGE	190	32,168	5.9065
46. ISUZU	STYLUS	9	1,544	5.8290
47. HYUNDAI	ELANTRA	205	36,169	5.6678
48. FORD MOTOR CO	THUNDERBIRD	733	129,854	5.6448
49. TOYOTA	MR2	29	5,245	5.5291
50. GENERAL MOTORS	CHEVROLET BLAZER S-10	731	132,616	5.5122
51. CHRYSLER CORP	DODGE B150 RAMCHARGER/VAN	29	5,376	5.3943
52. HONDA/ACURA	INTEGRA	197	36,832	5.3486
53. GENERAL MOTORS	PONTIAC SUNBIRD	471	88,087	5.3470

## THEFT RATES OF MODEL YEAR 1993 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1993—Continued

Manufacturer	Make/Model (line)	Thefts 1993	Production (mfr's) 1993	1993 (per 1,000 Vehicles Pro- duced) Theft Rate
54. ISUZU	AMIGO	41	7,684	5.3358
55. BMW	5	74	13,975	5.2952
56. GENERAL MOTORS	CHEVROLET BERETTA	194	36,925	5.2539
57. MITSUBISHI	EXPO	58	11,158	5.1981
58. BMW	3	209	40,552	5.1539
59. SUZUKI	SWIFT	55	10,689	5.1455
60. GENERAL MOTORS	CHEVROLET SPORTVAN G-10	11	2,173	5.0621
61. GENERAL MOTORS	CADILLAC DEVILLE/SIXTY SPECIAL	634	125,391	5.0562
62. VOLKSWAGEN	CORRADO	14	2,786	5.0251
63. NISSAN	240SX	107	21,471	4.9835
64. GENERAL MOTORS	CHEVROLET CORVETTE	103	20,764	4.9605
65. MERCEDES-BENZ	140 (S-CLASS)	80	16,218	4.9328
66. HYUNDAI	SCOUPE	56	11,377	4.9222
67. GENERAL MOTORS	CHEVROLET CORSICA	628	127,933	4.9088
68. NISSAN	ALTIMA	480	99,404	4.8288
69. NISSAN	PICKUP TRUCK	541	112,552	4.8067
70. GENERAL MOTORS	GMC RALLY SPORTVAN	5	1,073	4.6598
71. MERCEDES-BENZ	129 (SL-CLASS)	15	3,231	4.6425
72. GENERAL MOTORS	PONTIAC GRAND PRIX	491	107,000	4.5888
73. MITSUBISHI	ECLIPSE	247	54,670	4.5180
74. CHRYSLER CORP	DODGE STEALTH	64	14,516	4.4089
75. PORSCHE	968	4	911	4.3908
76. GENERAL MOTORS	PONTIAC LEMANS	33	7,550	4.3709
77. MITSUBISHI	PICKUP TRUCK	39	8,925	4.3697
78. FORD MOTOR CO	LINCOLN MARK VIII	135	30,964	4.3599
79. TOYOTA	CELICA	121	27,794	4.3535
80. NISSAN	INFINITI J30	81	18,785	4.3120
81. TOYOTA	SUPRA	12	2,850	4.2105
82. FORD MOTOR CO	MERCURY TOPAZ	314	76,115	4.1253
83. FORD MOTOR CO	TEMPO	853	208,382	4.0934
84. GENERAL MOTORS	CHEVROLET CAVALIER	962	235,319	4.0881
85. SUBARU	LOYALE	48	11,914	4.0289
86. BMW	8	3	753	3.9841
87. FORD MOTOR CO	MERCURY COUGAR	316	79,780	3.9609
88. MAZDA	929	61	15,651	3.8975
89. GENERAL MOTORS	CHEVROLET ASTRO	431	113,010	3.8138
90. GENERAL MOTORS	PONTIAC GRAND AM	844	224,101	3.7662
91. TOYOTA	COROLLA/COROLLA SPORT	794	211,301	3.7577
92. GENERAL MOTORS	GEO STORM	169	45,000	3.7556
93. VOLKSWAGEN	FOX	60	16,181	3.7081
94. FORD MOTOR CO	FESTIVA	152	41,199	3.6894
95. GENERAL MOTORS	BUICK SKYLARK	207	56,362	3.6727
96. FORD MOTOR CO	PROBE	438	119,920	3.6524
97. GENERAL MOTORS	SATURN SC	184	51,011	3.6071
98. MAZDA	B SERIES PICKUP	133	37,181	3.5771
99. TOYOTA	PASEO	96	26,896	3.5693
100. TOYOTA	LEXUS SC	60	16,891	3.5522
101. TOYOTA	LEXUS LS	100	28,366	3.5253
102. SUZUKI	SAMURAI	4	1,139	3.5119
103. BMW	7	32	9,304	3.4394
104. SUZUKI	SIDEKICK	64	18,621	3.4370
105. VOLKSWAGEN	PASSAT	44	12,851	3.4239
106. CHRYSLER CORP	DODGE DAYTONA	31	9,059	3.4220
107. TOYOTA	CAMRY	1,027	302,089	3.3997
108. CHRYSLER CORP	NEW YORKER 5TH AVE	92	27,345	3.3644
109. GENERAL MOTORS	GMC SAFARI	134	40,883	3.2776
110. GENERAL MOTORS	CHEVROLET S-10 PICKUP	567	173,509	3.2678
111. HONDA/ACURA	NSX	2	626	3.1949
112. GENERAL MOTORS	OLDSMOBILE ACHIEVA	135	42,384	3.1852
113. FORD MOTOR CO	LINCOLN CONTINENTAL	82	25,762	3.1830
114. CHRYSLER CORP	DODGE CARAVAN/GRAND	856	272,265	3.1440
115. TOYOTA	LEXUS GS	58	18,545	3.1275
116. CHRYSLER CORP	PLYMOUTH VOYAGER/GRAND	651	210,815	3.0880
117. GENERAL MOTORS	CADILLAC ALLANTE	14	4,558	3.0715
118. MAZDA	323/PROTEGE	258	84,282	3.0612
119. TOYOTA	TERCEL	311	101,974	3.0498
120. MAZDA	NAVAJO	17	5,579	3.0471
121. HONDA	CIVIC	843	280,107	3.0096
122. ISUZU	RODEO	123	40,886	3.0084

## THEFT RATES OF MODEL YEAR 1993 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1993—Continued

Manufacturer	Make/Model (line)	Thefts 1993	Production (mfr's) 1993	1993 (per 1,000 Vehicles Pro- duced) Theft Rate
123. TOYOTA	PICKUP TRUCK	611	207,824	2.9400
124. FORD MOTOR CO	ESCORT	1,141	399,860	2.8535
125. FORD MOTOR CO	CROWN VICTORIA	205	72,065	2.8447
126. CHRYSLER CORP	EAGLE TALON	74	26,105	2.8347
127. GENERAL MOTORS	CHEVROLET CAPRICE	163	57,723	2.8238
128. CHRYSLER CORP	PLYMOUTH LASER	48	17,178	2.7943
129. FORD MOTOR CO	MERCURY TRACER	208	74,835	2.7794
130. GENERAL MOTORS	PONTIAC FIREBIRD	34	12,327	2.7582
131. GENERAL MOTORS	CHEVROLET CAMARO	93	34,137	2.7243
132. FORD MOTOR CO	MERCURY CAPRI	25	9,231	2.7083
133. GENERAL MOTORS	CHEVROLET C-1500 PICKUP	636	242,756	2.6199
134. GENERAL MOTORS	GEO METRO	209	80,462	2.5975
135. ALFA ROMEO	164	1	385	2.5974
136. FORD MOTOR CO	TAURUS	1,056	423,698	2.4923
137. FORD MOTOR CO	MERCURY SABLE	317	127,406	2.4881
138. CHRYSLER CORP	TOWN & COUNTRY MPV	64	26,057	2.4562
139. VOLVO	850	67	27,482	2.4380
140. GENERAL MOTORS	BUICK REGAL	205	84,571	2.4240
141. FORD MOTOR CO	MERCURY GRAND MARQUIS	201	83,239	2.4147
142. GENERAL MOTORS	CHEVROLET LUMINA	526	222,442	2.3647
143. CHRYSLER CORP	INTREPID	165	70,170	2.3514
144. MAZDA	626/MX-6	301	128,044	2.3508
145. TOYOTA	LEXUS ES	95	41,060	2.3137
146. GENERAL MOTORS	GMC SONOMA	95	41,459	2.2914
147. CHRYSLER CORP	EAGLE SUMMIT	46	20,246	2.2721
148. NISSAN	INFINITI G20	39	17,427	2.2379
149. GENERAL MOTORS	GEO PRIZM	168	75,502	2.2251
150. GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	168	75,885	2.2139
151. FORD MOTOR CO	EXPLORER	671	306,845	2.1868
152. MERCEDES-BENZ	201	35	16,545	2.1154
153. MAZDA	MX-5 MIATA	46	21,758	2.1142
154. MAZDA	MX-3	67	31,972	2.0956
155. GENERAL MOTORS	GMC SIERRA C-1500	175	83,764	2.0892
156. SUBARU	LEGACY	138	66,117	2.0872
157. ISUZU	PICKUP	48	23,476	2.0446
158. GENERAL MOTORS	CADILLAC ELDORADO	41	20,540	1.9961
159. FORD MOTOR CO	F150 PICKUP TRUCK	268	136,373	1.9652
160. VOLVO	960	13	6,826	1.9045
161. VOLVO	940	43	22,767	1.8887
162. JAGUAR	XJS	3	1,625	1.8462
163. TOYOTA	PREVIA	67	36,970	1.8123
164. CHRYSLER CORP	EAGLE VISION	51	28,642	1.7806
165. FORD MOTOR CO	RANGER PICKUP	593	333,277	1.7793
166. GENERAL MOTORS	CADILLAC SEVILLE	58	32,968	1.7593
167. CHRYSLER CORP	CONCORDE	84	49,483	1.6976
168. CHRYSLER CORP	DODGE DAKOTA PICKUP	211	127,043	1.6609
169. GENERAL MOTORS	PONTIAC BONNEVILLE	163	99,076	1.6452
170. ISUZU	TROOPER	29	17,982	1.6127
171. MAZDA	MPV WAGON	48	30,069	1.5963
172. GENERAL MOTORS	BUICK RIVIERA	7	4,437	1.5776
173. NISSAN	QUEST	39	25,190	1.5482
174. MERCEDES-BENZ	124 (E-CLASS)	35	22,839	1.5325
175. AUDI	90	13	8,501	1.5292
176. FORD MOTOR CO	AEROSTAR	377	248,494	1.5171
177. SAAB	900	15	9,943	1.5086
178. JAGUAR	XJ6	12	8,003	1.4994
179. CHRYSLER CORP	DODGE COLT/COLT VISTA	55	38,339	1.4346
180. GENERAL MOTORS	OLDSMOBILE CUTLASS CRUISER	9	6,330	1.4218
181. VOLVO	240	20	14,985	1.3347
182. AUDI	S4	1	756	1.3228
183. GENERAL MOTORS	OLDSMOBILE 88 ROYALE	73	58,942	1.2385
184. GENERAL MOTORS	CADILLAC FLEETWOOD	32	26,899	1.1896
185. SAAB	9000	10	9,745	1.0262
186. SUBARU	IMPREZA	40	40,584	0.9856
187. CHRYSLER CORP	PLYMOUTH COLT/COLT VISTA	37	38,339	0.9651
188. GENERAL MOTORS	BUICK PARK AVENUE	42	51,244	0.8196
189. GENERAL MOTORS	BUICK LESABRE	117	143,724	0.8141
190. GENERAL MOTORS	BUICK ROADMASTER	28	36,289	0.7716
191. VOLKSWAGEN	JETTA	5	6,494	0.7699

## THEFT RATES OF MODEL YEAR 1993 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1993—Continued

Manufacturer	Make/Model (line)	Thefts 1993	Production (mfr's) 1993	1993 (per 1,000 Vehicles Pro- duced) Theft Rate
192. AUDI .....	100 .....	5	6,764	0.7392
193. GENERAL MOTORS .....	SATURN SL .....	122	165,754	0.7360
194. GENERAL MOTORS .....	OLDSMOBILE 98/TOURING .....	13	18,857	0.6894
195. VOLKSWAGEN .....	GOLF/GTI .....	2	2,946	0.6789
196. FORD MOTOR CO .....	MERCURY VILLAGER (MPV) .....	52	94,655	0.5494
197. SUBARU .....	JUSTY .....	2	4,071	0.4913
198. CHRYSLER CORP .....	DODGE RAM PICKUP D150 .....	6	13,349	0.4495
199. GENERAL MOTORS .....	SATURN SW .....	4	13,821	0.2894
200. ALFA ROMEO .....	SPIDER .....	0	509	0.0000
201. CHRYSLER CORP .....	DODGE VIPER .....	0	910	0.0000
202. FERRARI .....	348 .....	0	70	0.0000
203. FERRARI .....	512 .....	0	91	0.0000
204. FERRARI .....	MONDIAL .....	0	24	0.0000
205. JAGUAR .....	XJRS .....	0	99	0.0000
206. KIA MOTORS .....	SEPHIA .....	0	200	0.0000
207. LAMBORGHINI .....	DIABLO .....	0	13	0.0000
208. LOTUS .....	ESPIRIT .....	0	113	0.0000
209. PEUGEOT .....	405 .....	0	14	0.0000
210. ROLLS-ROYCE .....	CORNICHE/CONTINENTAL .....	0	145	0.0000
211. ROLLS-ROYCE .....	SIL SPIRIT/SPUR/MULS/EIGHT .....	0	99	0.0000
212. ROLLS-ROYCE .....	TURBO R .....	0	36	0.0000
213. SUBARU .....	SVX .....	0	302	0.0000

Issued on: January 11, 1996.

Barry Felrice,

Associate Administrator for Safety  
Performance Standards.

[FR Doc. 96-434 Filed 1-17-96; 8:45 am]

BILLING CODE 4910-59-P

# Proposed Rules

Federal Register

Vol. 61, No. 12

Thursday, January 18, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 6

#### Dairy Tariff-Rate Import Quota Licensing

**AGENCY:** Office of the Secretary, USDA.  
**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would supersede Import Regulation 1, Revision 7, which governs the administration of the import licensing system for certain dairy products which are subject to in-quota tariff rates established in the Harmonized Tariff Schedule of the United States resulting from the entry into force of certain provisions in the Uruguay Round Agreement.

**DATES:** Comments should be received on or before March 18, 1996 to be assured of consideration. Comments on the change in information collection should be received on or before March 18, 1996 to be assured of consideration.

**ADDRESSES:** Comments should be sent to Richard Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, Room 5531-S, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue SW., Agricultural Box 1021, Washington, DC 20250-1021. All comments received will be available for public inspection in room 5541-S at the above address.

**FOR FURTHER INFORMATION CONTACT:** Diana Wanamaker, Group Leader, Import Programs Group, Import Policies and Programs Division, room 5531-S, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250, or telephone (202) 720-2916.

#### SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined to be

economically significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Office of the Secretary is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Paperwork Reduction Act

In accordance with provisions of the Paperwork Reduction Act of 1995, the Department intends to amend the current information collection approved by the Office of Management and Budget (OMB) under OMB control number 0551-0001, expiring June 30, 1997.

Since this proposed rule provides for a substantial revision of the existing Import Regulation, the currently approved information collection needs to be amended to support the proposed rule. Specifically, for the 1997 quota year and each quota year thereafter, the amended "certification" form FAS-922 (Rev. 1-96) must be submitted to the Department by applicants requesting historical, nonhistorical rank-order lottery, and/or designated importer licenses within the application period specified in the proposed rule. This form requests applicants to certify that they are either importers, designated importers, manufacturers, or exporters of certain dairy products and that they meet the eligibility requirements of the proposed rule. In addition, importers

and exporters must submit the supporting documentation required by § 6.23 and § 6.24 of the proposed rule as proof of eligibility for an import license. The proposed amendments to the form consist of technical changes in the text which reflect technical changes in the proposed rule.

In addition, for the 1997 quota year and each quota year thereafter, applicants for nonhistorical licenses must submit amended application form FAS-922A (Rev. 1-96). This form requires applicants to identify requests for nonhistorical rank-order licenses to import cheese by cheese types and supplying country, and/or to import noncheese dairy articles by the type of noncheese article. The currently approved application form is being amended to limit its applicability to requests for nonhistorical licenses, and to require applicants to rank order their preferences for licenses to import cheese in descending order of preference, as is currently done for certain noncheese dairy articles.

The estimated total annual burden in the OMB inventory for the currently approved information collection is 425 hours for the 1996 quota year. For the 1997 quota year and each quota year thereafter, the estimated total annual burden is being reduced by 50 hours to 375 hours. The estimated reduction is based largely on the elimination of a separate "certification" form for historical licenses, elimination of the requirement that applicants for historical licenses must submit an application form, and strengthened eligibility requirements and increased disciplines in the proposed rule.

The estimated public reporting burden for the amended information collection for 1997 quota year and each quota year thereafter is set forth in the table below.

Form No. *	FAS-922, FAS-922A
Estimated No. of respondents	500
Estimated responses per respondent .....	1
Estimated hours per response	.75
Estimated total annual burden in hours .....	375

\* 922 and 922A are one form.

Copies of this information collection can be obtained from Pamela Hopkins, the Agency Information Collection Coordinator, at (202) 720-6713.

The Department requests comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of the collection of information. Comments should be submitted in accordance with the Dates and Addresses sections above. All comments will be summarized and included in the request for OMB approval, and will also become a matter of public record.

#### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778. The provisions of this proposed rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The proposed rule would not have retroactive effect.

#### Background

This proposed rule would govern the administration of the import licensing system for certain dairy products which are subject to in-quota tariff rates proclaimed in the Harmonized Tariff Schedule of the United States (HTS).

Prior to the conclusion of the Uruguay Round negotiations, the regime governing the importation of certain articles of cheese and other dairy products into the United States was a system of absolute quotas imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended. Prior versions of the Import Regulation, including Revision 7, as amended, established licensing systems pursuant to which the privilege of importing the subject articles was allocated among importers.

During the course of the Uruguay Round negotiations, the GATT Contracting Parties agreed that all systems of absolute quotas for the importation of agricultural products would be eliminated and would be converted, through a process known as tariffication, to tariff-based systems. For articles that had previously been subject to absolute quotas, countries were permitted to implement systems of tariff-rate quotas. A tariff-rate quota is a system whereby the importation of an article is subject to a two-tiered tariff. A specified volume—commonly referred to as the “in-quota amount”—is subject to the applicable low “in-quota” rate of duty; all imports beyond that amount are subject to the applicable higher, “over-quota” rate of duty.

This proposed rule, which would be Revision 8 of the Import Regulation, would implement a tariff-rate quota

licensing system for the importation of certain articles of cheese and other dairy products. It is also intended to incorporate a number of administrative improvements. The Import Regulation has not been substantially updated since Revision 7 took effect in 1979.

In order to ensure public participation in the rulemaking process at an early stage, and prior to the conclusion of the Uruguay Round, the Department published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register on June 2, 1994 (59 Fed. Reg. 28495), soliciting public comment with respect to various ways in which the Import Regulation might be improved to provide greater economic and administrative efficiencies. The Department also held a public hearing on March 10, 1995, during which public witnesses had the opportunity to present their views and proposals for revision of the Import Regulation. Further comments have also been received from the public in response to the Interim Rule published on January 6, 1995 (60 Fed. Reg. 1989–1996 amending Revision 7).

Comments were received in response to the ANPR from 42 entities: four of them were trade associations; two, foreign exporting entities; two, representatives of foreign governments; and the remainder, importers or their legal counsel, most of them participants in the existing import licensing program. Their comments focussed most heavily on the allocation of in-quota quantities of cheese, although several commentators had extensive comments on dairy articles other than cheese. Most were directed at the problems with the existing license system. Generally the solutions proposed to address them were adjustments to the licensing system of varying scope. Many commentators proposed that a revision of the rule deal with the lack of continuity and inadequate availability of license to small businesses and recent entrants. Their proposals ranged from creating set-asides for permanent new licenses for certain categories of business or preventing companies which hold more than a specified amount of license from obtaining any more, to reduction or non-issuance of historical licenses which are not fully utilized or, subsequent to license globalization, not utilized in the country for which they were originally issued. A number proposed eliminating the provision for exporting countries to designate importers for license. A number of comments encouraged the tightening of eligibility and performance requirements (particularly in regard to sales-in-transit) to eliminate license-holders who broker licenses, while

others expressed the fear that such action would work against small businesses. One commentator indicated all in-quota quantities which were increased by more than 500 metric tons in the Uruguay Round should be licensed. On the other hand, five entities proposed eliminating import licensing, four of them suggesting they should be replaced with some form of required exporting country control, while one suggested raising the duty in lieu of licenses.

At the March 10, 1995 public hearing, ten entities gave testimony and seven submitted rebuttal briefs subsequent to the hearing. The substance of the testimony and of the rebuttal briefs paralleled the responses submitted to the ANPR. Much of it dealt with the specifics of reforming the existing licensing system. An additional entity proposed eliminating the licensing system entirely.

Comments received by the Department in response to the ANPR, at the public hearing, and in response to the Interim Rule which was published on January 6 have generally supported the following recommendations for revision of the Import Regulation: (1) Formulation of clearer and more uniform eligibility requirements; (2) the establishment of clearer and more uniform criteria for license use and minimal levels of utilization for all license types; (3) an increase in the availability and conditions of license to new entrants; and (4) refined provisions governing suspension or revocation of licenses.

