

agencies to assess the effects of regulatory actions on state, local, and tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal

Dated: October 2, 1995.

Carol M. Browner,  
Administrator.

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS**

1. The authority citation for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949a(c); 33 U.S.C. 1345 (d) and (e).

2. Section 258.1 is amended by revising paragraphs (d)(3) and (e)(4) to read as follows:

**§ 258.1 Purpose, scope, and applicability.**

\* \* \* \* \*

(d) \* \* \*

(3) MSWLF units that meet the conditions of paragraph (f)(1) of this section and receive waste after October 9, 1991 but stop receiving waste before October 9, 1997, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1998. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1998 will be subject to all the requirements of this part 258, unless otherwise specified.

\* \* \* \* \*

(e) \* \* \*

(4) For a MSWLF unit that meets the conditions for the exemption in paragraph (f)(1) of this section, the compliance date for all applicable requirements of part 258, unless otherwise specified, is October 9, 1997.

3. Section 258.2 is amended by revising the definition of "new MSWLF unit" to read as follows:

**§ 258.2 Definitions.**

\* \* \* \* \*

*New MSWLF unit* means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1997 if the MSWLF unit meets the conditions of § 258.1(f)(1).

4. Section 258.50 is amended by revising paragraph (e) to read as follows:

**§ 258.50 Applicability.**

\* \* \* \* \*

(e) Owners and operators of all MSWLF units that meet the conditions of § 258.1(f)(1) must comply with all applicable ground-water monitoring requirements of this part by October 9, 1997.

5. Section 258.70 is amended by revising paragraph (b) to read as follows:

**§ 258.70 Applicability and effective date.**

\* \* \* \* \*

(b) The requirements of this section are effective April 9, 1997 except for MSWLF units meeting the conditions of § 258.1(f)(1), in which case the effective date is October 9, 1997.

6. Section 258.74 is amended by revising paragraph (a)(5), the third sentence of paragraph (b)(1); the second sentence of paragraph (c)(1); and the second sentence of paragraph (d)(1) to read as follows:

**§ 258.74 Allowable mechanisms.**

\* \* \* \* \*

(a) \* \* \*

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. \* \* \*

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* The letter of credit must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* The insurance must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. \* \* \*

**40 CFR Part 282**

[FRL-5295-1]

**Underground Storage Tank Program: Approved State Program for Utah****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 Utah's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

**DATES:** This regulation is effective December 5, 1995, unless EPA publishes a prior Federal Register notice withdrawing this immediate final rule. All comments on the codification of Utah's underground storage tank program must be received by the close of business November 6, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of December 5, 1995, in accordance with 5 U.S.C. 552(a).

**ADDRESSES:** Comments may be mailed to Jo Taylor, 8HWM-WM, Hazardous Waste Management Division, Underground Storage Tank Program, U.S. EPA Region 8, 999-18th Street, Suite 500, Denver, Colorado, 80202-2466. Comments received by EPA may be inspected in U.S. EPA Region 8 Library, Suite 144, 999 18th Street, Denver, Colorado 80202-2466 from 12:00 p.m. to 4:00 p.m., Monday through Friday, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jo Taylor, 8HWM-WM, Underground Storage Tank Program, U.S. EPA Region 8, 999-18th Street, Suite 500, Denver, Colorado, 80202-2466. Phone: (303) 293-1511.

**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 (EPA) 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 Utah (60 FR 12709, March 8, 1995). Approval was effective on April 7, 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 Utah underground storage tank program. This codification reflects the state program in effect at the time EPA granted Utah 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 Utah 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 Utah program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Utah, the status of federally approved requirements of the Utah program will be readily discernible. Only those provisions of the Utah 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 Utah's underground storage tank program, EPA has added section 282.94 to title 40 of the CFR. Section 282.94 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.94 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 Utah enforcement authorities will not be incorporated by reference. Section 282.94 lists those approved Utah 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 282.94 of the codification simply lists for reference and clarity the Utah 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 12709, March 8, 1995) to approve the Utah 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: August 25, 1995.

Jack W. McGraw,

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.

2. Subpart B is amended by adding § 282.94 to read as follows:

**Subpart B—Approved State Programs**

**§ 282.94 Utah State-Administered Program.**

(a) The State of Utah 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 Utah Department of Environmental Quality, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Utah program on March 8, 1995 and it was effective on April 7, 1995.

(b) Utah 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, Utah 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 Utah 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) Utah has final approval for the following elements submitted to EPA in Utah's program application for final approval and approved by EPA on

March 8, 1995. Copies may be obtained from the Underground Storage Tank Branch, Utah Department of Environmental Quality, 168 North 1950 West, 1st Floor, Salt Lake City, Utah 84116.

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

(B) Utah 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: Utah Code Unannotated (1994), Title 19, Chapter 6, Sections 19-6-112; 19-6-113; 19-6-115; 19-6-402(8), (11), and (23); 19-6-404(2)(f), (j), and (m); 19-6-405.5; 19-6-407(2) and (3); 19-6-410(3) as it pertains to penalties, (4)(b), and (5); 19-6-416; 19-6-418; 19-6-420(2), (4)(a), (5)(b), and (9)(b); 19-6-424.5; 19-6-425; 19-6-426(5) and (6); and 19-6-427.

(B) The regulatory provisions include: Administrative Rules of the State of Utah, Utah Administrative Code (1993), Sections R311-208-1; R311-208-2; R311-208-3; R311-208-4; R311-208-5; and R311-208-6.