In developing this proposed rule and in response to the comments received from the public, the Department considered three alternatives for revision of the Import Regulation. The system of auctioning importing licenses was not considered because the Statement of Administrative Action accompanying the Uruguay Round Agreements Act stated that imports of dairy products subject to TRQs would not be administered through such a system. The three alternatives that were considered are as follows:

(A) *First-Come, First-Served*. This alternative would eliminate licensing for all dairy product imports except those quantities of cheese products which have been subject to designation by exporting countries and those which will be subject to designation as a result of the Uruguay Round Bilateral Memoranda of Understanding that implement the Agreement. Imports would occur at the in-quota duty rate until the in-quota quantities were filled, at which point the over-quota duty rate would be charged any further imports

for the rest of the quota period. This could be done on an annual or quarterly basis. Six entities supported some variation of this type of import system, four on condition it was accompanied by required exporting country controls. Commentors felt such a system would be less of an interference with the market and specific trade relationships than the existing system. While most of the other commentors who focussed on modifying the license system did not address or specifically oppose a first-come, first-served system, their comments frequently referenced the need for licenses in order to ensure the continuity necessary for them to invest in the marketing and distribution of imported product. Two commentors specifically stated that not licensing the in-quota quantities of the TRQs allocated to Mexico under the North American Free-Trade Agreement was a mistake for that reason.

(B) *Rank-Order Lottery*. This alternative would provide for a rank-order lottery for all licenses to be issued for all quantities not designated, like that which already exists for certain dairy products other than cheese. Quantities currently designated (including any new Uruguay Round quantities) would continue to be so. While the concept of a rank-order lottery to replace the existing random lottery was suggested by comments received in response to the ANPR, extending such an approach beyond the existing lottery quantities was not suggested in any comments or testimony. Generally comments regarding the use of a lottery to allocate license were negative, because of the lack of continuity and insufficient license quantities such a system engenders. These comments were directed at the existing random lottery and for the quantities which are currently subject to it, rather than a rank-order lottery which would cover roughly two-thirds of the in-quota amounts. A comment received in response to the interim rule published on January 6, which implemented a rank-order lottery for dairy products other than cheese, suggested that it would lead to entities receiving licenses which were too small and of insufficient product coverage to permit market development or longer term trading relationships, while the entity which originally suggested the concept supported it as more fair than a completely random approach.

(C) *Mixed License System*. This alternative would retain a modified mixed licensing system, but make a number of significant changes which will redefine eligibility in terms of

higher performance standards and streamline and improve administration of the system in response to comments and recommendations received from the public, including current license holders. Most of the comments received favored some form of modifying the licensing system which would provide certainty of license receipt to existing businesses and new entrants who are regularly engaged in the importation or use of dairy products.

The Department believes the third alternative would be the most effective approach for revising the Import Regulation, and this proposed rule has been developed accordingly. Neither of the other alternatives would provide a longer or more certain planning horizon for entities in the importing business as desired by most of the commentors. Among the primary factors which make the third alternative preferable to the other two are: compared to a first-come, first-served system, it would provide greater certainty to importing businesses that they will be able to import at the in-quota duty throughout the year, would be less distortive of competition between designated importers and all others, and would better maintain the traditional importing pattern, wherein more than half of the imports enter in the second half of the calendar year; it does not have the disadvantage of the lottery system of severely disrupting the business of the larger existing entities and potentially mismatching licenses with the needs of a particular entity.

An economic impact analysis, which discusses the effects of the three alternatives in greater detail, has been prepared and can be obtained from Richard Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, room 5531-S, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Agricultural Box 1021, Washington, DC 20250-1021. While this proposed rule is based on the third alternative, the Department invites comments from the public on all three alternatives, as well as on the provisions of the proposed rule itself.

The proposed rule is designed to address a number of specific industry concerns which have been expressed during the ANPR, public hearing, and Interim Rule stages of the Department's review of the dairy import licensing system. These include the difficulty for new businesses to establish themselves in the dairy import business; the ease with which licenses can be obtained by persons not regularly in the business of importing, which in turn diminishes what is available to newcomers or existing businesses; the apparent lack of

due process in the license suspension and revocation procedures; the limited provisions for action subsequent to a determination that a licensee has violated a provision of the rule; the manner in which transfers of license between persons take place subsequent to a sale of the entire dairy products business related to the licenses; the inability of the industry to avail themselves to immediate delivery of Customs procedures; and certain other technical aspects of the rule.

The Department invites comments on the eligibility and performance requirements in the proposal. We would be interested in the costs and unintended market consequences to importers of these new requirements as follows: (1) The higher volume and/or more frequent shipment requirements than exist under the current rule; (2) the higher volume of manufacturing required for applicants who seek eligibility on the basis of being a manufacturer; (3) the requirement for direct shipments to qualify for eligibility; (4) the limitation on the proportion of license activity which may be made on the basis of purchases in transit; (5) the requirement that licensees whose eligibility is based on manufacturing, use the bulk of what they import in their own facility; and (6) the provision for permanently reducing historical licenses of those who surrender license in three consecutive or three years out of five.

This proposed rule retains the current practice of not permitting the sale of individual licenses and introduces a limitation on the use of sales-in-transit. The Department invites comment on this approach. Should the Department make it more difficult for persons not regularly in the business of importing dairy products to obtain or keep a license, effectively restricting a secondary market? How could this be best accomplished and enforced? What are the benefits and costs of doing so? With regard to sales-in-transit, what are their commercial advantages and what are the costs and benefits of a limitation on their use? Or should the Department encourage the development of a secondary market? Should it allow the sale of individual licenses on an annual basis, and if so how? What would the costs and benefits be?

In furtherance of the Administration's initiative on regulatory reform, the proposed rule has also been substantially rewritten to be clearer and more concise. Unnecessary definitions have been eliminated and the rule has been substantially shortened, made more internally consistent, and more compatible with other provisions of law.

The public is invited to provide its comments on all of these proposed changes and to suggest further improvements.

**Definitions**

In the proposed Revision 8, many definitions from Revision 7 are deleted and others are added, modified, or amended to deal with changes in the operational parts of the rule or to update them. The definition of "cheese and cheese products" is amended to conform with classifications in the HTS, and a definition of "dairy products" is added. A definition of "sale-in-transit" is added in order to clarify eligibility criteria which will take effect for the 1997 quota year (specifically: (1) Eligibility qualifying entries may not be based on sales-in-transit and (2) no more than 25 percent of a licensee's total licensed entries in the quota year preceding that for which application is being made may be based on sales-in-transit). One comment proposed that the definition of "date of entry" and "enter" be amended to conform to U.S. Customs Service regulations. The definition of "date of entry" is eliminated and the term "enter" or "entry" is so defined since this proposed rule permits the U.S. Customs Service rules regarding entry for TRQ's to govern the entry of articles subject to this regulation. While

the term "entrepreneurial use" is no longer found in the definition section, the eligibility requirements of § 6.23 and the provisions of § 6.27, "Limitations on license use", replace and expand the concept. A definition of "process" or "processing" is added to clarify the eligibility requirements and limitations on use of a license. Other definitions, not discussed here, are also deleted, added or modified.

**License Requirement and Exceptions**

The change to a TRQ from an absolute quota requires that a license be obtained only to enter articles at the applicable duty for in-quota quantities under the TRQ. Over-quota duty treatment effectively replaces the former prohibition of imports for articles in excess of the absolute quota. Amounts entering without a license receive the applicable over-quota duty treatment. Thus the section on prohibitions and restrictions on imports in Revision 7 would be renamed in the proposed Revision 8 and include exceptions to the requirement for a license under certain prescribed conditions. Two entities suggested that the level of imports allowed under this exception be raised. The provision for this exception as found in Revision 7, as amended by the Interim Rule dated January 6, 1995 is not changed substantively in this

proposed rule since it conforms to the exclusions in General Note 15 of the HTS, including the limit on entry for personal use of not more than five kilograms (changing the limit of "not over \$25" in Revision 7). In response to a question in the comments, the term "importer" as used in this section continues to mean individuals who import the article whether or not they are persons in the business of importing, and ex-quota import permits will continue to be issued in a timely manner.

**Changes in the Licensing Structure**

Changes in the licensing structure are proposed to streamline the administration of the program, provide more uniform eligibility and performance requirements, and facilitate license use. There would be three license types under Revision 8 as proposed: (1) Appendix 1 historical licenses; (2) Appendix 2 nonhistorical rank-order lottery licenses; and (3) Appendix 3 designated licenses. The following table indicates how the licenses currently issued under Revision 7 would be issued under Revision 8. The proposed Appendices to Revision 8 are based on license type rather than the implementation date of the quota or tariff-rate quota.

LICENSE CHANGES: REVISION 7 COMPARED TO REVISION 8

REV. 7 App. 1	REV. 7 App. 2	REV. 7 App. 3	REV. 8 App. 1	REV. 8 App. 2	REV. 8 App. 3
Historical license—pre-Tokyo Round. Non-Historical license—pre-Tokyo Round.	Historical license—Tokyo Round.  Supplementary designated license—Tokyo Round. Supplementary lottery license—Tokyo Round.	.....  Supplementary designated license—Uruguay Round. Supplementary lottery license—Uruguay Round.	Historical license.  .....  .....	.....  Non-Historical rank-order lottery license..	Designated license—Tokyo Round and Uruguay Round.

In summary, the basic changes are as follows:

(1) Appendix 1 (Revision 8) historical licenses would include all license amounts issued as historical and nonhistorical licenses under Revision 7, subject to any reduction requirements. Licensees who currently have more than one historical license for the same article from the same country, or one or more historical and a nonhistorical license, would have those license amounts combined into a single historical license, provided they remain eligible for such license.

(2) Appendix 2 (Revision 8) nonhistorical rank-order lottery licenses would include all license amounts issued as supplementary lottery licenses under Revision 7, any Uruguay Round increments not designated by exporting countries and any amounts obtained through reductions or revocations of historical license. License amounts resulting from such reductions or revocations would be permanently shifted to Appendix 2 from Appendix 1.

(3) Appendix 3 (Revision 8) designated licenses would include all license amounts for which importers will be designated by the government of

the exporting country. Governments who designate importers would be required to designate separately for quantities resulting from the Tokyo Round and from the Uruguay Round. Cumulative license amounts for an article may be shifted between Appendix 2 and Appendix 3 to reflect changes in exporting countries' decisions regarding the designation of importers. Changes in the Appendices, as well as changes from additional Uruguay Round increments taking effect, would be announced cumulatively in the Federal Register.

## Eligibility

The proposed section on establishing eligibility (§ 6.23) has been revised to try to ensure that the licenses will be awarded to bona-fide import/distribution or manufacturing operations who will use the imports under license in such distribution and manufacturing facilities. The Department received numerous comments on the scarcity of available license for new and growing businesses. Raising the eligibility requirements, and increasing the economic risk an applicant must take to become eligible, is intended to be a disincentive to persons applying for license primarily for their value and not for distributing or processing the imported product. The result should be a decrease in the number of applicants for the reduced number of larger licenses that result from the new allocation provisions in this proposed rule. In general, the changes to eligibility reflect comments which endorsed raising eligibility requirements and tightening manufacturers' eligibility. The new eligibility requirements would be implemented for the 1997 quota year.

The proposed revisions for establishing eligibility by license type are as follows:

(1) For historical licenses—Appendix 1—(where eligibility was originally established at the time that quotas were imposed under Section 22), eligibility for 1997 license would be based on: (1) Receipt of 1996 historical license under Revision 7; (2) meeting the same performance threshold as applicants for nonhistorical rank-order lottery licenses under Revision 8; and (3) meeting the utilization requirements of the proposed rule. Eligibility in 1997 for existing (Revision 7) nonhistorical licenses converted to historical licenses, would also be based on 1996 receipt of such licenses, subject to the utilization requirements of this proposed regulation. In quota years subsequent to 1997, historical licenses would continue to be allocated at the 1997 level, subject to a 90 percent utilization requirement and a reduction provision based on the frequency of license surrenders. This revision would no longer provide for temporary reductions of historical licenses, which means that other historical licensees would no longer benefit from reallocation of such reductions of other historical licenses. A licensee would not be eligible for a historical license if the utilization requirements are not met and that license amount would be moved to Appendix 2 (nonhistorical rank-order lottery licenses).

Requiring that applicants for historical license annually meet the same threshold as all other licensees to reestablish their eligibility is one of several major changes from the current rule which are intended to create greater equity in the granting of license and to reduce the ability of persons to acquire licenses solely for the purpose of brokering them. Over time it should also serve to increase the quantities available for Appendix 2 nonhistorical rank-order licenses.

Two comments proposed that a certain portion of the Uruguay Round increment for butter be granted to persons holding historical licenses for butter. Since historical licenses for butter date as far back as 1953 and are not necessarily a good indicator of current interest in marketing butter, this rule provides instead that butter licenses issued as nonhistorical rank-order lottery licenses in the 1996 and 1997 quota years be converted to historical licenses in the subsequent quota year if they are utilized at 95 percent or more. This is the only instance where new historical licenses would be created, in an attempt to provide the continuity required to encourage the importation and marketing of specialty product rather than commodity butter. Persons issued such converted historical licenses in the 1997 or 1998 quota year would not be eligible for nonhistorical rank-order licenses for butter in those quota years or any year thereafter so long as they are issued a historical butter license converted in this manner. This is an exception to the general rule that historical licensees may also apply for nonhistorical license. It would be imposed because these licenses will be significantly larger than the existing historical butter licenses and receipt of such a new historical butter license would be an exception to the treatment provided for other Uruguay Round dairy product increases. In 1998 and thereafter, licenses for Uruguay Round increments for butter would remain in the rank-order lottery.

Several other comments were received with regard to eligibility for historical license, the implementation of which would not be not feasible for administrative reasons and because of the limited availability of tariff-rate quota amounts. One comment questioned the basis for historical license amounts, proposed that the basis be reviewed, and that any resultant amounts which might be taken from the historical licenses be divided between manufacturers and distributors. Another suggested that small businesses, in operation for five years, be placed on a

priority list for selection as historical licensees. Two stated that no new licenses should be given to historical licensees, and another, that unused historical licenses should be converted to supplementary licenses with importers determined by exporting countries.

(2) For nonhistorical rank-order lottery licenses—Appendix 2—for cheese or cheese products, eligibility would be established for the 1997 and subsequent quota years for persons who apply as importers by having entered at least 57 metric tons of cheese, or, for those who apply as manufacturers by being listed as a processor in Section II of "Dairy Plants Surveyed and Approved for USDA Grading Services" and having processed at least 450 metric tons of cheese during the September 1 through August 31 period preceding the year for which application for license is made. An alternative importer eligibility threshold is proposed which would allow small businesses or those seeking licenses smaller than some of the minimum sizes established in this regulation to qualify for license: the threshold weight is significantly lower, but it requires multiple shipments spread throughout the year. Eligibility must be established for each quota year. For non-cheese dairy products, qualifying shipments may include dairy products other than cheese and exporters will also be permitted to apply.

The changes from the existing eligibility criteria, which were largely based on comments received, are: (1) The level of imports (or in the case of non-cheese articles, also exports) required; (2) the elimination beginning with the 1997 quota year of entries based on sales-in-transit (including from warehouse) and warehouse withdrawals as acceptable transactions for eligibility; and (3) the requirement that manufacturers seeking eligibility for cheese license must process cheese. All of these are aimed at narrowing eligibility to those persons who directly purchase cheese to either market and distribute it or to use it in their own processing operations.

(3) The third category of license proposed is that designated by the government of the exporting country—Appendix 3. These licenses are similar to the supplementary preferred importer licenses under Revision 7. The quantities to be designated consist of the portion of Tokyo-Round increments eligible for designation in 1996 as well as Uruguay Round market access increases for which governments have notified the Licensing Authority of their intent to designate. To be eligible to

receive designated licenses an applicant would have to meet the same requirements as an applicant for nonhistorical rank-order licenses, much as an applicant for designated license under Revision 7 must meet the nonhistorical eligibility requirements.

The designation provisions of this proposed rule are in part a carryover from Revision 7 and in part the implementation of the bilateral memoranda of understanding which resulted from the Uruguay Round Agreements. Of the ten entities that commented on designation, four suggested eliminating the concept; one recommended that it be limited to entities not owned by foreign governmental bodies; several did not approve of designation for the new quantities resulting from the Uruguay Round; two considered designation a second best option if export country certification was not an option; it was also suggested that designation by exporting countries be extended to include non-cheese products.

Other comments regarding eligibility requirements were as follows: there was concern that performance levels not be increased to levels detrimental to persons handling small volumes, or be set at levels higher than the amount of license some persons receive. The proposed alternative threshold should accommodate most of those situations. Four comments suggested that in lieu of import licenses, exporting countries should control trade via export certificates, an idea which goes beyond what was agreed in the Uruguay Round.

A number of additional suggestions were not incorporated for administrative reasons or can be handled through other provisions. Some of these were: firms should be given seniority status for licenses based on date of incorporation; eligibility should be based on periodic audits rather than imports or manufacturing; and past performance should show more than one customer. One comment suggested requiring submission of customs invoices with applications. The Department believes that the proposed requirement that eligibility qualifying entries be direct imports (not in-transit or warehouse purchases or warehouse withdrawals) as of the 1997 quota year responds to that concern. Opinions varied on: basing eligibility on sales; limiting the size of a given licensee's licenses for imports from a single country; and requiring experience in the cheese business to be able to apply for a license.

#### Conditions Under Which Eligibility May Not be Established: Insufficient Utilization; Affiliation and Association

Under previous revisions of this rule one of the conditions for continued eligibility was the fulfillment of a license utilization level. The requirement varied by license type. In this rule a utilization requirement is made a condition to establish eligibility annually. Further, it is made uniform across all license types and the level is raised from 85 to 90 percent, *to take effect in the 1996 quota year for establishing eligibility for the 1997 quota year.*

As proposed in this rule, to establish eligibility for a license for the 1997 and subsequent quota years, a licensee must have utilized 90 percent of the license amount not surrendered by September 1 for the same article from the same country. The license amount not surrendered *would include* any additional amounts issued to a licensee as a result of any reallocations beginning in the 1996 quota year. If 90 percent utilization is not achieved, then that license for an article from a country would not be issued to that licensee in the following year. As a consequence of the proposed eligibility requirement for historical licenses that such a license must have been issued to that licensee in the previous year, a person who is not issued a historical license because of insufficient use in the previous quota year would not be eligible for that historical license in any subsequent quota year. A nonhistorical rank-order lottery license or designated license would not be issued to the licensee for the quota year subsequent to that in which the utilization level was not met.

The proposed rule would provide more specific criteria under which the utilization requirement may be waived than does Revision 7. Only breach of suppliers' or carriers' contracts, or force majeure situations would be considered. Further, an exemption is proposed for historical and nonhistorical licenses where the country on the license permits an export monopoly to control exports. This would replace the provision in Revision 7 which gives the Licensing Authority the ability to globalize a person's license or waive the utilization requirement if that person can demonstrate discrimination by a country. It is intended to provide an administratively simpler means to achieve a level playing field for importers and exporters.

This proposed rule would introduce a further eligibility requirement: a ceiling on the licensed volume which may be

entered based on sales-in-transit (including purchases from warehouse in the United States). It is the Department's view that the ability of licensees to purchase all of their product in transit or from warehouse encourages the practice of license brokerage. If a licensee's licensed volume entered based on such indirect purchases in a quota year exceeds 25 percent of total licensed licensed volume entered, then such licensee would not be eligible for *any* licenses in the following year. The information necessary to make such determinations would be obtained at the time each entry is made under the requirements of § 6.29. The conditions for waiving this eligibility requirement would be the same as those for failure to use 90 percent of the license amount or license amount not surrendered, as stated above. Further, the documentation required with respect to sales-in-transit (including from warehouse in the United States), is delineated in § 6.29 in greater detail than in Revision 7 to require evidence that the licensee has title to the product at the time of entry.

Nine commentors had views on action regarding sales-in-transit. Four indicated that some limitation could or should be placed on them. The suggestions ranged from allowing 80 percent of entries to only 25 percent of entries to be based on sales-in-transit. One comment called for banning sales-in-transit unless the licensee who made a purchase in transit is the end-user. An additional two comments indicated they were a necessary practice and should be retained. The Department proposes that the more stringent limitation is the best way to ensure that licensees import licensed dairy products for their own entrepreneurial use. Suggestions that sales-in-transit by subsidiaries or agents of the exporter not be counted in any limitation were not incorporated in this proposal because of the difficulty of administering such an exemption and the potential for evading the sale-in-transit limitation.

Four comments suggested that if licensees frequently underutilize their license (in varying degrees), they should be subject to a penalty or forfeit the licenses or some portion thereof. The Department does not have statutory authority to assess a monetary penalty, but would provide in this proposal, for a gradual reduction of a historical license for which there is a surrender (1) in three consecutive years, or (2) in three years out of five. In the first case the historical license would be reduced to the average amount of an article entered in the three years in which the surrender took place; in the second, to

the average amount of the article entered during the five years.

The Licensing Authority would not issue nonhistorical licenses for the same article from the same country to applicants who are affiliated or associated. The proposed provisions covering affiliation and association have been shortened but cover substantially the same interrelationships among companies as those of Revision 7. Employees of a company are explicitly defined as being associated with it, limiting the types of licenses they may receive, although not completely barring them from eligibility as one commenter suggested. The reference to remote contingent exemptions is deleted but would be considered upon presentation to the Licensing Authority, and options to purchase stock would no longer be considered as determining affiliation because administratively it is impossible to enforce. Despite a comment to raise the level of co-ownership with respect to affiliation to a range of between 15 to 25 percent, it is the Department's view that 5 percent is appropriate given the limited license amounts available.

#### Applications for License

Section 6.24 is modified to include a revised application period from September 1 through October 15, beginning in quota year 1997. It should be noted that the postmark no longer has a bearing on a person's position in the lottery. The first day of the application period is intended only to prevent receipt of applications prior to the time the Licensing Authority can handle them. Given the technology available to process the applications, it is no longer necessary to have a three-month application period. Further, the proposed rule specifically states that applications must be complete in order to be accepted by that date.

#### Allocation of Licenses

A broad range of comments was received on allocating existing licenses and licenses for the Uruguay Round quantities. Four comments stated that auctioning should not be used. Opinions varied on whether to: eliminate designated and supplementary licenses; distinguish between industrial and table cheese; prevent license use for industrial cheese; or permit licensees to hold more than one supplementary license. Ten entities commented on the lack of continuity as a major problem with the lottery licenses—the only ones available to new entrants on a regular basis, short of a purchase of the complete assets attendant to the business of a company

which holds license for the articles covered by this rule.

In the proposed changes to the allocation procedures of Revision 7, the Department has taken into account the wide array of comments received regarding the allocation of the annual in-quota quantities under the TRQ. The proposed allocation rules are:

(1) Historical Licenses—For an existing historical license, the license amount in 1997 would be the Basic Annual Allocation used by the Licensing Authority in 1996, subject to the eligibility requirements of the proposed rule. In subsequent quota years the license amount would not exceed the amount issued for 1996. For an existing nonhistorical license (Revision 7), the license amount for the 1997 quota year would be the same amount issued in 1996, subject to the eligibility requirements of the proposed rule. The license amounts from historical licenses that are not used at least 90 percent or whose use does not meet the other requirements of the proposed rule would be issued under the rank-order lottery (Appendix 2) as of the 1997 quota year. If a licensee held more than one historical license, or one or more historical licenses and one nonhistorical license for the same article from the same country in 1996 and would be eligible for those same licenses in 1997, the licensee would be issued a single historical license at a combined level determined through the above procedures.

(2) Nonhistorical rank-order lottery licenses—The significant number of comments proposing more continuity in license allocation and comments supporting the greater fairness of a rank-order lottery system, introduced in the Interim Rule of January 6, 1995 for certain non-cheese articles, led the Department to propose extending it to those quantities of cheese not held in historical or designated licenses (notwithstanding an opposing comment that it would introduce greater volatility and trade in low-price merchandise). The rank-order lottery would consist of a series of random draws on the basis of licensee-expressed rankings. Once a licensee has received a nonhistorical license, it would not be issued another until all other applicants have received one nonhistorical license of their choice, provided their choices have not already been completely issued. Under the proposed Revision 8, licenses would be allocated on the basis of minimum shares with proration of any excess, if such occurs. Therefore, no license maximum would be required for nonhistorical rank-order lottery licenses. The proposed rule would not

change the size of the existing historical and designated licenses, but would increase the minimum size of most nonhistorical rank-order lottery licenses from that of the equivalent supplementary licenses, to make them more economically viable, and for ease of administration. The minimum size of licenses would in most cases be more than double the size under Revision 7. This would result in a decrease from the approximately 680 licenses which were awarded in 1994 under the lottery provisions of Revision 7 to approximately 291 licenses for the same quantity of cheese. Some Uruguay Round TRQ amounts will be added to this quantity from the countries who do not designate, as would the amounts which are available for global access. The rank-order lottery, while not a guarantee of continuity of license, should increase the odds of receiving a license for the same article in consecutive years. A detriment, as pointed out in a comment to the interim rule, is that a licensee would not receive as great a variety of licenses. With respect to license size, four comments suggested that they be made larger, three comments stated they should not be changed, and one comment proposed that the minimum size of non-cheese licenses be increased to at least 100 metric tons. Since the TRQ amounts are fixed, the system must balance the size of license with the large number of requests for license. The minimum license levels in this proposed regulation are deemed reasonable in this context.

Under Revision 7, a historical licensee is generally ineligible for nonhistorical license of the same article from the same country, but is eligible for supplementary lottery license. The Department has proposed making the new nonhistorical rank-order lottery licenses available to all eligible licensees, subject to the limitations of the rules of attribution in § 6.23(c) (3)–(5). The rank-order provision would prevent any one licensee from randomly getting significantly more nonhistorical licenses than another.

A significant number of suggestions for providing renewability or increasing continuity in the receipt of nonhistorical licenses had to be rejected because of the limited quantities available for allocation. For lottery license allocation, one comment suggested that if 85 percent of an entire license is used (as opposed to 85 percent of the license retained at the end of the year) the licensee should receive that same license the next year. Another suggested that licenses be made available to companies on a rotating

basis over a period of years and two comments proposed licenses be made available for longer than one year. While the latter proposals might extend a business' planning horizon, it is doubtful that a business would make or increase investments on the basis of licenses it knows may be unavailable after 2, 3, 4, or 5 years—whatever multiple year term might be provided. Two comments suggested a license exchange so that licensees could swap licenses. Administrative difficulties make this unfeasible.

With respect specifically to the new Uruguay Round cheese quantities, two comments suggested that 50 percent of the non-designated licenses be granted to importers of non-quota cheese. However, virtually all of the cheese is likely to be designated. In many cases the non-quota cheese importers are the same companies as the license holders and the size of their license portfolio ranges from small to large. Thus, such a proposal is not likely to give substantial advantage to smaller businesses who find it difficult to increase the size and continuity of their licenses. Another comment stated that Uruguay Round quantities not yet designated by a country should be issued through a lottery. This recommendation is contained in the proposed rule. The following specific recommendations were also submitted: three comments proposed the Uruguay Round increments in cheese should be equally split among license types; one felt that the licenses should be issued equally to manufacturers and importer distributors; and one stated that 50 percent of the licenses should be issued to businesses created after 1979. Other more complex formulas were also submitted for allocating licenses.

(3) Designated licenses—Revision 8 would incorporate Uruguay Round commitments on designated importers, provide a deadline for designation by foreign governments, submission of the specific information required by the Licensing Authority, and a deadline for notification of the Licensing Authority by an exporting country if it intends to begin or cease designating importers in the following quota year.

#### Surrender and Reallocation

Revision 8 would move the surrender date from October 1 to September 1 beginning with the 1996 quota year, on the basis of several comments. This would also entail moving the period forward for requesting additional amounts from September 1–September 15 to August 1–August 15. Three comments suggested that requests for additional license and the surrender of

license be made one month earlier so as to allow for earlier reallocation and better conditions for the shipment of product in time for the end of the year. Two entities commented that the current time frame was more appropriate as a September 1 date was too early for decisions on non-use. We are particularly interested in further comments on this provision in light of the increase in the utilization level required to reestablish eligibility in the following year, and the potential for loss of historical license if that level is not met.

Surrendered licenses would be reallocated in a manner similar to the method used for initial allocation of nonhistorical licenses (i.e., a rank-order lottery). However, the minimum license level would be smaller.

One comment suggested that those who use 95 percent of their combined license and reallocated quantities be given priority the following year for reallocated amounts. The administrative complexity of this proposal would slow down the reallocation process, defeating at least in part the earlier surrender-reallocation period proposed.

#### Limitations on the Use of Licenses

Historically, an important goal of the licensing system has been to grant licenses to those businesses which will employ them for their own entrepreneurial use. It is not the goal of the system to award licenses to license brokers who obtain licenses for the use by a third party. This proposed rule reiterates the requirement that a licensee must use its licenses in its own dairy importing or manufacturing business. This is further reflected in the proposed limitation on sales-in-transit to remain eligible for license in § 6.23 and in the proposed requirement that licensees who are eligible on the basis of manufacturer status use a minimum of 75 percent of the licensed imports in their own processing operations in the United States. This requirement should better implement the original intent of the provision introduced in Revision 7, to give manufacturers who have no importing history the opportunity to have direct access to imported inputs. Manufacturers would be expected to be able to document that they have used 75 percent of their licensed imports in their own plant. Another comment suggesting that importers must sell to more than two unaffiliated or unassociated companies unless the importer of record uses more than 50 percent of such imports in its own processing facility, was viewed as a restriction whose intent could be circumvented and has

therefore not been incorporated into the proposed rule.

#### Transfer of License

Several changes have been proposed for the provisions affecting transfer of license upon sale or conveyance of a business involving articles covered by this regulation. Licenses would be transferred by the Licensing Authority to the person who has acquired a business involving articles covered by this regulation, including complete transfer of attendant assets, for the remainder of the quota year. In subsequent quota years the person who has acquired the business could reestablish eligibility for the historical licenses as provided in § 6.23 and also apply for nonhistorical and designated license. The entries made under the licenses by the original licensee during the year in which the sale or conveyance is made would be considered as having been made by the person acquiring the business for the purpose of establishing eligibility. In line with comments received, all licenses would be permitted to be transferred to the person acquiring the business in an asset purchase approved by the Licensing Authority (as is now the case for those changes in ownership resulting from a stock transfer). As a result, the person acquiring the business could, under this revision, hold any duplicate nonhistorical rank-order lottery licenses for the remainder of the quota year for which they are issued. The person acquiring the business and any affiliates would be eligible for only one such nonhistorical rank-order lottery license in subsequent years. If the existing provision remained in effect, nonhistorical amounts which could not be transferred through an asset purchase would be held by the Licensing Authority until the reallocation of surrendered amounts made in the fall of any given quota year.

With respect to the requirement that the "total assets" related to the business be transferred in order for the Licensing Authority to transfer the licenses, one comment stated that it is onerous and proposed the test be "substantially all of the assets." In the Department's view, the one-time burden is reasonable in view of the benefits of the transfer to both parties of the transaction. In addition, one comment suggested that a company be able to sell a particular portion of its import business, and that licenses be transferred on the basis of such a sale. The complexity of attempting to define and audit the requirement of a partial transfer makes the suggestion unfeasible.

In response to long-standing industry requests and a comment received, the proposed rule provides for the Licensing Authority to review, prior to its execution, a proposed contract for an asset purchase for compliance with the requirement for conveying assets attendant to the importing business. The prior submission of the documents of conveyance would be made mandatory. The submission would have to be received by the Licensing Authority at least 20 *working days* before the conveyance takes place. Any alteration found in the documents ultimately submitted would require a further determination. Also proposed is a provision permitting an escrow clause in the contract, but such escrow could only be returned if the Licensing Authority determined that it will not transfer the licenses to the buyer. Experience has caused the Department to propose a new requirement for timely reporting and submission of the actual documents conveying the assets of a company, with non-compliance leading to suspension or revocation of license.

#### Use of Licenses

This section has been simplified and made more uniform for the various types of entry. The intent of the proposed document requirements is to ensure that at the time of entry the licensee is the owner and importer of record of the licensed product, as is already required under Revision 7.

One entity proposed replacing the through-bill-of-lading requirement with a certificate of origin requirement so that the license could be used to import cheese produced in a specific country from another part of the world. This would increase the difficulty of enforcing the country of origin requirements of the tariff-rate quotas.

In response to industry requests which pre-dated the ANPR, and in conformance with Customs rules on tariff-rate quotas, the proposed rule would provide for the use of immediate delivery for articles covered by it.

#### Records and Inspection

Proposed Revision 8 would extend the two-year period for retaining records for a quota year to five years after the end of a quota year. Five years is standard for other Department regulations. It would also require that all documentation related to transactions which establish a licensee's eligibility be maintained for that period. It would further clarify that documents must be made available to all officials of the Department. Failure to provide information would be a violation subject

to suspension and revocation under § 6.31.

#### Suspension and Revocation of License Eligibility

These proposed provisions have been entirely rewritten. They would provide greater clarity regarding grounds for suspension or revocation; give the Licensing Authority greater discretion as to the severity of the action to be taken (by allowing partial or complete suspension or revocation of the licenses held by a person); ensure that a decision to revoke the ability to apply for license extends to the individual who has violated the Import Regulation (or other government rule) as well as to the named licensee; and provide for suspension and the opportunity for a hearing prior to revocation—as proposed in a recommendation received. It has been the Department's policy in recent years to provide the opportunity for a hearing before revocation administratively, even though Revision 7 only provides for an appeal hearing after revocation. One comment proposed monetary fines for certain infractions of the rule. The Department has no authority for such action. Another stated that the licenses of a person violating the Import Regulation or any Customs rules should be returned to the lottery, and two others stated that a person be made ineligible for licenses only upon conviction of wrongdoing. Persons found to be violating the Import Regulation or Customs rules and regulations applicable to the Import Regulation would be subject to § 6.31 proceedings.

The proposed rule provides for a single administrative appeal of determinations by the Licensing Authority to the Director of the Import Policies and Programs Division, Foreign Agricultural Service, or his or her designee. The Department believes that the two levels provided in Revision 7 are duplicative and potentially burdensome for the licensee. The rule would also require that the licensee exhaust its administrative remedies before pursuing any other remedy.

#### Globalization of Licenses

The section on country of origin adjustments found in Revision 7 would be renamed to reflect the action which the Licensing Authority actually takes when it determines that entries of an article from a country will fall short of that country's allocated amount as indicated in Appendices 1, 2 and 3, i.e., to globalize the remaining balance (or an appropriate portion thereof) of licenses for an article from a country. It would

also continue the provision in the current interim rule which implements the U.S. Uruguay Round commitment to obtain the consent of the exporting country's government prior to globalization of the TRQ amounts granted in Uruguay Round. While this section does not specifically state that importers may request globalization and that when they do they must supply information which would show to the best of their ability the reasons why a supplying country will not be able to fill its quota allocation, this provision would be implemented by the Licensing Authority as it has been in the past. Further, such requests must be submitted no later than August 1.

This section does not reflect the comments received on this issue which would be administratively difficult to implement or where the existing provisions are not considered deficient by the Department. Several comments recommended some form of automatic or semi-automatic country-of-origin adjustment if a supplying country had a poor record of filling a TRQ in several consecutive years, and another proposed that evaporated and sweetened/condensed milk be excluded from this provision. One comment proposed that the provision permitting the Licensing Authority to make a license-specific country-of-origin adjustment (or waive the 85 percent utilization requirement) upon determination that an exporting country has discriminated as to price or availability be strengthened. The comment further recommended provisions describing statutory export monopolies who export primarily industrial type cheeses as anti-competitive, and, based on such a description, revoking the exporting country's ability to designate importers for license. The Department has instead provided in § 6.23 an exemption to the 90 percent utilization requirement for licenses where the product is purchased from an export monopoly.

#### License Fee

Proposed Revision 8 would require that license fee payments be made by certified check or money order to minimize the Department's burden in handling returned checks, and would continue the provision for automatic suspension of licenses for non-payment of the fee by May 15. It further states that revocation procedures would begin immediately upon suspension. It is the Department's intent to enforce this vigorously. There would be no grace period beyond the May 15 postmark date, and late payment would continue

to lead to suspension and revocation procedures.

Two comments were submitted stating that the fee was too high, one suggested it be based on the amount of licenses received, another said it should be eliminated. The fee is required by an OMB Directive and must be based on the cost of services rendered, not on the size of the license. Another comment proposed splitting the fee into two payments (a fee for processing the license and a fee for the license) in order to discourage frivolous applications. This would double the Department's processing, handling, and monitoring of payments and in the Department's view would not be a sufficient disincentive to reduce applications significantly.

#### Adjustment of Appendices

This section has been added to clarify that historical licenses which are not issued to a licensee who has not met the eligibility provisions of § 6.23 or whose license has been revoked or permanently surrendered would be moved to Appendix 2 for nonhistorical rank-order licenses. The Licensing Authority would provide the opportunity to apply for such licenses if the transfer to Appendix 2 added an article or an article from a country not previously listed under that Appendix.

#### Miscellaneous

A provision has been added that all submissions required by mail in this regulation would have to be made by registered or certified mail with a postmarked receipt, and proper postage affixed. This is intended to assure timely delivery and provide a means to verify that the postmark deadline is met.

#### Appendices

Several comments addressed the types of cheeses under TRQ and the contents of TRQ articles. Some welcomed the consolidation of licenses for Italian-type and Edam and Gouda cheeses and recommended further consolidation. Another comment suggested the mix of cheese be adjusted to minimize the impact on domestic producers. One comment proposed changing the tariff-rate quotas for evaporated and sweetened/condensed milk to make them equal. These formulations are part of the Uruguay Round Agreement and cannot be changed through regulatory action. They would require legislative authority and in some cases renegotiation of the Agreement.

Two comments recommended extending licensing to other non-cheese dairy products, particularly those where the TRQ increased by more than 500

metric tons. The Department will be monitoring imports to determine if further licensing is needed.

#### List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

#### Proposed Rule

Accordingly, for the reasons described in the preamble, 7 CFR Part 6 Subpart—Tariff Rate Quotas §§ 6.20–6.34 and Appendix 1, Appendix 2 and Appendix 3 thereto, is revised to read as follows:

#### Subpart—Dairy Tariff-Rate Import Quota Licensing

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819.

#### § 6.20 Introduction.

(a) Presidential Proclamation 6763 of December 23, 1994 (3 CFR, 1994 Comp., p. 147), modified the Harmonized Tariff Schedule of the United States affecting the import regime for certain articles of dairy products. The Proclamation terminated quantitative restrictions that had been imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624); proclaimed tariff-rate quotas for such articles pursuant to Public Law 103–465; and specified which of such articles may be entered only by or for the account of a person to whom a license has been issued by the Secretary of Agriculture.

(b) Effective January 1, 1995, the prior regime of absolute quotas for certain dairy products was replaced by a system of tariff-rate quotas. The articles subject to licensing under the new tariff-rate quotas are listed in Appendices 1, 2, and 3 of this subpart. The provisions of this subpart are effective on [effective date of the final rule]. Licenses are issued pursuant to its provisions for the 1997 and subsequent quota years. These licenses permit the holder to import specified quantities of the subject articles into the United States at the applicable in-quota rate of duty. If an importer has no license for an article subject to a tariff-rate quota, such importer is required, with certain exceptions, to pay the applicable over-quota rate of duty.

(c) The Secretary of Agriculture has determined that this subpart, to the fullest extent practicable, results in fair and equitable allocation of the right to import articles subject to such tariff-rate

quotas. The subpart also maximizes utilization of the tariff-rate quotas for such articles, taking due account of any special factors which may have affected or may be affecting the trade in the articles concerned.

#### § 6.21 Definitions.

As used in this subpart and the Appendices thereto, the following terms mean:

**Cheese or cheese products**—Articles in headings 0406, 1901.90.34 and 1901.90.36 of the Harmonized Tariff Schedule.

**Commercial entry**—Any entry except those made by or for the account of the United States Government or for a foreign government, for the personal use of the importer or for sampling, taking orders, research, or the testing of equipment.

**Country**—Country of origin as determined in accordance with Customs rules and regulations, except that “EC–12” and “Other Countries” shall each be treated as a country.

**Customs**—The United States Customs Service.

**Dairy products**—Articles in headings 0401 through 0406, margarine cheese listed under headings 1901.90.34 and 1901.90.36, ice cream listed under heading 2105, and casein listed under heading 3501 of the Harmonized Tariff Schedule.

**Department**—The United States Department of Agriculture.

**EC 12**—Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom.

**Enter or Entry**—To make or making entry for consumption, or withdrawal from warehouse for consumption in accordance with Customs regulations and procedures.

**Harmonized Tariff Schedule or HTS**—The Harmonized Tariff Schedule of the United States.

**Licensee**—A person to whom a license has been issued under this subpart.

**Licensing Authority**—The Dairy Import Quota Manager, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture.

**Other countries**—Countries not listed by name as having separate tariff-rate quota allocations for an article in the Additional U.S. Notes to Chapter 4 of the Harmonized Tariff Schedule.

**Person**—An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

**Postmark**—The postage cancellation mark or date applied by the United

States Postal Service. This does not include the date on "same day or next day" mail delivered by the U.S. Postal Service (also known as Express Mail), on metered postage affixed by the applicant, or on mail delivered by private entities.

**Process or Processing**—Any additional preparation of a dairy product, such as melting, grating, shredding, cutting and wrapping, or blending with any additional ingredient.

**Quota article**—One of the products listed in Appendices 1, 2, or 3 of this subpart which are the same as those described in Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 of the Harmonized Tariff Schedule.

**Quota year**—The 12-month period beginning on January 1 of a given year.

**Sale-in-transit**—Any sale prior to entry that is not a direct sale, including from a warehouse in the United States. A direct sale means a sale by the exporter in a foreign country of an article to the licensee or person seeking license.

**Tariff-rate quota amount or TRQ amount**—The amount of an article subject to the applicable in-quota rate of duty established under a tariff-rate quota.

**United States**—The customs territory of the United States, which is limited to the fifty states, the District of Columbia, and Puerto Rico.

#### § 6.22 Requirement for a license.

(a) **General rule.** A person who seeks to enter, or cause to be entered, an article shall obtain a license, in accordance with this subpart, except as provided in paragraph (b) of this section.

(b) **Exceptions.** Licenses are not required if:

(1) The article is imported by or for the account of any agency of the U.S. Government;

(2) The article is imported for the personal use of the importer, provided that the net weight does not exceed 5 kilograms in any one shipment;

(3) The article imported will not enter the commerce of the United States and is imported as a sample for taking orders, for exhibition, for display or sampling at a trade fair, for research, for testing of equipment; or for use by embassies of foreign governments. Written approval of the Licensing Authority shall be obtained prior to entry, and the importer of record (or a broker or agent acting on its behalf) shall provide to the Licensing Authority, prior to the release of such articles, the appropriate Customs documentation identifying the article, quantity to be imported, its location,

intended use, an entry number and the importer of record. The Licensing Authority may also require as a condition of import that the article be destroyed or re-exported after such use; or

(4) Such person pays the applicable over-quota rate of duty.

#### § 6.23 Eligibility to apply for a license.

(a) **In general.** To apply for any license, a person shall have:

(1) A business office, and be doing business, in the United States, and

(2) An agent in the United States for service of process.

(b) **Eligibility for the 1997 and subsequent quota years.** (1) **Historical licenses (Appendix 1).** Any person issued a historical or nonhistorical license for the 1996 quota year for an article may apply for a historical license (Appendix 1) for the same article from the same country for the 1997 and subsequent quota years, if such person was, during the 12-month period ending August 31 prior to the quota year, either:

(i) Where the article is cheese or cheese product,  
(A) The owner of and importer of record for at least three separate commercial entries of cheese or cheese products totalling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight, excluding entries made on the basis of a sale-in-transit to the applicant and warehouse withdrawals;

(B) The owner of and importer of record for at least eight separate commercial entries of cheese or cheese products totalling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, excluding entries made on the basis of a sale-in-transit to the applicant and warehouse withdrawals, with a minimum of two entries in each of at least three quarters during that period; or

(C) The owner or operator of a plant listed in Section II of the most current issue of "Dairy Plants Surveyed and Approved for USDA Grading Service" and had processed or packaged at least 450,000 kilograms of cheese or cheese products in its own plant in the United States; or

(ii) Where the article is not cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of dairy products totalling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight, excluding entries made on the basis of a sale-in-transit to the applicant and warehouse withdrawals;

(B) The owner of and importer of record for at least eight separate commercial entries of dairy products totalling not less than 19,000 kilograms net weight, each of the eight entries not less than 2,000 kilograms net weight, excluding entries made on the basis of a sale-in-transit to the applicant and warehouse withdrawals, with a minimum of two entries in each of at least three quarters during that period;

(C) The owner or operator of a plant listed in the most current issue of "Dairy Plants Surveyed and Approved for USDA Grading Service" and had manufactured, processed or packaged at least 450,000 kilograms of dairy products in its own plant in the United States; or

(D) The exporter of dairy products in the quantities and number of shipments required under paragraphs (b)(1)(ii) (A) or (B) of this section.

(2) **Certain butter.** A person issued a nonhistorical license for butter for the 1996 or 1997 quota year may annually apply for a historical license (Appendix 1) for the same quantity of butter for the subsequent quota year and each year thereafter, provided that such person has used at least 95 percent of the license issued for the previous quota year and meets the requirements of paragraph (b)(1)(ii) of this section. However, if a person is issued a historical license pursuant to this paragraph, that person may not apply for a nonhistorical license for butter for any quota year in which that historical license is issued to that person.

(3) **Nonhistorical licenses for cheese or cheese products (Appendix 2).** A person may annually apply for a nonhistorical license for cheese or cheese products (Appendix 2) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(i) of this section.

(4) **Nonhistorical licenses for articles other than cheese or cheese products (Appendix 2).** A person may annually apply for a nonhistorical license for articles other than cheese or cheese products (Appendix 2) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(ii) of this section.

(5) **Designated license (Appendix 3).** A person may annually apply for a designated license (Appendix 3) for the 1997 quota year and for each quota year thereafter, provided that such person meets the requirements of paragraph (b)(1)(i) of this section, and provided further that the government of the country has designated such person for such license. The designating country

shall submit its selection of designated importers in writing directly to the Licensing Authority not later than October 31 prior to the beginning of the quota year.

(c) *Exceptions.* (1) A licensee that fails in a quota year to enter at least 90 percent of the amount of an article permitted under a license, shall not be eligible to receive a license for the same article from the same country for the next quota year. For the purpose of this paragraph, the amount of an article permitted under the license will exclude any amounts surrendered pursuant to § 6.26(a), but will include any additional allocations received pursuant to § 6.26(b). This paragraph will not apply, however:

(i) Where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the article, act of God or force majeure; or

(ii) To historical and nonhistorical licenses where the country specified on the license maintains or permits an export monopoly to control the product concerned. For the purpose of this paragraph, "export monopoly" means a privilege vested in one or more persons consisting in the exclusive right to carry on the exportation of an article of dairy products from a country to the United States. The Licensing Authority may publish a notice in the Federal Register indicating which countries export an article or articles through such a monopoly, and revise it as necessary.

(2) A licensee who enters more than 25 percent of the total amount entered under its licenses on the basis of sales-in-transit, shall not be eligible to receive any license in the following year. This paragraph will not apply, however, where the licensee demonstrates to the satisfaction of the Licensing Authority that it exceeded that level as a result of breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the article, act of God or force majeure.

(3) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a non-historical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a historical butter license of 57,000 kilograms or greater. For the

purpose of this paragraph, an applicant will be deemed affiliated with another applicant if:

(i) The applicant is the spouse, brother, sister, parent, or grandchild of such other applicant;

(ii) The applicant is the spouse, brother, sister, parent or grandchild of an individual who owns or controls such other applicant;

(iii) The applicant is owned or controlled by the spouse, brother, sister, parent, or grandchild of an individual who owns or controls such other applicant;

(iv) Both applicants are 5 percent or more owned or controlled, directly or indirectly, by the same person;

(v) The applicant, or a person who owns or controls the applicant, benefits from a trust that controls such other applicant.

(4) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a nonhistorical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a historical butter license for 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed associated with another applicant if:

(i) The applicant is an employee of, or is controlled by an employee of, such other applicant;

(ii) The applicant economically benefits, directly or indirectly, from the use of the license issued to such other applicant.

(5) The Licensing Authority will not issue a nonhistorical license for an article from a country, for which the applicant receives a designated license.

#### § 6.24 Application for a license.

(a) Application for license shall be made on forms provided by the Licensing Authority and shall be duly notarized and mailed in accordance with § 6.36(b). All parts of the application shall be completed. Beginning with the 1997 quota year the application shall be postmarked no earlier than September 1 and no later than October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete or unpostmarked applications.

(b)(1) Where the applicant seeks to establish eligibility on the basis of imports, applications shall include:

(i) Customs Form 7501 showing the applicant as the importer of record, and

(ii) The commercial invoice or bill of sale showing the applicant as the owner and the original consignee for the number and level of entries required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(2) Where the applicant seeks to establish eligibility on the basis of exports, applications shall include:

(i) Census Form 7525 or a copy of the electronic submission of such form, and

(ii) The commercial invoice or bill of sale for the quantities and number of exports required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(c) An applicant requesting more than one nonhistorical license must rank order these requests by the applicable Additional U.S. Note number. Cheese and cheese products must be ranked separately from dairy articles which are not cheese or cheese products.

#### § 6.25 Allocation of licenses.

(a) *Historical licenses for the 1997 quota year (Appendix 1).* (1) A person issued a historical license for the 1996 quota year will be issued a historical license for the 1997 quota year in an amount equal to the Basic Annual Allocation level used by the Licensing Authority for the 1996 quota year provided that such person meets the requirements of § 6.23(b)(1) and § 6.23(c).

(2) A person issued a nonhistorical license for the 1996 quota year will be issued a historical license for the 1997 quota year for the same quantity as the license for the 1996 quota year, provided that such person meets the requirements of § 6.23.

(3) If a person was issued more than one historical license, or one or more historical licenses and a nonhistorical license, for the same article from the same country for the 1996 quota year, such person will be issued a single historical license for the 1997 quota year, the amount of which shall be determined in accordance with paragraphs (1) and (2) above.

(b) *Historical licenses for the 1998 and subsequent quota years (Appendix 1).* A person issued a historical license for the 1997 quota year will be issued a historical license in the same amount for the same article from the same country for the 1998 quota year and for each subsequent quota year except that:

(1) Beginning with the 1998 quota year, a person who has surrendered a portion of such historical license in each of the prior three quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those three quota years; and

(2) Beginning with the quota year 2000, a person who has surrendered a portion of such historical license in at least three of the prior five quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those five quota years.

(c) *Nonhistorical licenses (Appendix 2).* The Licensing Authority will allocate nonhistorical licenses on the basis of a rank-order lottery system, which will operate as follows:

(1) The minimum license size shall be:

(i) Where the article is cheese or cheese product:

(A) The total amount available for nonhistorical license where such amount is less than 9,500 kilograms;

(B) 9,500 kilograms where the total amount available for nonhistorical license is between 9,500 kilograms and 500,000 kilograms, inclusive;

(C) 19,000 kilograms where the total amount available for nonhistorical license is between 500,001 kilograms and 1,000,000 kilograms, inclusive;

(D) 38,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms; or

(E) An amount less than the minimum license size established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee;

(ii) Where the article is not cheese or cheese product:

(A) The total amount available for nonhistorical license where such amount is less than 19,000 kilograms;

(B) 19,000 kilograms where the total amount available for nonhistorical license is between 19,000 kilograms and 550,000 kilograms, inclusive;

(C) 38,000 kilograms where the total amount available for nonhistorical license is between 550,001 kilograms and 1,000,000 kilograms, inclusive; and

(D) 57,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms;

(E) An amount less than the minimum license sizes established in paragraphs (c)(1)(ii) (A) through (D) of this section, if requested by the licensee.

(2) Taking into account the order of preference expressed by each applicant, as required by § 6.24(c), the Licensing Authority will allocate licenses for an

article from a country by a series random draws. A license of minimum size will be issued to each applicant in the order established by such draws until the total amount of such article in Appendix 2 has been allocated. An applicant that receives a license for an article will be removed from the pool for subsequent draws until every applicant has been allocated at least one license, provided that the licenses for which they applied are not already fully allocated. Any amount remaining after the random draws which is less than the applicable minimum license size may, at the discretion of the Licensing Authority, be prorated equally among the licenses awarded for that article.

(d) *Designated licenses (Appendix 3).*

(1) With respect to an article listed in Appendix 3, the government of the applicable country may, not later than October 31 prior to the beginning of a quota year, submit directly and in writing to the Licensing Authority:

(i) The names and addresses of the importers that it is designating to receive licenses; and

(ii) The amount, in percentage terms, of such article for which each such importer is being designated. Where quantities for designation result from both Tokyo Round and Uruguay Round concessions, the designations should be made in terms of each.

(2) To the extent practicable, the Licensing Authority will issue designated licenses to those importers, and in those amounts, indicated by the government of the applicable country, provided that the importer designated meets the eligibility requirements set forth in § 6.23. Consistent with the international obligations of the United States, the Licensing Authority may disregard a designation if the Licensing Authority determines that the person designated is not eligible for any of the reasons set forth in § 6.23(c) (1) or (2).

(3) If a government of a country which negotiated in the Uruguay Round for the right to designate importers has not done so, but determines to designate importers for the next quota year, it shall indicate its intention to do so directly and in writing to the Licensing Authority not later than July 1 prior to the beginning of such next quota year. Furthermore, if a government that has designated importers for a quota year determines that it will not continue to designate importers for the next quota year, it shall so indicate directly and in writing to the Licensing Authority, not later than July 1 prior to such next quota year.

#### § 6.26 Surrender and reallocation.

(a) If a licensee determines that it will not enter the entire amount of an article permitted under its license, such licensee shall surrender its license right to enter the amount that it does not intend to enter. Surrender shall be made to the Licensing Authority in writing, mailed in accordance with § 6.36(b) and postmarked not later than September 1. Any surrender shall be final and shall be only for that quota year, except as provided in § 6.25(b). The amount of the license not surrendered shall be subject to the license use requirements of § 6.23(c) (1) and (2).

(b) For each quota year, the Licensing Authority will, to the extent practicable, reallocate any amounts surrendered.

(c) Any person who has been issued a license for a quota year may apply to receive additional license, or addition to an existing license for a portion of the amount being reallocated. The application shall be submitted to the Licensing Authority by mail postmarked not later than August 15, in accordance with § 6.36(b), and shall specify:

(1) The name and control number of the applicant;

(2) The article and country being requested, the applicable Additional U.S. Note number and, if more than one article is requested, a rank-order by Additional U.S. Note number; and

(3) If applicable, the number of the license issued to the applicant for that quota year permitting entry of the same article from the same country.

(d) The Licensing Authority will reallocate surrendered amounts among applicants as follows:

(1) The minimum license size, or addition to an existing license, will be the total amount of the article from a country surrendered, or 10,000 kilograms, whichever is less;

(2) Minimum size licenses, or additions to an existing license, will be allocated among applicants requesting articles on the basis of the rank-order lottery system described in § 6.25(c);

(3) If there is any amount of an article from a country left after minimum size licenses have been issued, the Licensing Authority may allocate the remainder in any manner it determines equitable among applicants who have requested that article; and

(4) No amount will be reallocated to a licensee who has surrendered a portion of its license for the same article from the same country during that quota year;

(e) However, if the government of an exporting country chooses to designate eligible importers for surrendered amounts under Appendix 3, the Licensing Authority shall issue the

licenses in accordance with § 6.25(d)(2), provided that the government of the exporting country notifies the Licensing Authority of its designations no later than September 1. Such notification shall contain the names and addresses of the importers that it is designating and the amount in percentage terms of such article for which each importer is being designated. In such case the requirements of paragraph (c) of this section shall not apply.

**§ 6.27 Limitations on use of license.**

(a) A licensee shall not use its license to import articles for the benefit of another person, nor shall it permit any other person to use such license.

(b) A person who is eligible as a manufacturer or processor, pursuant to § 6.23, shall process at least 75 percent of its licensed imports in such person's own facilities and maintain the records necessary to so substantiate.

**§ 6.28 Transfer of license.**

(a) If a licensee sells or conveys its business involving articles covered by this subpart to another person, including the complete transfer of the attendant assets, the Licensing Authority will transfer to such other person the historical, nonhistorical or designated license issued for that quota year. Such sale or conveyance must be unconditional, except that it may be in escrow with the sole condition for return of escrow being that the Licensing Authority determines that such sale does not meet the requirements of this paragraph.

(b) The parties seeking transfer of license shall give written notice to the Licensing Authority of the intended sale or conveyance described in paragraph (a) of this section by mail as required in § 6.36(b). The notice must be received by the Licensing Authority at least 20 working days prior to the intended consummation of the sale or conveyance. Such written notice shall include copies of the documents of sale or conveyance. The Licensing Authority will review the documents for compliance with the requirement of paragraph (a) of this section and advise the parties of its findings. The parties shall have the burden of demonstrating the sale or conveyance, and complete transfer of assets to the satisfaction of the Licensing Authority. Within 15 days of the consummation of the sale or conveyance, the parties shall mail copies of the final documents to the Licensing Authority, in accordance with § 6.36(b). The Licensing Authority will not transfer the licenses unless the documents are submitted in accordance with this paragraph.

(c) For the purposes of § 6.23 the person to whom a business is sold or conveyed shall be deemed to be the person to whom the historical licenses were issued during the quota year in which the sale or conveyance occurred. In all other respects, that person's eligibility to apply for a license for any subsequent quota year will be determined in accordance with § 6.23.

(d) For the purposes of this subpart, the entries made under such licenses by the original licensee during the year in which the sale or conveyance is made, shall be considered as having been made by the person to whom the business was sold or conveyed.

**§ 6.29 Use of licenses.**

(a) An article entered under a license shall be the article produced in the country specified on the license.

(b) An article entered or withdrawn from warehouse for consumption under a license must be entered in the name of the licensee as the importer of record by the licensee or its agent, and must be owned by the licensee at the time of such entry.

(c) If the article entered or withdrawn from warehouse for consumption was purchased by the licensee through a direct sale from a foreign supplier, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill-of-lading from the country; and

(2) A commercial invoice or bill of sale from the seller, showing the quantity and value of the product, the date of purchase and the country.

(d) If the article entered was purchased by the licensee via sale-in-transit, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill-of-lading endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(e) If the article entered was purchased by the licensee in warehouse, the licensee shall present, at the time of entry:

(1) Customs Form 7501 endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(f) The Licensing Authority may waive the requirements of paragraphs (c), (d) or (e) of this section, if it determines that because of strikes, lockouts or other unusual circumstances, compliance with those requirements would unduly interfere with the entry of such articles.

(g) Nothing in this subpart shall prevent the use of immediate delivery in accordance with the provisions of Customs regulations relating to tariff-rate quotas.

**§ 6.30 Record maintenance and inspection.**

A licensee shall retain all records relating to its purchases, sales and transactions governed by this subpart, including all records necessary to establish the licensee's eligibility, for five years subsequent to the end of the quota year in which such purchases, sales or transactions occurred. During that period, the licensee shall, upon reasonable notice and during ordinary hours of business, grant officials of the U.S. Department of Agriculture full and complete access to the licensee's premises to inspect, audit or copy such records.

**§ 6.31 Suspension or revocation of a license.**

(a) The Licensing Authority may determine to suspend or revoke a license for a quota year, or not to issue a license to a person for no more than three subsequent quota years, for any of the following reasons:

(1) Failure to pay a license fee in accordance with § 6.33;

(2) Submission of false or misleading information in connection with an application or with the use of a license;

(3) Indictment or conviction for a felony which indicates moral turpitude, lack of business integrity or business honesty;

(4) Violation of a provision of this subpart; or

(5) Ownership, control or management by, or employment of, a person whose license has been suspended or revoked or who has been debarred or suspended from contracting with the government or from participating in U.S. Government programs.

(b) The Licensing Authority shall determine whether to suspend or revoke a license and shall give written notice of such determination to the licensee. Where the Licensing Authority determines that adequate grounds exist, the notice shall state that the license has been suspended, shall give a plain and concise explanation of the factual basis and grounds for the determination, shall

specify the length of revocation proposed and a date on which such revocation will become effective if there is no appeal, and shall advise the licensee of its right to appeal the determination, including its right to a hearing.

(c) Any action taken by the Licensing Authority to suspend or revoke a license is without prejudice to the rights of the U.S. Government to pursue any other available legal recourse, civil, criminal or administrative.

(d) A licensee whose license is suspended or revoked is required to exhaust its administrative remedies before pursuing any other remedy.

#### **§ 6.32 Administrative appeals.**

(a) *General.* This section provides for administrative appeal of a determination by the Licensing Authority to suspend or revoke a license. The decision on such appeal shall be made by the Director, Import Policies and Programs Division, Foreign Agricultural Service ("Director"), or his or her designee.

(b) *Filing of appeal.* The licensee may appeal the Licensing Authority's determination by filing a written notice of appeal, signed by the licensee or the licensee's agent, with the Director. The appeal may be filed by mail, postmarked no later than 30 calendar days after the date of the Licensing Authority's determination, in accordance with § 6.36(b), or filed directly in the office of the Director. If the licensee files the notice of appeal directly with the office of the Director, two copies must be submitted. Both copies will be date-stamped by the office of the Director and one copy will be returned to the licensee. The licensee may make a written submission of its position at the time it files its appeal. If the licensee does not timely appeal, any suspension or revocation proposed will take effect in accordance with the Licensing Authority's determination. If the licensee seeks a hearing, it shall so request in its notice of appeal. The licensee may request that the hearing be scheduled within 30 days of the postmark date of its notice of appeal.

(c) *Appeal process and hearing.* (1) Ordinarily, hearings will be held only at the request of the licensee. If no hearing is requested, the Director will make his or her determination on the basis of written submission and any other available information. The hearing shall be held at the place and time determined by the Director, except that it shall be held within 30 days of the postmark date of the notice of appeal if the licensee so requests.

(2) Hearings will be conducted by the Director in a manner as informal as practicable, consistent with the principles of fundamental fairness.

(3) The licensee may be represented by counsel.

(4) The licensee shall have full opportunity to present any relevant evidence, documentary or testimonial, and to make argument in support of its position. The Director may permit other individuals to present evidence at the hearing, and the licensee shall have an opportunity to question those witnesses.

(5) If requested, the Director shall make available to the licensee all documentation considered by the Director in reaching its determination.

(6) A verbatim transcript of the hearing may be made at the direction of the Director, or at the request of the licensee. If the licensee requests a transcript be made, it shall be responsible for arranging for a professional reporter and shall pay all attendant expenses.

(d) *Determination on appeal.* The Director shall make the determination on appeal, and may affirm, reverse, modify or remand the Licensing Authority's determination. The Director shall notify the licensee in writing of the determination on appeal and of the basis therefore. The determination on appeal exhausts the licensee's administrative remedies.

#### **§ 6.33 Globalization of licenses.**

If the Licensing Authority determines that entries of an article from a country are likely to fall short of that country's allocated amount as indicated in Appendices 1, 2, and 3, the Licensing Authority may permit, with the approval of the Office of the United States Trade Representative, the applicable licensees to enter the remaining balance or a portion thereof from any country during that quota year. Requests for consideration of such adjustments must be submitted to the Licensing Authority no later than August 1. The Licensing Authority will obtain prior consent for such an adjustment of licenses from the government of the exporting country for quantities in accordance with the Uruguay Round commitment of the United States.

#### **§ 6.34 License fee.**

(a) A fee will be assessed each quota year for each license to defray the Department's costs of administering the licensing system. To the extent practicable, the fee will be announced by the Licensing Authority in a notice published in the Federal Register no later than August 31 of the year

preceding the quota year for which the fee is to be assessed.

(b) The license fee for each license is due and payable in full by mail, postmarked no later than May 15 of the year for which the license is issued, in accordance with § 6.36(b). The fee for any license issued after May 15 of any quota year is due and payable in full by mail, postmarked no later than 30 days from the date of issuance of the license, in accordance with § 6.36(b). Fee payments shall be made by certified check or money order payable to the Treasurer of the United States.

(c) If the license fee is not paid by the final payment date, the Licensing Authority will suspend that license and begin revocation procedures. If, after granting opportunity for an administrative appeal, the Licensing Authority determines that a person has not paid its fee as required by this paragraph and there is no indication that non-payment was for reasons beyond that person's control, the Licensing Authority will revoke the license for the remainder of the quota year and will not issue to such person a license for the same article from the same country for the next quota year. Where the license at issue is a historical license, this will result, pursuant to § 6.23(c), in the person's loss of historical eligibility for such license.

(d) Prior to the final payment date, licensees may elect not to accept certain licenses issued to them; however, the Licensing Authority must be so notified by mail, postmarked no later than the May 15 payment deadline, in accordance with § 6.36(b).

#### **§ 6.35 Adjustment of Appendices.**

(a) Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23 or subsequent to the permanent surrender to or revocation of such license by the Licensing Authority, the amount of such license will be transferred to Appendix 2.

(b) The cumulative annual transfers to Appendix 2 made in accordance with paragraph (a) of this section will be published in a Notice in the Federal Register. If such a transfer results in the addition of a new article, or an article from a country not previously listed in Appendix 2, the Licensing Authority shall afford all eligible applicants for that quota year the opportunity to apply for a license for such article.

#### **§ 6.36 Miscellaneous.**

(a) If any deadline date in this subpart falls on a Saturday, Sunday or a Federal holiday, then the deadline shall be the next business day.

(b) All submissions required by mail in this subpart shall be by registered or certified mail, return receipt requested, with a postmarked receipt, with the proper postage affixed and properly addressed to the Dairy Import Licensing Group, AG Box 1021, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of

Agriculture, Washington D.C. 20250-1021.

**§ 6.37 Supersedure of Import Regulation 1, Revision 7.**

This subpart supersedes the provisions of Import Regulation 1, Revision 7. With respect to any violation of the provisions of that regulation by a licensee prior to [the effective date of the final rule] the

provisions of that Regulation will be deemed to continue in full force. Any determination of the Licensing Authority to suspend or revoke a license for a violation of a provision of that Regulation shall be in accordance with § 6.31 of this subpart. Any administrative appeal shall be conducted in accordance with § 6.32 of this subpart.

APPENDIX 1—ARTICLES SUBJECT TO THE HISTORICAL PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR.<sup>1</sup>

Article by additional U.S. note number	1997 Historical tariff-rate in-quota quantity (kilo- grams)
<b>NON-CHEESE ARTICLES</b>	
BUTTER (Note 6) .....	320,689
EU .....	96,161
NEW ZEALAND .....	150,593
OTHER COUNTRIES .....	73,935
DRIED SKIM MILK (Note 7) .....	819,641
AUSTRALIA .....	600,076
CANADA .....	219,565
DRIED WHOLE MILK (Note 8) .....	3,175
NEW ZEALAND .....	3,175
DRIED BUTTERMILK AND WHEY (Note 12) .....	224,981
CANADA .....	161,161
NEW ZEALAND .....	63,820
TOTAL: NON-CHEESE ARTICLES .....	1,368,486
<b>CHEESE ARTICLES</b>	
CHEESE AND SUBSTITUTES FOR CHEESE (EXCEPT CHEESE NOT CONTAINING COW'S MILK AND SOFT RIPENED COW'S MILK CHEESE, CHEESE (EXCEPT COTTAGE CHEESE) CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT AND ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER)	
(Note 16) .....	26,016,085
ARGENTINA .....	7,690
AUSTRALIA .....	541,170
AUSTRIA .....	369,747
CANADA .....	1,141,000
SWITZERLAND .....	652,841
EU .....	15,032,240
FINLAND .....	814,903
ISRAEL .....	79,696
ICELAND .....	294,000
NORWAY .....	150,000
NEW ZEALAND .....	4,815,472
POLAND .....	936,224
PORTUGAL .....	129,309
SWEDEN .....	915,473
OTHER COUNTRIES .....	136,320
BLUE-MOLD CHEESE (EXCEPT STILTON PRODUCED IN THE UNITED KINGDOM) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, BLUE-MOLD CHEESE:	
(Note 17) .....	2,366,029
ARGENTINA .....	2,000
EU .....	2,364,028
OTHER COUNTRIES .....	1
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE:	
(Note 18) .....	4,183,856
AUSTRALIA .....	984,499
EU .....	263,000
NEW ZEALAND .....	2,796,468
OTHER COUNTRIES .....	139,889
AMERICAN-TYPE CHEESE, INCLUDING COLBY, WASHED CURD AND GRANULAR CHEESE (BUT NOT INCLUDING CHEDDAR) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH AMERICAN-TYPE CHEESE:	
(Note 19) .....	3,065,553
AUSTRALIA .....	880,998
EU .....	254,000
NEW ZEALAND .....	1,761,999

APPENDIX 1—ARTICLES SUBJECT TO THE HISTORICAL PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR.<sup>1</sup>—Continued

Article by additional U.S. note number	1997 Historical tariff-rate in-quota quantity (kilo- grams)
OTHER COUNTRIES .....	168,556
EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE:	
(Note 20) .....	5,606,402
ARGENTINA .....	125,000
EU .....	5,248,000
SWEDEN .....	41,000
NORWAY .....	167,000
OTHER COUNTRIES .....	25,402
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MAKE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI AND SBRINZ AND GOYA, NOT IN ORIGINAL LOAVES) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN-TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES:	
(Note 21) .....	6,733,376
ARGENTINA .....	4,125,483
EU .....	2,594,829
OTHER COUNTRIES .....	13,064
SWISS OR EMMENTHALER CHEESE OTHER THAN WITH EYE FORMATION, GRUYERE-PROCESS CHEESE AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH CHEESES:	
(Note 22) .....	6,120,089
AUSTRIA .....	778,994
SWITZERLAND .....	1,421,787
EU .....	3,091,475
FINLAND .....	748,000
OTHER COUNTRIES .....	79,833
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OF LESS BY WEIGHT OF BUTTERFAT, PROVIDED FOR IN (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE:	
(Note 23) .....	4,181,944
EU .....	3,882,352
POLAND .....	174,907
SWEDEN .....	124,684
OTHER COUNTRIES .....	1
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION:	
(Note 25) .....	20,258,803
ARGENTINA .....	9,115
AUSTRIA .....	5,004,491
AUSTRALIA .....	209,698
SWITZERLAND .....	1,747,315
EU .....	3,736,262
FINLAND .....	5,477,074
ISRAEL .....	27,000
ICELAND .....	149,999
NORWAY .....	3,812,573
OTHER COUNTRIES .....	85,276
<b>TOTAL: CHEESE ARTICLES .....</b>	<b>78,532,137</b>

<sup>1</sup> This appendix combines articles for which historical and nonhistorical licenses were issued under Appendix 1 and Appendix 2 of Import Regulation 1, Revision 7 and for which USDA issued annual import licenses identified by the numeric identification prefix 1, 2, or 3.

APPENDIX 2—ARTICLES SUBJECT TO THE NONHISTORICAL PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR <sup>1</sup>

Article by Additional U.S. Note number	1997 Nonhistorical tariff-rate in-quota quantity (kilo- grams)
<b>NON-CHEESE ARTICLES</b>	
BUTTER (Note 6) .....	2 4,856,311
DRIED SKIM MILK (Note 7) .....	2,041,359
DRIED WHOLE MILK (Note 8) .....	1,548,125
BUTTER SUBSTITUTES CONTAINING OVER 45% OF BUTTERFAT AND BUTTEROIL (Note 14) .....	4,520,500
<b>TOTAL: NON-CHEESE ARTICLES .....</b>	<b>12,966,295</b>

APPENDIX 2—ARTICLES SUBJECT TO THE NONHISTORICAL PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND  
RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR <sup>1</sup>—Continued

Article by Additional U.S. Note number	1997 Nonhistorical tariff-rate in-quota quantity (kilo- grams)
<b>CHEESE ARTICLES</b>	
CHEESE AND SUBSTITUTES FOR CHEESE (EXCEPT CHEESE NOT CONTAINING COW'S MILK AND SOFT RIPENED COW'S MILK CHEESE, CHEESE (EXCEPT COTTAGE CHEESE) CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT AND ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER):	
(Note 16) .....	5,436,075
EU .....	5,070,760
OTHER COUNTRIES .....	65,315
ANY .....	300,000
BLUE-MOLD CHEESE (EXCEPT STILTON PRODUCED IN THE UNITED KINGDOM) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, BLUE-MOLD CHEESE:	
(Note 17) .....	154,972
EU .....	114,972
CHILE .....	40,000
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE:	
(Note 18) .....	210,000
CHILE .....	110,000
ANY .....	100,000
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MAKE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI AND SBRINZ AND GOYA, NOT IN ORIGINAL LOAVES) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN-TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES:	
(Note 21) .....	1,037,171
EU .....	787,171
ROMANIA .....	250,000
SWISS OR EMMENTHALER CHEESE OTHER THAN WITH EYE FORMATION, GRUYERE-PROCESS CHEESE AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH CHEESES:	
(Note 22) .....	533,525
EU .....	533,525
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OF LESS BY WEIGHT OF BUTTERFAT, PROVIDED FOR IN (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE:	
(Note 23) .....	117,648
EU .....	117,648
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION:	
(Note 25) .....	2,263,738
EU .....	2,263,783
<b>TOTAL: CHEESE ARTICLES .....</b>	<b>9,753,129</b>

<sup>1</sup> This appendix includes (1) articles for which supplementary lottery licenses were issued under Appendix 2 of Import Regulation 1, Revision 7 in 1995, and (2) increased quantities of certain articles as provided for in the Uruguay Round Trade Agreements Act (Public Law 103-465). The articles and quantities included in this appendix for certain cheese may be modified as provided in § 6.25(d)(3).

<sup>2</sup> Butter licenses issued as nonhistorical licenses for quota years 1996 and 1997 will be converted to historical licenses in the following quota year as provided in § 6.23(a)(2).

APPENDIX 3.—ARTICLES SUBJECT TO THE DESIGNATED IMPORTER PROVISIONS OF IMPORT REGULATION 1, REVISION 8,  
AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR <sup>1</sup>

Article by additional U.S. note number	1997 Designated tariff-rate in-quota quantity (kilo- grams)
CHEESE AND SUBSTITUTES FOR CHEESE (EXCEPT CHEESE NOT CONTAINING COW'S MILK AND SOFT RIPENED COW'S MILK CHEESE, CHEESE (EXCEPT COTTAGE CHEESE) CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT) AND ARTICLES WITHIN THE SCOPE OF OTHER TARIFF-RATE QUOTAS PROVIDED FOR IN THIS SUBCHAPTER:	
(Note 16) .....	14,877,699
ARGENTINA .....	92,310
AUSTRALIA .....	1,633,830
AUSTRIA .....	553,253
SWITZERLAND .....	817,159
EU .....	900,000
FINLAND .....	485,097
ISRAEL .....	593,304
ICELAND .....	29,000
NEW ZEALAND .....	6,506,528

APPENDIX 3.—ARTICLES SUBJECT TO THE DESIGNATED IMPORTER PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR <sup>1</sup>—Continued

Article by additional U.S. note number	1997 Designated tariff-rate in-quota quantity (kilo- grams)
POLAND .....	300,000
PORTUGAL .....	223,691
SWEDEN .....	143,527
COSTA RICA .....	1,550,000
CZECH REPUBLIC .....	200,000
SLOVAK REPUBLIC .....	600,000
URUGUAY .....	250,000
BLUE-MOLD CHEESE (EXCEPT STILTON PRODUCED IN THE UNITED KINGDOM) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, BLUE-MOLD CHEESE:	
(Note 17) .....	200,000
EU .....	150,000
CZECH REPUBLIC .....	50,000
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE:	
(Note 18) .....	4,244,033
AUSTRALIA .....	840,501
EU .....	500,000
NEW ZEALAND .....	2,853,532
CZECH REPUBLIC .....	50,000
AMERICAN-TYPE CHEESE, INCLUDING COLBY, WASHED CURD AND GRANULAR CHEESE (BUT NOT INCLUDING CHEDDAR) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH AMERICAN-TYPE CHEESE:	
(Note 19) .....	407,003
AUSTRALIA .....	119,002
EU .....	50,000
NEW ZEALAND .....	238,001
EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE:	
(Note 20) .....	710,000
ARGENTINA .....	110,000
AUSTRIA .....	200,000
EU .....	300,000
CZECH REPUBLIC .....	100,000
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK (ROMANO MADE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI AND SBRINZ AND GOYA), AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN-TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES:	
(Note 21) .....	5,285,517
ARGENTINA .....	2,257,517
EU .....	350,000
URUGUAY .....	1,178,000
HUNGARY .....	400,000
POLAND .....	1,325,000
SWISS OR EMMENTHALER CHEESE OTHER THAN WITH EYE FORMATION, GRUYERE-PROCESS CHEESE AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH CHEESES:	
(Note 22) .....	1,011,219
AUSTRIA .....	181,006
EU .....	150,000
SWITZERLAND .....	428,213
FINLAND .....	252,000
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT, PROVIDED FOR IN (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE:	
(Note 23) .....	1,175,316
SWEDEN .....	125,316
ISRAEL .....	50,000
NEW ZEALAND .....	1,000,000
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION:	
(Note 25) .....	10,992,735
ARGENTINA .....	70,885
AUSTRIA .....	1,345,509
AUSTRALIA .....	290,302
CANADA .....	70,000
SWITZERLAND .....	1,782,685
EU .....	350,000
FINLAND .....	2,722,926
ICELAND .....	150,001
NORWAY .....	3,070,427
CZECH REPUBLIC .....	400,000

APPENDIX 3.—ARTICLES SUBJECT TO THE DESIGNATED IMPORTER PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR <sup>1</sup>—Continued

Article by additional U.S. note number	1997 Designated tariff-rate in-quota quantity (kilo-grams)
HUNGARY .....	400,000
SWEDEN .....	300,000
<b>TOTAL: CHEESE ARTICLES .....</b>	<b>38,903,522</b>

<sup>1</sup> This Appendix includes articles for which countries of origin designate importers. The articles and quantities included in this appendix for certain cheese may be modified as provided in § 6.25(d)(3).

Signed at Washington, DC on January 2, 1996.

Dan Glickman,  
*Secretary of Agriculture.*  
 [FR Doc. 96-329 Filed 1-17-96; 8:45 am]  
 BILLING CODE 3410-10-P

**RAILROAD RETIREMENT BOARD**

**20 CFR Part 200**

**RIN 3220-AB19**

**Availability of Information to Public**

**AGENCY:** Railroad Retirement Board.  
**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby proposes to amend its regulations establishing fees to be assessed in connection with the search for records and provision of documents by the Board. The revision will eliminate the exemption from charge for the first 100 pages of reproduction and the first two hours of search time for requesters of documents who are not included within the specific categories provided in the regulations.

**DATES:** Comments shall be submitted on or before March 18, 1996.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4929, TDD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** Section 200.4(g)(2)(v) of the Board's regulations provides for fees to be assessed in connection with the production of documents for "All other requesters", i.e. those requesters who do not fall within other categories provided for in the regulation. Those other categories include requests by commercial users, by educational and non-commercial scientific institutions, by representatives of the news media, and by subjects of

records in Privacy Act Systems of Records. Currently § 200.4(g)(2)(v) provides that the Board does not charge "other requesters" for the first 100 pages of reproduction and the first two hours of search time.

The Board is authorized to charge for such costs or reproduction and search time by section 12(d) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(d)) which provides, in pertinent part, that:

\* \* \* the Board may furnish such information to any person or organization upon payment by such person or organization to the Board of the cost incurred by the Board by reason thereof; and the amounts so paid to the Board shall be credited to the railroad unemployment insurance administration fund established pursuant to section 11(a) of this Act.

This provision is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act (45 U.S.C. 231f(b)(3)).

The Board has been receiving an increasing number of genealogical requests (almost 700 for the first six months of 1995 compared with about 450 for the same period in 1994) with a current estimated cost per request of \$16.00. The Board has determined that it is more equitable that the costs for provision of this information be borne by the individuals who need the information, rather than the railroad industry as a whole. Accordingly, the Board proposes to eliminate the exemption from charge for the first 100 pages of reproduction and the first two hours of search time for requesters covered by § 200.4(g)(2)(v).

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 200—GENERAL ADMINISTRATION**

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.4 is amended by revising paragraph (g)(2)(v) to read as follows:

**§ 200.4 Availability of information to public.**

\* \* \* \* \*  
 (g) \* \* \* \* \*  
 \* \* \* \* \*  
 (2) \* \* \* \* \*  
 \* \* \* \* \*

(v) *All other requesters.* For requesters who do not fall within the purview of paragraphs (g)(2) (i), (ii), (iii), or (iv) of this section, the RRB will charge the full direct cost of searching for and reproducing records that are responsive to the request. The RRB will not charge for such costs to be assessed if the total is less than \$10.00. If the total is \$10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

Dated: January 3, 1996.  
 By Authority of the Board.  
 For the Board.

Beatrice Ezerski,  
*Secretary to the Board.*

[FR Doc. 96-433 Filed 1-17-96; 8:45 am]  
 BILLING CODE 7905-01-M

# Notices

Federal Register

Vol. 61, No. 12

Thursday, January 18, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meetings

*Name:* Setting a National Occupational Research Agenda: Occupational Safety and Health Community Working Group Meeting.

*Time and Date:* 9:30 a.m.–4:30 p.m., January 24, 1996.

*Place:* The Latham Hotel, Presidential Ballroom, 3000 M Street, NW, Washington, DC 20007.

*Status:* Open to the public, limited only by the space available.

*Name:* Setting a National Occupational Research Agenda: Health Professional Working Group Meeting.

*Time and Date:* 9:30 a.m.–4:30 p.m., January 30, 1996.

*Place:* Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

*Status:* Open to the public, limited only by the space available.

*Purpose:* NIOSH will sponsor two meetings of groups with different expertise to assist in the development of a national agenda for occupational safety and health research for the next decade. At each meeting, invited participants will discuss and contribute their perspectives in work sessions open to the public. A limited amount of time will be reserved to provide members of the public attending these work group meetings the opportunity to comment.

The tentative agenda of the meetings will include: Discussion of the process being used to develop the list of research priorities and the agenda and evaluation of the list of research priorities included in this announcement for potential inclusion into the national occupational research agenda. Research priorities for consideration include health effects, hazardous exposures, work environments, industries, occupations, and populations associated with significant occupational disease, injury, disability, fatalities, or topics of growing importance in the future.

*Matters to be Discussed:* As the lead federal health agency for research into the causes and prevention of work injuries and diseases, NIOSH has a responsibility to continually assess the state of existing knowledge and define future research needs and priorities. The development of a national research agenda will assist NIOSH and the occupational safety and health research community in establishing priorities and targeting some of the scientific needs of the next decade that offer the greatest potential for advancing the safety and health of workers. Establishing these priorities is especially important in light of increasing fiscal constraints on occupational safety and health research in both the public and private sectors. The agenda is intended to serve decision-makers and scientists working throughout the field, employed in government, corporate, labor, university, and private research programs for planning and implementing occupational health research and prevention activities.

Prior to the public meetings, together with external experts, NIOSH developed a discussion list of approximately 50 potential research priorities for the national occupational research agenda. The discussion list has been expanded with input received through written comments and oral presentations given at a public meeting on November 30, 1995, and at a working group meeting of researchers held on December 12, 1995. The expanded list of potential research priorities are:

#### Health Response

- Traumatic Injury
- Amputation injuries
- Eye Injury
- Electrocutions
- Falls
- Inhalation Injury
  - Musculoskeletal disorders of the neck, shoulder & other upper extremities
  - Musculoskeletal disorders of the low back
    - Fertility and pregnancy outcomes
    - Occupational Asthma
    - Pneumoconioses
    - Hypersensitivity Lung Disease
    - Occupational Chronic Diseases (Selected)
      - Chronic Obstructive Lung Disease
      - Chronic Renal Disease
      - Ischemic Heart Disease
      - Neurodegenerative Disease (Cognitive & Movement Disorders)
      - Anxiety and Depression
        - Psychological disorders other than Anxiety and Depression
      - Occupational Infectious Diseases
      - Immune Dysfunction
      - Neuroimmune Function
      - Hearing Loss due to noise and nonauditory exposures
        - Occupational Dermatitis
        - Premature Disability

- Latex allergy
- Chemical Mixtures (Including Hazardous Waste)
  - Pesticides
  - Solvents
  - Oils their Substitutes and Related derivatives (e.g., Cutting Fluids, Diesel)
    - Indoor Environment
    - Thermal stresses
    - Mineral and Synthetic Fibers
    - Silica
    - Metals and Related Compounds
    - Hormonally Active Substances
    - Violence/Assaults
    - Motor Vehicles
    - Heavy Machinery (including Farm equipment)
      - Hand Tools
      - Biomechanical Stressors (including manual material handling)
    - Noise
    - Electric and Magnetic Fields
    - Behavioral Risk Factors
    - Falling objects
    - Lead
    - Pharmaceuticals (manufacture and administration)
      - Robots
      - Interactions

#### Work Environment and the Workforce

- Work Organization
- Extended work shift
- Shift work
  - Changing Economy and Workforce
  - Emerging Technologies and Problems
  - Vulnerable Populations
- aging workforce
- child labor (including adolescents)
- home work
- migrant workers
- temporary/contingent workforce
- minorities
  - Psychosocial factors
  - Costs of occupational disease and injury (economic and social)
    - Social inequality & health
    - Environmental justice
    - Occupational health/occupational disease & injury costs and benefits of prevention

#### Research Process

- Intervention Research
- Effectiveness Research (e.g. training)
- Economic Analysis: Cost benefit and workers' compensation
  - International Occupational Health Research
    - Clinical Methods Research
- Develop methods for occupational disease and practice guidelines
  - Engineering and Technological Solutions
  - Exposure Assessment Methods

#### Development

- Hazard Surveillance
- Disease Surveillance
- Injury Surveillance

- Risk Assessment Methods Development
- Identification of Molecular Correlates of Cancer and other Chronic Diseases
- Health Services Research (in a changing health care & workplace environment)
- Respirator research & other personal protective equipment research
- Information dissemination & Health communication
- Community & region-based studies
- Strategies for worker/employer empowerment
- Barriers to implementation of prevention efforts
- Sector focussed research

## Sector

- Construction
- Agriculture
- Small Businesses
- Service workers
- Health Care
- Mining
- Transportation
- Hotel/restaurant workers

From this list and additional items that are recommended, NIOSH anticipates producing a final agenda of 15–25 of the highest scientific priorities for research to advance safety and health.

NIOSH is seeking public comment until March 6, 1996, to assure that the final agenda includes input from the broadest base of occupational safety and health expertise. In addition to the two working group meetings described in this announcement and the working group meeting held on December 12, 1995, the process for receipt of public comment includes the following elements: (1) Corporate and worker liaison committees and a broader-based stakeholders outreach committee will assist NIOSH in obtaining involvement and input from employers, employees, health officials, health professionals, scientists, and public health, advocacy, scientific, industry and labor organizations; (2) A public meeting was held on November 30, 1995, to obtain early input on the research priorities, criteria for selection of priorities, and the process for developing the agenda; (3) Regional public meetings will be held in Chicago, Boston and Seattle to increase the opportunities for input from employers, employees, scientists, and other public stakeholders across the United States; (4) A final public meeting will be held on March 1, 1996, in Washington, DC, to present a draft research agenda and provide the opportunity for public review and comment; and (5) Public input throughout the process; the public is encouraged to provide oral comments at the public meetings, and written comments as soon as possible. The last date for submission of public comments is close of business, March 6, 1996.

The final agenda will be presented at a scientific symposium commemorating the 25th anniversary of the Occupational Safety and Health Act on April 29, 1996.

NIOSH encourages the public to provide recommendations on research priorities, criteria for determining priorities, and the process of developing the research agenda throughout the process. To attend these meetings, or to receive additional

information, please contact Mr. Chris Olenec as indicated below. On-site registration will be available; however, to assist in planning for the meeting, advance registration is requested.

**ADDRESSES:** Written public comments on the National Occupational Research Agenda should be mailed to Ms. Diane Manning, NIOSH, CDC, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Mr. Chris Olenec, NIOSH, CDC, 200 Independence Avenue, room 317B, Washington, DC 20201, telephone 202/205–2640 or by FAX 202/260–1898.

Dated: January 12, 1996.

Nancy C. Hirsch,

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–564 Filed 1–17–96; 8:45 am]

**BILLING CODE 4163–19–M**

**Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites, Savannah River Site Health Effects Subcommittee; Cancellation of Meeting**

This notice announces the cancellation of a previously announced meeting.

*Federal Notice Citation of Previous Announcement:* 60 FR 66552–66553, December 22, 1995.

*Previously Announced Times and Dates:* 9 a.m.–5 p.m., January 11, 1996, 9 a.m.–12 noon, January 12, 1996.

*Change in the Meeting:* This meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040.

Dated: January 11, 1996.

Carolyn J. Russell,

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–563 Filed 1–17–96; 8:45 am]

**BILLING CODE 4163–18–M**

**DEPARTMENT OF STATE**

**[Public Notice 2317]**

**Overseas Schools Advisory Council; Notice of Re-Scheduling of Meeting**

The Executive Committee Meeting of the Overseas Schools Advisory Council of the Department of State has been re-scheduled for Thursday, February 22, 1996 in Conference Room 1105, Department of State, 2201 C Street NW., Washington, DC at 9:30 a.m. For details of the meeting, please refer to the announcement which appeared in Public Notice 2297 published on Monday, December 11, 1995 (60 FR 63564).

If you need further information, please contact the office of Dr. Ernest N. Mannino, Department of State, Office of Overseas Schools, SA–29, room 245, Washington, DC 20522–2902, telephone 703–875–7800.

Dated: January 16, 1996.

Ernest N. Mannino,

*Executive Secretary, Overseas Schools Advisory Council.*

[FR Doc. 96–558 Filed 1–17–96; 8:45 am]

**BILLING CODE 4710–24–M**

**SURFACE TRANSPORTATION BOARD**

**[Finance Docket No. 32837]<sup>1</sup>**

**Grand Trunk Western Railroad Inc.—Trackage Rights Exemption—Consolidated Rail Corporation**

Consolidated Rail Corporation (Conrail) has agreed to grant an aggregate of 24.1 miles of additional trackage rights to Grand Trunk Western Railroad Inc. (GTW), as follows: (1) Approximately 7.6 miles of track between the Conrail/GTW connection at CP–Vinewood, Detroit, MI, and the Conrail/GTW connection at Mill Street, Ecorse, MI; (2) approximately 11.2 miles of track between the Conrail/GTW connection at Mill Street to the loop track owned by CSX Transportation, Inc., at Windsor, Ont.; and (3) approximately 5.3 miles from the Conrail/GTW connection at CP–

<sup>1</sup> This was a pending proceeding with the Interstate Commerce Commission (ICC) on December 29, 1995, when President Clinton signed into law, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act). The Act, which took effect January 1, 1996, abolished the ICC and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings transferred from the ICC to the Board shall be decided under the law in effect prior to January 1, 1996. All statutory references in this decision will be to the former Interstate Commerce Act provisions.

Vinewood to the connection with the line of the Essex Terminal Railroad Company at Windsor.<sup>2</sup>

Under the agreement, GTW will obtain the right to operate trains, locomotives, cars, and equipment with its own crews. The purpose of the transaction is to improve service and

<sup>2</sup>The transaction amends a prior trackage rights agreement dated April 29, 1985. Under the prior agreement, GTW already operates over Conrail's track generally between Conrail's property line at the Detroit River tunnel and the GTW connections at Mill Street, Ecorse, and Vinewood. GTW seeks to use Conrail's westerly wye and other track between the Conrail/GTW connection in Conrail's North Yard Branch at Vinewood and the connections with Conrail's Detroit Line at West Detroit to make progressive moves with its trains that handle Conrail traffic at the Conrail River Rouge Yard at River Rouge, MI.

facilitate the movement of traffic between Conrail and GTW. Also, it is intended to maintain and improve both railroads' economic viability. The trackage rights were scheduled to become effective on or about December 22, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) [formerly 10505(d)] may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Paul E. Ladue, 700 Pershing Street,

Pontiac, MI 48056; and R. Paul Carey, P.O. Box 41414, 2001 Market Street, Philadelphia, PA 19104-1414.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: January 4, 1996.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

Vernon A. Williams,  
*Secretary*.

[FR Doc. 96-447 Filed 1-17-96; 8:45 am]

**BILLING CODE 4915-00-P**

# Sunshine Act Meetings

Federal Register

Vol. 61, No. 12

Thursday, January 18, 1996

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## POSTAL RATE COMMISSION

**TIME AND DATE:** 10:00 a.m. on January 18, 1996.

**PLACE:** Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** To discuss and vote on issues in Docket No. MC95-1, Mail Classification Schedule, 1995—Classification Reform, I.

**CONTACT PERSON FOR MORE INFORMATION:** Margaret P. Crenshaw, Secretary, Postal Rate Commission, suite 300, 1333 H Street, NW, Washington, DC 20268-0001, Telephone (202) 789-6840.

Margaret P. Crenshaw,  
Secretary.

[FR Doc. 96-532 Filed 1-16-96; 2:52 pm]

BILLING CODE 7710-FW-P

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Forwarded to the Federal Register on Thursday, January 11, 1996.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, January 17, 1996.

**CHANGES IN THE MEETING:** One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added: Proposed acquisition of prepaid software and service agreements within the Federal Reserve System. (This item was originally announced for a closed meeting on January 10, 1996.)

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-551 Filed 1-16-96; 2:54 pm]

BILLING CODE 6210-01-P

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

**TIME AND DATE:** 10:00 a.m., Thursday, January 18, 1996.

**PLACE:** Room 600, 1730 K Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument on the following:

1. *Secretary on behalf of Carroll Johnson and UMWA v. Jim Walter Resources, Inc.*, Docket No. SE 93-182-D, etc. (Issues include whether the judge erred in his penalty assessments for violations of sections 103(f) and 105(c) of the Mine Act, 30 U.S.C. §§ 813(f) and 815(c).

2. *Secretary on behalf of James Johnson and UMWA v. Jim Walter Resources, Inc.*, Docket No. SE 93-127-D. (Issues include whether the judge erred in finding a violation of section 105(c) of the Mine Act and in his penalty assessment.)

Any person intending to attend this session who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR §§ 2706.150(a)(3) and 2706.160(e).

**TIME AND DATE:** 2:30 p.m., Thursday, January 18, 1996.

**STATUS:** Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

**MATTERS TO BE CONSIDERED:** The Commission will consider and act on the following:

1. *Secretary on behalf of Carroll Johnson and UMWA v. Jim Walter Resources, Inc.*, Docket No. SE 93-182-D, etc. (see oral argument listing).

2. *Secretary on behalf of James Johnson and UMWA v. Jim Walter Resources, Inc.*, Docket No. SE 93-127-D. (see oral argument listing).

It was determined by a majority vote of the Commissioners that the items be held in closed session.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653-5629/for toll free TDD Relay/1-800-877-8339 for toll free.

Dated: January 11, 1996.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 96-593 Filed 1-16-96; 2:55 pm]

BILLING CODE 6735-01-M

## FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

**TIME AND DATE:** 12:00 p.m., Tuesday, January 23, 1996.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

**STATUS:** The entire meeting will be open to the public.

**MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:**

- Approval of 1996 AHP District Priorities.
- FHLBank of Dallas' Budget Amendment Request.
- Appointment of FHLBank Public Interest Directors.
- Appointment of FHLBank Chairs and Vice Chairs.
- Financing Corporation 1996 Budget Amendment.

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Secretary to the Board, (202) 408-2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96-528 Filed 1-16-96; 2:51 pm]

BILLING CODE 6725-01-P

## FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

**DATE AND TIME:** January 17, 1996, 10:00 a.m.

**PLACE:** 888 First Street, N.E., Room 2C, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

The following members of the Commission voted that agency business requires the holding of an open meeting on less than the seven days' notice required under the Government in the Sunshine Act:

Chair Moler  
Commissioner Bailey  
Commissioner Hoecker  
Commissioner Massey

- Commissioner Santa
- This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.
- Consent Agenda—Hydro, 644th Meeting—January 17, 1996, Regular Meeting (10:00 a.m.)
- CAH-1.  
Docket # P-1494, 108, Grand River Dam Authority
- CAH-2.  
Docket # P-1922, 014, Ketchikan Public Utilities
- CAH-3.  
Docket # P-2019, 009, Pacific Gas & Electric Company
- CAH-4.  
Docket # P-2689, 007, Scott Paper Company, N.E.W. Hydro, Inc.
- CAH-5.  
Docket # P-2744, 020, Menominee Company, N.E.W. Hydro, Inc.
- CAH-6.  
Docket # P-2680, 017, Consumers Power Company and the Detroit Edison Company
- Consent Agenda—Electric
- CAE-1.  
Docket # ER96-447, 000, Nevada Power Company
- CAE-2.  
Docket # ER96-149, 000, Dartmouth Power Associates Limited Partnership
- CAE-3.  
Docket # ER96-399, 000, Northern Indiana Public Service Company
- CAE-4.  
Docket # ER96-417, 000, Florida Power & Light Company
- CAE-5.  
Docket # ER96-495, 000, Florida Power & Light Company
- CAE-6.  
Omitted
- CAE-7.  
Docket # ER96-439, 000, Wisconsin Public Service Corporation, WPS Energy Services, Inc. and WPS Power Development, Inc.
- CAE-8.  
Docket # QF89-58, 004, Megan-Racine Associates, Inc.
- CAE-9.  
Docket # QF95-302, 000, Brooklyn Navy Yard Cogeneration Partners, L.P.
- CAE-10.  
Docket # ER95-966, 000, Washington Water Power Company
- CAE-11.  
Docket # ER95-139, 000, Southern California Edison Company
- CAE-12.  
Docket # ER95-711, 000, Entergy Services, Inc.
- CAE-13.  
Omitted
- CAE-14.  
Docket # EL93-19, 001, San Diego Gas & Electric Company, Tucson Electric Power Company and Century Power Corporation
- Other # SFA90-34, 002, Tucson Electric Power Company
- CAE-15.  
Omitted
- CAE-16.  
Docket # ER93-540, 005, American Electric Power Service Corporation
- Other # S EC94-7, 004, El Paso Electric Company and Central and South West Services, Inc.
- ER92-331, 005, Consumers Power Company
- ER92-332, 005, Consumers Power Company
- ER93-465, 023, Florida Power & Light Company, et al.
- ER94-475, 005, Wisconsin Power & Light Company
- ER94-898, 004, El Paso Electric Company and Central and South West Services, Inc.
- ER94-1045, 007, Kansas City Power & Light Company
- ER94-1113, 004, Northern States Power Company (Minnesota and Wisconsin)
- ER94-1348, 004, Southern Company Services
- ER94-1380, 008, Louisville Gas & Electric Company
- ER94-1518, 004, Commonwealth Electric Company
- ER94-1561, 005, Citizens Utilities Company
- ER94-1637, 004, Cinergy Services, Inc.
- ER94-1639, 004, Wisconsin Public Service Corporation
- ER94-1698, 005, Kentucky Utilities Company
- ER95-112, 006, Energy Services, Inc.
- ER95-203, 006, Utilicorp United, Inc.
- ER95-264, 004, Wisconsin Electric Power Company
- ER95-371, 005, Commonwealth Edison Company
- CAE-17.  
Docket # EL93-42, 001, Towns and Cities of Clayton, Lewes, et al. v. Delmarva Power & Light Company
- CAE-18.  
Omitted
- CAE-19.  
Docket # ER95-1545, 001, Commonwealth Edison Company
- Other # S ER93-777, 005, Commonwealth Edison Company
- ER95-371, 006, Commonwealth Edison Company
- ER95-1539, 001, Commonwealth Edison Company
- CAE-20.  
Docket # ER95-755, 001, Duke Energy Marketing Corporation
- Other # S ER95-756, 001, Duke/Louis Dreyfus L.L.C.
- ER95-758, 001, Louis Dreyfus Electric Power, Inc.
- ER95-760, 001, Duke Power Company
- CAE-21.  
Docket # ER95-1686, 001, Northeast Utilities Service Company
- CAE-22.  
Omitted
- CAE-23.  
Docket # ER81-177, 008, Southern California Edison Company
- CAE-24.  
Omitted
- Consent Agenda—Gas and Oil
- CAG-1.  
Omitted
- CAG-2.  
Docket # RP96-87, 000, Koch Gateway Pipeline Company
- CAG-3.  
Docket # RP96-89, 000, Mississippi River Transmission Corporation
- CAG-4.  
Docket # RP96-91, 000, Trunkline Gas Company
- CAG-5.  
Docket # RP96-93, 000, Williston Basin Interstate Pipe Line Company
- CAG-6.  
Docket # RP95-44, 000, Equitrans, Inc.
- CAG-7.  
Docket # RP95-347, 000, CNG Transmission Corporation
- CAG-8.  
Omitted
- CAG-9.  
Docket # RP92-166, 000, Panhandle Eastern Pipe Line Company
- CAG-10.  
Omitted
- CAG-11.  
Docket # RP95-443, 000, Northwest Pipeline Corporation
- CAG-12.  
Docket # RP93-49, 000, Paiute Pipeline Company
- Other # S RP93-49, 003, Paiute Pipeline Company
- CAG-13.  
Docket # RP96-16, 001, Natural Gas Pipeline Company of America
- CAG-14.  
Docket # RP95-435, 002, Northern Natural Gas Company
- CAG-15.  
Docket # RP95-5, 005, Northwest Pipeline Corporation
- CAG-16.  
Docket # RP95-374, 002, Gas Research Institute
- CAG-17.  
Docket # RO95-1, 000, Storey Oil Company, Inc.
- CAG-18.  
Docket # OR95-34, 000, Tosco Corporation V. SFPP, L.P.
- Other # S OR92-8, 000, SFPP, L.P. et al.
- CAG-19.  
Docket # CP94-172, 001, Mojave Pipeline Company
- CAG-20.  
Docket # CP95-119, 002, Steuben Gas Storage Company
- Other # S CP95-119, 000, Steuben Gas Storage Company
- CP95-119, 001, Steuben Gas Storage Company
- CP95-119, 003, Steuben Gas Storage Company
- CP96-35, 000, Steuben Gas Storage Company
- CAG-21.

Docket # CP96-21, 001, Egan Hub Partners, L.P.  
 CAG-22. Docket # CP96-89, 000, Transcontinental Gas Pipe Line Corporation  
 CAG-23. Docket # CP96-83, 000, Norteno Pipeline Company and Western Gas Interstate Company  
 CAG-24. Docket # CP95-109, 000, CNG Transmission Corporation  
 CAG-25. Docket # CP95-113, 000, K N Interstate Gas Transmission Company  
 CAG-26. Docket # CP62-205, 002, Washington Gas Light Company  
 CAG-27. Docket # CP95-375, 000, Great Lakes Gas Transmission Limited Partnership  
 CAG-28. Docket # CP95-587, 000, El Paso Natural Gas Company  
 CAG-29. Docket # CP95-614, 000, Paiute Pipeline Company  
 CAG-30. Docket # CP95-218, 000, Texas Eastern Transmission Corporation  
 CAG-31. Docket # RP94-343, 013, Noram Gas Transmission Company  
 Other # S RP94-343, 014, Noram Gas Transmission Company  
 CAG-32. Docket # RP94-357, 003, Texas Eastern Transmission Corporation  
 CAG-33. Docket # IS94-26, 000, Kenai Pipe Line Company  
 Other # S IS94-30, 000, Kenai Pipe Line Company  
 IS94-35, 000, Kenai Pipe Line Company  
 IS95-1, 000, Kenai Pipe Line Company  
 IS95-22, 000, Kenai Pipe Line Company  
 CAG-34. Docket # RP95-421, 001, Koch Gateway Pipeline Company  
 CAG-35.

Docket # CP94-608, 006, Northern Natural Gas Company  
 Other # S CP94-610, 005, Enron Gathering Company  
 MT95-12, 002, Northern Natural Gas Company  
 CAG-36. Docket # RP96-88, 000, Trunkline Gas Company  
 Hydro Agenda  
 H-1. Reserved  
 Electric Agenda  
 E-1. Reserved  
 Oil and Gas Agenda  
*I. Pipeline Rate Matters*  
 PR-1. Reserved  
*II. Pipeline Certificate Matters*  
 PC-1. Reserved  
 Dated: January 11, 1996.  
 Lois D. Cashell,  
*Secretary.*  
 [FR Doc. 96-535 Filed 1-16-96; 2:53 pm]  
**BILLING CODE 6717-01-P**

**FEDERAL ELECTION COMMISSION**

**“FEDERAL REGISTER” NUMBER: 96-176.**  
**PREVIOUSLY ANNOUNCED DATES AND TIMES:**

Tuesday, January 9, 1996 at 10:00 a.m. Meeting closed to the public.  
 Wednesday, January 10, 1996 at 10:00 a.m. Meeting open to the public.

Due to the federal government shutdown (inclement weather), the above noted meetings were held on January 11, 1996.

**DATE AND TIME:** Tuesday, January 23, 1996 at 10:00 a.m.  
**PLACE:** 999 E Street, N.W., Washington, D.C.  
**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.  
 Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.  
 Matters concerning participation in civil actions or proceedings or arbitration.  
 Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, January 25, 1996 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor).

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes  
 Title 26 Certification Matters  
 Advisory Opinion 1995-48: Kenneth A. Gross on behalf of Clinton Day for Senate Regulations:  
 Notice of Proposed Rulemaking on Candidate Debates Staged by Cable Television (11 CFR 100.7(b)(2), § 100.8(b)2, § 110.13 and § 114.4(f))  
 Technical Amendment and Final Rule for Point of Entry for House Reports  
 Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:**  
 Mr. Ron Harris, Press Officer,  
 Telephone: (202) 219-4155.

Delores Hardy,  
*Administrative Assistant.*  
 [FR Doc. 95-595 Filed 1-16-95; 2:56 pm]  
**BILLING CODE 6715-01-M**

# Federal Register

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Thursday  
January 18, 1996

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## Part II

### Department of Transportation

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Federal Aviation Administration

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14 CFR Part 1, et al.

1-g Stall Speed as the Basis for  
Compliance With Part 25 of the Federal  
Aviation Regulations; Proposed Rule

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 1, 25, 36, and 97****[Docket No. 28404; Notice No. 95-17]****RIN 2120-AD40****1-g Stall Speed as the Basis for Compliance With Part 25 of the Federal Aviation Regulations****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to redefine the reference stall speed for transport category airplanes as the 1-g stall speed instead of the minimum speed obtained in a stalling maneuver. The proposed changes would: provide for a consistent, repeatable reference stall speed; ensure consistent and dependable maneuvering margins; provide for adjusted multiplying factors to maintain approximately the current requirements in areas where use of the minimum speed in the stalling maneuver has proven adequate; and harmonize the applicable regulations with those proposed for the European Joint Aviation Requirements-25 (JAR-25). These changes would result in a higher level of safety for those cases in which current methods would result in artificially low operating speeds.

**DATES:** Comments must be received on or before May 17, 1996.

**ADDRESSES:** Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 28404, 800 Independence Avenue SW., Washington, DC 20591; or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28404. Comments may be examined in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM-100), Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055-4056. Comments in the information docket may be examined weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Don Stimson, Flight Test and Systems Branch, ANM-111, Transport Airplane

Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, WA 98055-4056; telephone (206) 227-1129; facsimile (206) 227-1320.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket, both before and after the comment period closing date, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28404." The postcard will be date stamped and returned to the commenter.

**Availability of the NPRM**

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. The notice number of this NPRM must be identified in all communications. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**Background**

The stalling speed ( $V_2$ ) is defined as the minimum speed demonstrated in the performance stall maneuver described in § 25.103 of 14 CFR part 25

(part 25) of the Federal Aviation Regulations (FAR).  $V_S$  has historically served as a reference speed for determining the minimum operating speeds for transport category airplanes. Examples of minimum operating speeds that are based on  $V_S$  include the takeoff safety speed ( $V_2$ ), the final takeoff climb speed, and the landing approach speed. The airworthiness standards of part 25 define these speeds as multiples of  $V_S$ . For example,  $V_2$  must be at least 1.2 times  $V_S$ , the final takeoff climb speed must be at least 1.25 times  $V_S$ , and the landing approach speed must be at least 1.3 times  $V_S$ .

The speed margin, or difference in speed, between  $V_S$  and each minimum operating speed provides a safety "cushion" to ensure that normal operating speeds are sufficiently higher than the speed at which the airplane stalls. Using multiplying factors applied to  $V_S$  to provide this speed margin, however, assumes that  $V_S$  provides a proper reference stall speed. Since  $V_S$  is the minimum speed obtained in the stalling maneuver, it can be less than the lowest speed at which the airplane's weight is still supported entirely by aerodynamic lift. If  $V_S$  is significantly less than this speed, applying multiplying factors to  $V_S$  to determine the minimum operating speeds may not provide as large a speed margin as intended.

A proper reference stall speed should provide a reasonably consistent approximation of the wing's maximum usable lift. Maximum usable lift occurs at the minimum speed for which the lift provided by the wing is capable of supporting the weight of the airplane. This speed is known as the 1-g stall speed because the load factor (the ratio of airplane lift to weight) at this speed is equal to 1.0 "g" (where "g" is the acceleration caused by the force of gravity) in the direction perpendicular to the flight path of the airplane. A speed lower than the 1-g stall speed represents a transient flight condition that, if used as a reference for the deriving minimum operating speeds, may not provide the desired speed margin to protect against inadvertently stalling the airplane.

For jet transport airplanes, the minimum speed obtained in the stall maneuver of § 25.103 usually occurs near the point in the maneuver where the airplane spontaneously pitches nose-down or where the pilot initiates recovery after reaching a deterrent level of buffet, i.e., a vibration of a magnitude and severity that is a strong and effective deterrent to further speed reduction. Early generation transport airplanes, which had fairly straight

wings, typically pitched nose-down near the 1-g stall speed. The minimum speed in the maneuver was easy to note and record, and served as an adequate approximation of the speed for maximum lift.

For the recent generation of high speed transport airplanes with swept wings, however, the minimum speed obtained in the stalling maneuver can be substantially lower than the speed for maximum lift. Furthermore, the point at which the airplane pitches nose down or exhibits a deterrent level of buffet is more difficult to distinguish and can vary with piloting technique. As a result, the minimum speed in the stalling maneuver has become an inappropriate reference for most modern high speed transport airplanes for establishing minimum operating speeds since it may: (1) Be inconsistently determined, and (2) represent a flight condition in which the load factor perpendicular to the flight path is substantially less than 1.0 g.

In recent years, advanced technology transport category airplanes have been developed that employ novel flight control systems. These flight control systems incorporate unique protection features that are intended to prevent the airplane from stalling. They also prevent the airplane from maintaining speeds that are slower than a small percentage above the 1-g stall speed. Because of their unique design features, the traditional method of establishing  $V_S$  as the minimum speed obtained in the stalling maneuver was inappropriate for these airplanes. The FAA issued special conditions for these airplanes to define the reference stall speed as the 1-g stall speed for the flight requirements contained in subpart B of part 25 and the noise requirements contained in part 36 of the FAR.

In these special conditions, the multiplying factors used to determine the minimum operating speeds were reduced in order to maintain equivalency with acceptable operating speeds used by previous jet transports. Since the 1-g stall speed is generally higher than the minimum speed obtained in the stalling maneuver, retaining the current multiplying factors would have resulted in higher minimum operating speeds for airplanes using the 1-g stall speed as the reference stall speed. However, increasing the minimum operating speeds would impose costs on operators because payloads would have to be reduced to comply with the regulations at the higher operating speeds. Based on the service experience of the current fleet of jet transports, the costs imposed would

not be offset by a commensurate increase in safety.

Several airplane types with conventional flight control systems have also been certificated using the 1-g stall speed as the reference stall speed. Because of the potential deficiencies in using the minimum speed demonstrated in the stalling maneuver, the FAA has been encouraging applicants to use the 1-g stall speed in lieu of the minimum speed obtained in the stalling maneuver. Applicants generally desire to use 1-g stall speeds because the 1-g stall speeds are less dependent on pilot technique and other subjective evaluations. Hence, 1-g stall speeds are easier to predict and provide a higher level of confidence for developing predictions of overall airplane performance. Again, reduced multiplying factors are applied to the 1-g stall speeds to obtain minimum operational service. Using 1-g stall speeds ensures that the airplane's minimum operating speeds will not be unreasonably low.

#### Discussion of the Proposals

The FAA proposes to define the reference stall speed in § 25.103 as a 1-g stall speed, rather than the minimum speed obtained in the stalling maneuver. This action would provide a consistent basis for use in all type design certification requirements for transport category airplanes. The FAA proposes to introduce the symbol  $V_{SR}$  to represent this speed and to indicate that it is different than the minimum speed obtained in the stalling maneuver,  $V_S$ .

In addition, the FAA proposes to reduce the multiplying factors that are used in combination with the reference stall speed to determine the minimum operating speeds by approximately 6 percent. This change would result in minimum operating speeds equivalent to those for most current jet transports since the 1-g stall speed for these airplanes is approximately 6 percent higher than the minimum speed obtained in the stalling maneuver. Demonstrating a minimum stalling speed more than 6 percent slower than the 1-g stall speed, which is possible under the current standards, would provide an unacceptable basis for determining the minimum operating speeds. The proposed standards would prevent this situation from occurring. In this respect, the proposed standards would provide a higher level of safety than the existing standards.

However, the reduced factors would allow lower minimum operating speeds to be established for those airplanes that have a minimum speed in the stalling maneuver approximately equal to the 1-g stall speed. One particular class of

airplanes for which this applies are airplanes equipped with devices that abruptly push the nose down (e.g., stick pushers) near the angle of attack for maximum lift. These devices are typically installed on airplanes with unacceptable natural stalling characteristics. The abrupt nose down push provides an artificial stall indication and acceptable stall characteristics, and prevents the airplane from reaching a potentially hazardous natural aerodynamic stall. The minimum speed obtained in this maneuver is approximately equal to the 1-g stall speed.

Traditionally, the existing multiplying factors have been applied to these airplanes. The proposal to define the reference stall speed as the 1-g stall speed would not affect these airplanes, but reducing the multiplying factors would allow lower minimum operating speeds to be established. Therefore, this proposal would allow these airplanes to be operated at speeds and angles-of-attack closer to the pusher activation point than has been experienced in operational service.

The FAA considers this reduction in operating speeds for pusher-equipped airplanes to be acceptable, provided the pusher reliably performs its intended function and that unwanted operation is minimized. The FAA intends to propose an acceptable method of addressing these concerns in an upcoming revision to Advisory Circular (AC) 25-7. In this material, the FAA will provide criteria for pusher reliability, the effects of design and manufacturing tolerances on the pusher activation point, design features such as phase advance and filtering, and the affects of atmospheric turbulence and windshear.

In addition to proposing to define the reference stall speed as the 1-g stall speed and to reduce the multiplying factors for establishing the minimum operating speeds, the FAA also proposes to require applicants to demonstrate adequate maneuvering capability during the takeoff climb, en route climb, and landing approach phases of flight. During a banked turn, a portion of the lift generated by the wing provides a force to help turn the airplane. To remain at the same altitude, the airplane must produce additional lift. Therefore, banking the airplane (at a constant speed and altitude) reduces the stall margin, which is the difference between the lift required for the maneuver and the maximum lift capability of the wing. As the bank angle increases, the stall margin is reduced proportionately. This bank angle effect on the stall margin can be determined analytically, and the multiplying factors applied to  $V_{SR}$  to

determine the minimum operating speeds are intended to ensure that an adequate stall margin is maintained.

In addition to the basic effect of bank angle, however, modern wing designs also typically exhibit a significant reduction in maximum lift capability with increasing Mach number. The magnitude of this Mach number effect depends on the design characteristics of the particular wing. For wing designs with a large Mach number effect, the maximum bank angle that can be achieved while retaining an acceptable stall margin can be significantly reduced. Because the effect of Mach number can be significant, and because it can also vary greatly for different wing designs, the multiplying factors applied to  $V_{SR}$  are insufficient to ensure that adequate maneuvering capability exists at the minimum operating speeds.

To address this issue, the FAA proposes to require a minimum bank angle capability in a coordinated turn without encountering stall warning or any other characteristic that might interfere with normal maneuvering. This requirement would be added to § 25.143 as a new paragraph (g). The proposed minimum bank angles were derived by adding a 15 degree allowance for wind gusts and inadvertent overshoot to a maneuvering capability the FAA considers necessary for the specific cases identified in the proposed new paragraph. These proposed maneuver margin requirements are intended to ensure that the level of safety in maneuvering flight is not reduced by the proposed change to the reference stall speed and the reduction in the multiplying factors used to determine the minimum operating speeds.

Consistent with the proposed maneuver margin requirements, the FAA proposes adding §§ 25.107(c)(3), 25.107(g)(2), and 25.125(a)(2)(iii) to reference § 25.143(g) in the list of constraints applicants must consider when selecting the minimum takeoff safety speed, final takeoff speed, and reference landing speeds, respectively. The normal all-engines-operating takeoff climb speed selected by the applicant must also provide the minimum bank angle capability specified in the proposed § 25.143(g).

Section 25.145(a) requires that there be adequate longitudinal control available to promptly pitch the airplane's nose down from at or near the stall in order to return to original trim speed. The intent of this requirement is to ensure sufficient pitch control for a prompt recovery if the airplane is inadvertently slowed to the point of stall. The FAA proposes to change the

wording of this requirement to replace " $V_S$ " with "the stall," "§ 25.103(b)(1)" with "§ 25.103(a)(6)," and "at any speed" with "at any point." These changes would be consistent with the proposed change to the definition of the reference stall speed and the proposed re-formatting of § 25.103.

Although § 25.145(a) must be met both with power off and with maximum continuous power, there is no intention to require flight test demonstrations of full stalls at engine powers above that specified in § 25.201(a)(2). Instead of performing a full stall at maximum continuous power, compliance may be assessed by demonstrating sufficient static longitudinal stability and nose down control margin when the deceleration is ended at least one second past stall warning during a one knot per second deceleration. The static longitudinal stability during the maneuver and the nose down control power remaining at the end of the maneuver must be sufficient to assure compliance with the requirement.

Section 25.207 requires that a warning of an impending stall must be provided in order to prevent the pilot from inadvertently stalling the airplane. The warning must occur at a speed sufficiently higher than the stall speed to allow the pilot time to take action to avoid a stall. The speed difference between the stall speed and the speed at which the stall warning occurs is known as the stall warning margin. The FAA proposes amending the size of the stall warning margin required by § 25.207(c) because of the change in definition of the reference stall speed.

Currently, the stall warning must begin at a speed exceeding  $V_S$  by seven knots, or a lesser margin if the stall warning has enough clarity, duration, distinctiveness, or other similar properties. Requiring the same seven knot warning margin to be provided relative to  $V_{SR}$  would result in an increase to the minimum operating speeds. This increase in the minimum operating speeds would be necessary to meet the maneuvering margin requirements proposed in § 25.143(g), which are defined relative to the stall warning speed. However, as discussed previously, requiring an increase to the minimum operating speeds would impose costs to airplane operators that cannot be justified by service experience.

On the other hand, if the stall warning margin were reduced to retain approximately the same stall warning speed, the warning would occur only one or two knots prior to reaching the 1-g stall speed. Although reaching the 1-g stall speed is not likely to be a

catastrophic occurrence, the FAA considers such a small stall warning margin to be unacceptable. The FAA proposes requiring a stall warning margin of at least 3 knots or 3 percent, whichever is greater, relative to  $V_{SR}$ . The FAA considers this margin to represent a reasonable balance between providing the pilot with enough warning to avert an impending stall, and providing adequate maneuvering capability at the minimum operating speeds. This proposal would retain the existing level of safety.

The FAA proposes to require a larger stall warning margin for airplanes equipped with devices that abruptly push the nose down at a selected angle of attack (e.g., stick pushers). Inadvertent operation of such a device, especially close to the ground, can have more serious consequences than a comparable situation in which the pilot of an airplane without the device inadvertently slows to  $V_{SR}$ . Therefore, the FAA proposes adding § 25.207(d) to require the stall warning, for airplanes equipped with one of these devices, to occur at least 5 knots or 5 percent, whichever is greater, above the speed at which the device activates. This proposal is intended to retain the existing level of safety for airplanes equipped with such devices.

The FAA proposes to add a new paragraph, § 25.207(e), to require that, in a slow-down turn with load factors up to 1.5 g and deceleration rates up to 3 knots per second, sufficient stall warning must exist to prevent stalling when recovery is initiated not less than one second after stall warning occurs. The FAA considers the proposed requirement necessary to provide adequate stall warning during a dynamic maneuver, such as a collision avoidance maneuver. In addition, this new paragraph would provide a quantitative requirement with which to assess whether "sufficient margin to prevent inadvertent stalling \* \* \* in turning flight" has been provided as required by § 25.207(a). This proposal would increase the level of safety during maneuvering flight.

The FAA proposes to add a new paragraph, § 25.207(f), to require that stall warning be provided for abnormal airplane configurations likely to be used following system failures. This proposal adds a requirement currently contained in JAR-25 and is consistent with current transport airplane designs. There would be no impact on the existing level of safety.

On modern jet transports, the natural buffet or vibration caused by the airflow separating and reattaching itself to the wing as the airplane approaches the

stall speed is usually not strong enough by itself to provide an effective stall warning. Therefore, stall warning on modern transport category airplanes is usually provided through an artificial means, such as a stick shaker that shakes the pilot's control column. Production tolerances associated with these systems can result in variations in the size of the stall warning margin for different airplanes manufactured under the same approved type design.

The FAA considers the stall warning margins proposed in §§ 25.207(c) and (d) to be the minimum acceptable warning margins, and that these margins should not be reduced by production tolerances associated with a system added to the airplane to provide an artificial stall warning. The FAA intends for the proposed stall warning margins to be available at the most critical tolerance expected in production. Applicants would be expected to demonstrate compliance with the proposed stall warning margin either by flight testing with the stall warning system set to its critical tolerance setting, or by adjusting flight test data obtained at some other setting.

The tolerances associated with the stall warning system must also be considered in relation to the proposed minimum maneuvering requirements of § 25.143(g). As proposed, § 25.143(g) would require that the airplane be capable of reaching a minimum bank angle during a coordinated turn without encountering stall warning. Because the proposed requirements already provide the capability to overshoot the intended bank angle by 15 degrees, the small differences in the speed at which the stall warning system operates due to system tolerances are not as critical. Therefore, the FAA intends for the minimum bank angles in the proposed § 25.143(g) to apply at the designed nominal setting of the stall warning system. To ensure that large production tolerances do not adversely impact the airplane's maneuvering capability free of stall warning, the bank angle capability specified in the proposed § 25.143(g) should not be reduced by more than two degrees with the stall warning system operating at its most critical tolerance. Applicants would be expected to demonstrate this capability either by flight test with the system set to its critical tolerance, or by analytically adjusting flight test data obtained at some other setting.

To be consistent with the proposed revision of the definition of the reference stall speed, the FAA proposes to incorporate reduced multiplying factors throughout part 25, where appropriate, in requirements that use

speeds based on a multiple of the reference stall speed. The FAA also proposes numerous minor wording and structural changes to various sections to improve editorial clarity and to harmonize with the wording and structure proposed for JAR-25.

The FAA proposes to add the nomenclature "final takeoff speed" and "reference landing speed" and the abbreviations " $V_{FTO}$ " and " $V_{REF}$ " to denote these speeds, respectively, to part 1 of the FAR. These terms and abbreviations, which are commonly used in the aviation industry, would be referenced throughout the proposed amendments to part 25. The reference landing speed would be defined as the speed of the airplane, in a specified landing configuration, at the point where it descends through the landing screen height in the determination of the landing distance for manual landings. The term "landing screen height" refers to the height of the airplane at the beginning of the defined landing distance. This height is normally 50 feet above the landing surface (see § 25.125(a)), but approvals have been granted for steep approaches that use a landing screen height of 35 feet. The final takeoff speed would be defined as the speed of the airplane that exists at the end of the takeoff path in the en route configuration with one engine inoperative.

The FAA also proposes to add the abbreviations  $V_{SR}$ ,  $V_{SR0}$ , and  $V_{SR1}$  to part 1, and use them in part 25 to denote the reference stall speed corresponding to different airplane configurations. In addition, the FAA proposes adding the abbreviation  $V_{SW}$  to part 1 to refer to the stall warning speed.

The FAA proposes to amend § C36.9(e)(1) by replacing " $1.3 V_S + 10$  knots" with " $V_{REF} + 10$  knots" and by removing the words "or the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane, whichever speed is greatest." The words proposed to be deleted would no longer be necessary because  $V_{REF}$  would denote the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane. Also,  $V_{REF}$  would refer to the speed at the landing screen height, regardless of whether that speed for a particular airplane is  $1.3 V_S$ ,  $1.23 V_{SR}$ , or some higher speed.

In the same manner, the FAA proposes to amend § 97.3(b) by replacing " $1.3 V_{SO}$ " with " $V_{REF}$ ." As noted above,  $V_{REF}$  would refer to the speed at the landing screen height used

in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane, regardless of whether that speed for a particular airplane is  $1.3 V_S$ ,  $1.23 V_{SR}$ , or some higher speed.

These proposals have been discussed extensively with the European Joint Aviation Authorities (JAA) with the intent of harmonizing the certification requirements related to stall speed for transport category airplanes. The JAA intend to introduce an equivalent proposal to amend the Joint Aviation Requirements-25 (JAR-25). JAR-25 prescribes the airworthiness standards for transport category airplanes that are accepted by the aviation regulatory authorities of 23 European nations. When it is published, the JAA proposal will be placed in the docket for this rulemaking.

#### Regulatory Evaluation Summary

##### *Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment*

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in DOT's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

#### *Regulatory Evaluation Summary*

##### *Costs*

The proposed requirements would apply to future type certificated transport category airplanes and generally would not impose significant additional costs on manufacturers. One major manufacturer demonstrated adherence to the 1-g stall speed basis in recent FAA special conditions

applicable to several models of advanced technology airplanes. Other manufacturers have requested certification to the 1-g stall speed basis through equivalent safety findings for airplanes with conventional flight control systems.

Cost estimates provided by manufacturers generally did not vary significantly. Data provided by a manufacturer of part 25 small airplanes, however, showed costs several hundred thousand dollars higher than the norm. That manufacturer estimated that short-term costs (mostly non-recurring) to convert to the new stall speed basis would be over \$1 million and that increased costs on a program-by-program basis would "be substantial." Because of the gross nature of these estimates and because of the inability to segment them on a per-certification basis, they have not been incorporated into this analysis. The FAA invites manufacturers to provide detailed cost estimates during the public comment period.

Although several sections of part 25 would be revised by the proposal, only five merit analysis: Sections 25.103 (Stall speed), 25.107 (Takeoff speeds), 25.125 (Landing), 25.143 (General) (under Controllability and Maneuverability), and 25.207 (Stall warning).

#### Section 25.103 (Stall Speed)

The proposal to redefine the reference stall speed as a 1-g stall speed could result in a net reduction in certification costs for part 25 large airplanes. In some recent airplane designs, manufacturers have used the 1-g stall speed as the reference stall speed. Calculation of the reference stall speed ( $V_{SR}$ ) is within the range of instrumentation currently available and additional instrumentation would not be required. Existing techniques to determine minimum speed in the stalling maneuver require six to eight independent stalls at various flap settings; determination of 1-g stall speed could require approximately half as many. Cost-savings could be in the range of \$50,000 to \$100,000 per type certification.

Recent part 25 small transport category airplane certifications, on the other hand, have not been based on the 1-g stall speed. Consequently, additional instrumentation and analysis would be required. Incremental one-time costs for a part 25 small airplane design would be approximately \$70,000. However, cost savings attributable to reduced testing could be realized in future certifications (see previous paragraph re part 25 large airplanes).

#### Section 25.107 (Takeoff Speeds)

The proposed changes to this section, by virtue of the new maneuvering requirements of § 25.143(g), could affect airplane operators if the proposed maneuvering requirements necessitate higher takeoff/climb speeds and lower passenger/cargo capacity on length-limited runways. Because of the myriad combinations of airplanes, runways, passenger/cargo loads, etc., the FAA is unable to estimate potential capacity limitations. The FAA invites interested parties to provide estimates of such effects during the public comment period.

#### Section 25.125 (Landing)

As in the case of § 25.107 above, the proposed changes to this section could potentially affect operators by virtue of the new maneuvering requirements in § 25.143(g). Again, the FAA invites interested parties to submit cost estimates during the public comment period.

#### Section 25.143 (General)

Incremental costs that would be incurred by manufacturers to determine minimum maneuvering margins are estimated to total approximately \$150,000 per part 25 large airplane type certification and approximately \$50,000 per part 25 small airplane type certification.

#### Section 25.207 (Stall Warning)

Incremental costs that would be incurred by manufacturers to provide sufficient stall warning at the various proposed slow-down speeds and configurations are estimated to total approximately \$120,000 per part 25 large airplane type certification and approximately \$200,000 per part 25 small airplane type certification.

#### Total Costs

Manufacturers of part 25 large airplanes have already incurred the major portion of the start-up costs to convert to a 1-g stall speed system and would therefore experience lower incremental costs than manufacturers of part 25 small airplanes. The estimated costs to meet the revised standards would total approximately \$195,000 per part 25 large airplane type certification (costs associated with §§ 25.143 and 25.207 reduced by the midpoint of the cost-savings range of § 25.103). Assuming 500 airplanes produced under one type certification, this would equate to \$390 per airplane.

Manufacturers of part 25 small airplanes would experience one-time costs of \$70,000 in conjunction with § 25.103. In addition, costs for each

future type certification would total approximately \$250,000 (attributable to §§ 25.143 and 25.207), or about \$500 per airplane over a 500 airplane production run. A portion of these costs may be offset by reduced testing requirements per revised § 25.103. The potential operating costs of proposed §§ 25.107 and 25.125 have not been estimated in this evaluation; the FAA invites interested parties to provide cost estimates during the public comment period.

#### Benefits

Redefining the airplane reference stall speed as the 1-g stall speed would result in a higher level of safety in those cases where current methods could result in artificially low operating speeds. New requirements for minimum maneuvering margins would assure that safe margins are obtained at the minimum operating speeds, thus diminishing the possibility of inadvertent stalls at critical flight stages.

A review of National Transportation Safety Board accident reports for the years 1983–1992 does not indicate that any accidents have been caused by inconsistent/inappropriate reference stall speeds. There were several accidents in which inadvertent stalls were cited as a contributing factor, but pilot error (e.g., airspeed not properly maintained) was the probable cause rather than inherent problems with the reference stall speed. In spite of the absence of directly aligned accidents, the FAA postulates that, without the revisions in stall speed as proposed or effected through special conditions, safety could reach unacceptably low levels. The benefits associated with avoiding a single accident would far exceed the costs of the proposed rule.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to insure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires agencies to determine whether proposed rules would have "a significant economic impact on a substantial number of small entities" and, in cases where they would, to conduct a Regulatory Flexibility Analysis. As prescribed in implementing FAA Order 2100.14A, the size threshold for a small aircraft manufacturer is one having 75 or fewer employees. Since there are no manufacturers of part 25 airplanes with 75 or fewer employees, the proposed rule would not have a significant economic impact on a substantial number of small entities.

*International Trade Impact Assessment*

The proposed rule would not constitute a barrier to international trade, including the export of U.S. airplanes to foreign markets and the import of foreign airplanes into the U.S. Instead, the proposed changes would harmonize with corresponding proposals of the European Joint Aviation Authorities, thereby lessening restraints on trade.

**Federalism Implications**

The amended regulations proposed in this rulemaking would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant preparing a Federalism Assessment.

**Conclusion**

Because the proposed changes to redefine the reference stall speed for transport category airplanes as the 1-g stall speed are not expected to result in substantial economic cost, the FAA has determined that this proposed regulation would not be significant under Executive Order 12866. Because this is an issue which has not prompted a great deal of public concern, the FAA has determined that this action is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 25, 1979). In addition since there are no small entities affected by this proposed rulemaking, the FAA certifies, under the criteria of the Regulatory Flexibility Act, that this rule, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

**List of Subjects**

*14 CFR Part 1*

Air transportation.

*14 CFR Part 25*

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

*14 CFR Part 36*

Agriculture, Aircraft, Noise control.

*14 CFR Part 97*

Air traffic control, Airports, Navigation (air), Weather.

**The Proposed Amendments**

Accordingly, the Federal Aviation Administration (FAA) proposes to amend 14 CFR parts 1, 25, 36, and 97 of the Federal Aviation Regulations (FAR) as follows:

**PART 1—DEFINITIONS AND ABBREVIATIONS**

1. The authority citation for part 1 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Section 1.1 is amended by adding new definitions in alphabetical order to read as follows:

**§ 1.1 General definitions.**

\* \* \* \* \*

*Final takeoff speed* means the speed of the airplane that exists at the end of the takeoff path in the en route configuration with one engine inoperative.

\* \* \* \* \*

*Reference landing speed* means the speed of the airplane, in a specified landing configuration, at the point where it descends through the landing screen height in the determination of the land distance for manual landings.

\* \* \* \* \*

3. Section 1.2 is amended by adding new terms in alphabetical order to read as follows:

**§ 1.2 Abbreviations and symbols.**

\* \* \* \* \*

$V_{FTO}$  means final takeoff speed.

\* \* \* \* \*

$V_{REF}$  means reference landing speed.

\* \* \* \* \*

$V_{SR}$  means reference stall speed.

$V_{SR0}$  means reference stall speed in the landing configuration.

$V_{SR1}$  means reference stall speed in a specific configuration.

$V_{SW}$  means speed at which onset of natural or artificial stall warning occurs.

\* \* \* \* \*

**PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES**

4. The authority citation for part 25 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 22704.

5. Section 25.103 is revised to read as follows:

**§ 25.103 Stall speed.**

(a) The reference stall speed,  $V_{SR}$ , is a calibrated airspeed as defined in

paragraph (c) of this section.  $V_{SR}$  is determined with—

(1) Engines idling, or, if that resultant thrust causes an appreciable decrease in stall speed, not more than zero thrust at the stall speed;

(2) Propeller pitch controls (if applicable) in the takeoff position;

(3) The airplane in other respects (such as flaps and landing gear) in the condition existing in the test in which  $V_{SR}$  is being used;

(4) The weight used when  $V_{SR}$  is being used as a factor to determine compliance with a required performance standard;

(5) The center of gravity position that results in the highest value of reference stall speed; and

(6) The airplane trimmed for straight flight at a speed selected by the applicant, but not less than 1.13  $V_{SR}$  and not greater than 1.3  $V_{SR}$ .

(b) Starting from the stabilized trim condition, apply elevator control to decelerate the airplane so that the speed reduction does not exceed one knot per second.

(c) The reference stall speed,  $V_{SR}$ , is a calibrated airspeed determined in the stalling maneuver.  $V_{SR}$  may not be less than a 1-g stall speed.  $V_{SR}$  is expressed as:

$$V_{SR} \geq \frac{V_{CLMAX}}{\sqrt{n_{ZW}}}$$

where—

$V_{CLMAX}$  = Speed occurring when lift coefficient is first a maximum. In addition, if the stalling maneuver is limited by a device that commands an abrupt nose down pitch (e.g., a stick pusher),  $V_{CLMAX}$  may not be less than the speed existing at the instant the device operates; and  
 $n_{ZW}$  = Flight patch normal load factor (not greater than 1.0) at  $V_{CLMAX}$ .

6. Section 25.107 is amended by revising paragraphs (b)(1) introductory text, (b)(2) introductory text, (c)(1) and (c)(2), and by adding new paragraphs (c)(3) and (g) to read as follows:

**§ 25.107 Takeoff speeds.**

\* \* \* \* \*

(b) \* \* \*

(1) 1.13  $V_{SR}$  for—

\* \* \* \* \*

(2) 1.08  $V_{SR}$  for—

\* \* \* \* \*

(c) \* \* \*

(1)  $V_{2MIN}$ ;

(2)  $V_R$  plus the speed increment attained (in accordance with § 25.111(c)(2)) before reaching a height of 35 feet above the takeoff surface; and

(3) A speed that provides the maneuvering capability specified in § 25.143(g).

\* \* \* \* \*

(g)  $V_{FTO}$ , in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by § 25.121(c), but may not be less than—

(1)  $1.18 V_{SR}$ ; and

(2) A speed that provides the maneuvering capability specified in § 25.143(g).

7. Section 25.111 is amended by revising paragraph (a) introductory text to read as follows:

**§ 25.111 Takeoff path.**

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface, or at which the transition from the takeoff to the en route configuration is completed and  $V_{FTO}$  is reached, whichever point is higher. In addition—

\* \* \* \* \*

8. Section 25.119 is amended by revising the section heading and paragraph (b) to read as follows:

**§ 25.119 Landing climb: All-engines-operating.**

\* \* \* \* \*

(b) A climb speed of not more than  $V_{REF}$ .

9. Section 25.121 is amended by revising paragraphs (c) introductory text, (d) introductory text, (d)(2) and (d)(3), and by adding paragraph (d)(4) to read as follows:

**§ 25.121 Climb: One-engine-inoperative.**

\* \* \* \* \*

(c) *Final takeoff.* In the en route configuration at the end of the takeoff path determined in accordance with § 25.111, the steady gradient of climb may not be less than 1.2 percent for two-engine airplanes, 1.5 percent for three-engine airplanes and 1.7 percent for four-engine airplanes, at  $V_{FTO}$  and with—

\* \* \* \* \*

(d) *Approach.* In a configuration corresponding to the normal all-engines-operating procedure in which  $V_{SR}$  for this configuration does not exceed 110 percent of the  $V_{SR}$  for the related all-engines-operating landing configuration, the steady gradient of climb may not be less than 2.1 percent for two-engine airplanes, 2.4 percent for three-engine airplanes, and 2.7 percent for four engine airplanes, with—

(1) \* \* \*

(2) The maximum landing weight;

(3) A climb speed established in connection with normal landing

procedures, but not more than  $1.4 V_{SR}$ ; and

(4) Landing gear retracted.

10. Section 25.125 is amended by revising paragraph (a)(2) to read as follows:

**§ 25.125 Landing.**

(a) \* \* \*

(2) A stabilized approach, with a calibrated airspeed of  $V_{REF}$ , must be maintained down to the 50 foot height.  $V_{REF}$  may not be less than—

(i)  $1.23 V_{SR0}$ ,

(ii)  $V_{MCL}$  established under § 25.149(f); and

(iii) A speed that provides the maneuvering capability specified in § 25.143(g).

\* \* \* \* \*

11. Section 25.143 is amended by adding a new paragraph (g) to read as follows:

**§ 25.143 General.**

\* \* \* \* \*

(g) The maneuvering capabilities in a constant speed coordinated turn at forward center of gravity, as specified in the following table, must be free of stall warning or other characteristics that might interfere with normal maneuvering:

Con-figuration	Speed	Ma-neu-ving bank angle in a coordinated turn	Thrust/power setting
Takeoff	$V_2$ .....	30°	Asymmetric WAT-limited. <sup>1</sup>
Takeoff	$V_2+XX^2$ ....	40°	All-engines-operating climb. <sup>3</sup>
En route.	$V_{FTO}$ .....	40°	Asymmetric WAT-limited. <sup>1</sup>
Land-ing.	$V_{REF}$ .....	40°	Symmetric for -3° flight path angle.

<sup>1</sup> A combination of weight, altitude, and temperature (WAT) such that the thrust or power setting produces the minimum climb gradient specified in § 25.121 for the flight condition.

<sup>2</sup> Airspeed approved for all-engines-operating initial climb.

<sup>3</sup> That thrust or power setting which, in the event of failure of the critical engine and without any crew action to adjust the thrust or power of the remaining engines, would result in the thrust or power specified for the takeoff condition at  $V_2$ , or any lesser thrust or power setting that is used for all engines-operating initial climb procedures.

12. Section 25.145 is amended by revising paragraphs (a) introductory

text, (a)(1), (b)(1), (b)(4), (b)(6), and (c) introductory text to read as follows:

**§ 25.145 Longitudinal control.**

(a) It must be possible, at any point between the trim speed prescribed in § 25.103(a)(6) and the stall, to pitch the nose downward so that the acceleration to this selected trim speed is prompt with—

(1) The airplane trimmed at the trim speed prescribed in § 25.103(a)(6);

\* \* \* \* \*

(b) \* \* \*

(1) With power off, flaps retracted, and the airplane trimmed at  $1.3 V_{SR1}$ , extend the flaps as rapidly as possible while maintaining the airspeed at approximately 30 percent above the reference stall speed existing at each instant throughout the maneuver.

\* \* \* \* \*

(4) With power off, flaps retracted, and the airplane trimmed at  $1.3 V_{SR1}$ , rapidly set go-around power or thrust while maintaining the same airspeed.

\* \* \* \* \*

(6) With power off, flaps extended, and the airplane trimmed at  $1.3 V_{SR1}$ , obtain and maintain airspeeds between  $V_{SW}$  and either  $1.6 V_{SR1}$  or  $V_{FE}$ , whichever is lower.

(c) It must be possible, without exceptional piloting skill, to prevent loss of altitude when complete retraction of the high lift devices from any position is begun during steady, straight, level flight at  $1.08 V_{SR1}$  for propeller powered airplanes, or  $1.13 V_{SR1}$  for turbojet powered airplanes, with—

\* \* \* \* \*

**§ 25.147 [Amended]**

13. Section 25.147 is amended in paragraphs (a) introductory text, (a)(2), (c) introductory text, and (d) by revising the expression “ $1.4 V_{S1}$ ” to read “ $1.3 V_{SR1}$ ”.

**§ 25.149 [Amended]**

14. Section 25.149 is amended in paragraph (c) introductory text by revising the expression “ $1.2 V_S$ ” to read “ $1.13 V_{SR}$ .”

**§ 25.161 [Amended]**

15. Section 25.161 is amended in paragraphs (b), (c)(1), (c)(2), (c)(3) and (d) introductory text by revising the expression “ $1.4 V_{S1}$ ” to read “ $1.3 V_{SR1}$ ”; and in paragraph (e)(3) by revising the expression “ $0.013 V_{S0^2}$ ” to read “ $0.013 V_{SR0^2}$ ”.

**§ 25.175 [Amended]**

16. Section 25.175 is amended in paragraphs (a)(2), (b)(1) introductory text, (b)(2) introductory text, (b)(3)

introductory text and (c)(4) by revising the expression “ $1.4 V_{S1}$ ” to read “ $1.3 V_{SR1}$ ”, in paragraph (b)(2)(ii) by revising the expression “ $V_{MO}+1.4 V_{S1}/2$ ” to read “ $(V_{MO}+1.3 V_{SR1})/2$ ”, in paragraph (c) introductory text by revising the expressions “ $1.1 V_{S1}$ ” to read “ $V_{SW}$ ” and “ $1.8 V_{S1}$ ” to read “ $1.7 V_{SR1}$ ”, in paragraph (d) introductory text by revising the expressions “ $1.1 V_{SO}$ ” to read “ $V_{SW}$ ” and “ $1.3 V_{SO}$ ” to read “ $1.7 V_{SR0}$ ”, and in paragraph (d)(5) by revising the expression “ $1.4 V_{SO}$ ” to read “ $1.3 V_{SR0}$ ”.

**§ 25.177 [Amended]**

17. Section 25.177 is amended in paragraph (c) by revising the expression “ $1.2 V_{S1}$ ” to read “ $1.13 V_{SR1}$ ”.

**§ 25.181 [Amended]**

18. Section 25.181 is amended in paragraphs (a) introductory text and (b) by revising the reference “ $1.2 V_S$ ” to read “ $1.13 V_{SR}$ ”.

19. Section 25.201 is amended by revising paragraphs (a)(2) and (b)(4) to read as follows:

**§ 25.201 Stall demonstration.**

(a) \* \* \*

(2) The power necessary to maintain level flight at  $1.5 V_{SR1}$  (where  $V_{SR1}$  corresponds to the reference stall speed with flaps in the approach position, the landing gear retracted, and the maximum landing weight).

(b) \* \* \*

(4) The airplane trimmed for straight flight at the speed prescribed in § 25.103(a)(6).

\* \* \* \* \*

20. Section 25.207 is amended by revising paragraphs (b) and (c), and by adding new paragraphs (d), (e), and (f) to read as follows:

**§ 25.207 Stall warning.**

\* \* \* \* \*

(b) The warning must be furnished either through the inherent aerodynamic qualities of the airplane or by a device that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself. If a warning device is used, it must provide a warning in each of the airplane configurations prescribed in paragraph (a) of this section at the speed prescribed in paragraphs (c) and (d) of this section.

(c) When the speed is reduced at rates not exceeding one knot per second, with engines idling and throttles closed, stall warning must begin, in each normal configuration, at a speed,  $V_{SW}$ , exceeding the reference stall speed by

not less than three knots or three percent, whichever is greater. For the purposes of this paragraph, the reference stall speed is as defined in § 25.103, except that § 25.103(a)(5) does not apply. Stall warning must continue throughout the demonstration, until the angle of attack is reduced to approximately that at which stall warning is initiated.

(d) In addition to the requirements of paragraph (c) of this section, when devices that abruptly push the nose down at a selected angle of attack (e.g., stick pushers) are installed, the stall warning must occur at a speed not less than five knots or five percent, whichever is greater, above the speed at which the device activates.

(e) In slow-down turns up to  $1.5g$  at entry rates up to 3 knots per second, with the flaps and landing gear in any normal position, the stall warning margin must be sufficient to allow the pilot to prevent stalling when recovery is initiated not less than one second after the onset of stall warning.

(f) Stall warning must also be provided in each abnormal configuration of the high lift devices that is likely to be used in flight following system failures (including all configurations covered by Airplane Flight Manual procedures).

**§ 25.231 [Amended]**

21. Section 25.231 is amended in paragraph (a)(2) by revising the word “altitude” to read “attitude” and by revising the expression “80 percent of  $V_{S1}$ ” to read “75 percent of  $V_{SR1}$ ”.

**§ 25.233 [Amended]**

22. Section 25.233 is amended in paragraph (a) by revising the reference “ $0.2 V_{SO}$ ” to read “ $0.2 V_{SR0}$ ”.

**§ 25.237 [Amended]**

23. Section 25.237 is amended in paragraphs (a), (b)(1), and (b)(2) by revising the reference “ $0.2 V_{SO}$ ” to read “ $0.2 V_{SR0}$ ”.

24. Action 25.735 is amended by revising paragraphs (f)(2) and (g) to read as follows:

**§ 25.735 Brakes.**

\* \* \* \* \*

(f) \* \* \*

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel brake assembly may be derived from the following formula, which must be modified in the case of unequal braking distribution, which assumes an equal distribution of braking between main wheels:

$KE=0.0443 (WV^2/N)$   
where—

$KE$ =Kinetic energy per wheel (ft.-lb.);

$W$ =Design landing weight (lb.);

$V=V_{REF}/1.3$

$V_{REF}$ =Airplane steady landing approach speed, in knots, at the maximum design landing weight and in the landing configuration at sea level; and

$N$ =Number of main wheels with brakes.

(g) The minimum speed rating of each main wheel-brake assembly (that is, the initial speed used in the dynamometer tests) may not be more than the  $V$  used in the determination of kinetic energy in accordance with paragraph (f) of this section, assuming that the test procedures for wheel-brake assemblies involve a specified rate of deceleration, and, therefore, for the same amount of kinetic energy, the rate of energy absorption (the power absorbing ability of the brake) varies inversely with the initial speed.

**§ 25.773 [Amended]**

25. Section 25.773 is amended in paragraph (b)(1)(i) by revising the expression “ $1.6 V_{S1}$ ” to read “ $1.5 V_{SR1}$ ”.

**§ 25.1001 [Amended]**

26. Section 25.1001 is amended in paragraphs (c)(1) and (c)(3) by revising the expression “ $1.4 V_{S1}$ ” to read “ $1.3 V_{SR1}$ ”.

**§ 25.1323 [Amended]**

27. Section 25.1323 is amended in paragraph (c)(1) by revising the expression “ $1.3 V_{S1}$ ” to read “ $1.23 V_{SR1}$ ” and in paragraph (c)(2) by revising the expression “ $1.3 V_{SO}$ ” to read “ $1.23 V_{SR0}$ ”.

**§ 25.1325 [Amended]**

28. Section 25.1325 is amended in paragraph (e) by revising the expressions “ $1.3 V_{SO}$ ” and “ $1.8 V_{S1}$ ” to read “ $1.23 V_{SR0}$ ” and “ $1.7 V_{SR1}$ ”, respectively.

**§ 25.1587 [Amended]**

29. Section 25.1587 is amended in paragraph (b)(2) by revising the expression “ $V_S$ ” to read “ $V_{SR}$ ”.

**PART 36—NOISE STANDARDS:  
AIRCRAFT TYPE AND  
AIRWORTHINESS CERTIFICATION**

30. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*, 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 comp., p. 902.

31. Appendix C to part 36, Section C36.9 is amended by revising paragraph (e)(1) to read as follows:

Appendix C to Part 36—Noise Levels for Transport Category and Turbojet Powered Airplanes Under § 36.201

\* \* \* \* \*

Sec. C36.9 Approach Reference and Test Limitations

\* \* \* \* \*

(e) \* \* \*

(1) For subsonic airplanes a steady approach speed of  $V_{REF} + 10$  knots must be established and maintained over the approach measuring point.

\* \* \* \* \*

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

32. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

33. Section 97.3 is amended by revising the first two sentences of paragraph (b) introductory text to read as follows:

**§ 97.3 Symbols and terms used in procedures.**

\* \* \* \* \*

(b) *Aircraft approach category* means a grouping of aircraft based on a speed of  $V_{REF}$  at the maximum certificated landing weight.  $V_{REF}$  and the maximum certificated landing weight are those values as established for the aircraft by the certification authority of the country of registry. \* \* \*

\* \* \* \* \*

Issued in Washington, DC on November 29, 1995.

Thomas E. McSweeney,

*Director, Aircraft Certification Service.*

[FR Doc. 96–415 Filed 1–17–96; 8:45 am]

**BILLING CODE 4910–13–M**

# Executive Order

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Thursday  
January 18, 1996

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## Part III

# The President

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Proclamation 6862—Religious Freedom  
Day, 1996



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**Presidential Documents**

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Title 3—

Proclamation 6862 of January 12, 1996

The President

Religious Freedom Day, 1996

By the President of the United States of America

## A Proclamation

On this day over 200 years ago, Virginia's General Assembly passed a law that created the first legal protection for religious freedom in this country. Introducing his bill to the Virginia Assembly, Thomas Jefferson stated that he was not creating a new right confined simply to the State of Virginia or to the United States, but rather declared religious liberty to be one of the "natural rights of mankind" that should be shared by all people. Jefferson's language was shepherded through the legislature by James Madison, who later used it as a model for the First Amendment to the United States Constitution.

Americans have long benefited from our founders' wisdom, and the Constitution's twin pillars of religious liberty—its protection of the free exercise of religion and its ban on the establishment of religion by the Government—have allowed an enormous diversity of spiritual beliefs to thrive throughout our country. Today, more than 250,000 churches, synagogues, mosques, meeting houses, and other places of worship serve to bring citizens together, strengthening families and helping communities to keep their faith traditions alive. We must continue to ensure full protection for religious liberty and help people of different faiths to find common ground.

Our Nation's profound commitment to religious freedom reminds us that many people around the world lack the safeguard of law to protect them from prejudice and persecution. We deplore the religious intolerance that too often tears neighbor from neighbor, and we must remain an international advocate for the ideal of human brotherhood and sisterhood and for the basic rights that sustain human dignity and personal freedom. Let us pledge our support to all who struggle against religious oppression and rededicate ourselves to fostering peace among people with divergent beliefs so that what Americans experience as a "natural right" may be enjoyed by individuals and societies everywhere.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 1996, as Religious Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies, activities, and programs, and I urge all Americans to reaffirm their devotion to the fundamental principles of religious freedom and religious tolerance.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of January, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.



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Federal Register

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This is a list of public bills  
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(Public Laws Update Service)  
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ordered in individual pamphlet  
form (referred to as "slip  
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(phone, 202-512-2470).

#### **H.R. 1295/P.L. 104-98**

Federal Trademark Dilution  
Act of 1995 (Jan. 16, 1996;  
109 Stat. 985)

Last List January 17, 1996