(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) The statutory provisions include: Utah Code Unannotated (1994), Title 19, Chapter 6, Sections 19-6-402 (3), (4), (9), (14), (15), (20), and (26); 19-6-403(1)(a) (i) and (iv); 19-6-404(2)(c); 19-6-405.5; 19-6-408; 19-6-409; 19-6-410; 19-6-411; 19-6-412; 19-6-414; 19-6-415; 19-6-416; 19-6-417; 19-6-419; 19-6-420 (1), (3)(a), (3)(b), (5)(c), and (6); 19-6-421; 19-6-422; 19-6-423; 19-6-424; and 19-6-426 (1) through (4) and (7).

(B) The regulatory provisions include: Administrative Rules of the State of Utah, Utah Administrative Code (1993), Sections R311-200-1 (2), (5), (8), (10), (13), (20), (29), (42) through (49), (53), and (54); R311-201-2; R311-201-1; R311-201-3; R311-201-4; R311-201-5; R311-201-6; R311-201-7; R311-201-8; R311-201-9; R311-201-10; R311-201-11; R311-203-2; R311-206-2 (b) and (c); R311-206-4; R311-206-5 (b), (c),

(d), and the words "compliance or" in (a); R311-206-6; R311-207-1; R311-207-2; R311-207-3; R311-207-4; R311-207-5; R311-207-6; R311-207-7; R311-207-8; R311-207-9; R311-209-1; R311-209-2; R311-209-3; and R311-209-4.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Utah on April 18, 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 Utah to EPA, April 18, 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 complete application in September 1993, 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 in September 1993, 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 VIII and the Utah Department of Environmental Quality, signed by the EPA Regional Administrator on March 1, 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 "Utah" and its listing.

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

\* \* \* \* \*

*Utah*

(a) The statutory provisions include: Utah Code Unannotated (1994), Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, and Chapter 6, Part 4, Underground Storage Tank Act:

Section 19-6-109 Inspections authorized.

Section 19-6-402 Definitions, except (3), (4), (8), (9), (11), (14), (15), (20), (23), and (26).

Section 19-6-402.5 Retroactive effect.

Section 19-6-403 Powers and duties of board, except (1)(a) (i) and (iv).

Section 19-6-404

Powers and duties of executive secretary, except (2)(c), (2)(f), (2)(j), and (2)(m).

Section 19-6-407 Underground storage tank registration—Change of ownership or operation—Civil penalty, except (2) and (3).

Section 19-6-413 Tank tightness test—Actions required after testing.

Section 19-6-420 Releases—Abatement actions—Corrective actions, except (1) through (3)(b), (4)(a), (5) (b) and (c), (6), and (9)(b).

(b) The regulatory provisions include:

(1) Administrative Rules of the State of Utah, Utah Administrative Code (1993):

Section R311-200-1 Definitions, except (2), (5), (8), (10), (13), (20), (29), (42) through (49), (53), and (54).

Section R311-202-1 Incorporation by Reference.

Section R311-203-1 Definitions.

Section R311-203-3 New Installations.

Section R311-203-4 Notification.

Section R311-204-1 Definitions

Section R311-204-2 Underground Storage Tank Closure Plan.

Section R311-204-3 Disposal.

Section R311-204-4 Subsequent Closure Notice.

Section R311-205-1 Definitions.

Section R311-205-2 Site Assessment Protocol.

Section R311-206-1 Definitions.

Section R311-206-2 Requirements for Issuance of Certificates, except (b) and (c).

Section R311-206-3 Application for Certificates.

Section R311-206-5 Revocation and Reissuance of Certificates, except (b), (c), (d), and the words "compliance or" in R311-206-5(a).

[FR Doc. 95-24873 Filed 10-5-95; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 61

[CC Docket No. 94-1; FCC 95-394]

#### Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** On October 20, 1994, the Commission adopted a Memorandum Opinion and Order concluding that the basic video dialtone offerings of local exchange carriers (LECs) would be subject to the existing price cap rules. In

that the order, the Commission stated it would initiate a rulemaking proceeding on whether to create a separate price cap basket for LEC video dialtone service. On February 7, 1995 the Commission issued a notice of proposed rulemaking in this docket seeking comment on whether to establish a separate price cap basket for LEC video dialtone service. The Report and Order adopted today establishes a separate price cap basket for video dialtone. **EFFECTIVE DATE:** February 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Claudia Pabo, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-1595 or Cheryl Lynn Schneider, Tariff Division, Common Carrier Bureau, (202) 418-1530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Report and Order adopted September 14, 1995 and released September 21, 1995. The full text of the Commission's decision is available for public inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, NW., Washington, DC 20037.

#### Regulatory Flexibility Analysis

We determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to the rule amendments adopted in this Order because they do not have a significant economic impact on a substantial number of small entities, as defined by section 301(3) of the Regulatory Flexibility Act. Carriers subject to price cap regulation for local exchange access services affected by the rule amendments adopted in this Order generally are large corporations or affiliates of such corporations.

#### Paperwork Reduction Analysis

Public burden for the collection of information is estimated to average 203 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and competing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project (3060-0298), Washington, DC 20554 and to the Office

of Management and Budget, Paperwork Reduction Project (3060-0298), Washington, DC 20503.

#### Summary of Report and Order

In this Order, the Commission adopts new rules regarding the price cap treatment of video dialtone common carrier service provided by local exchange carriers (LECs). The Order amends the Commission's rules to require that basic video dialtone offerings of price cap LECs must be included in a new, separate price cap basket. The video dialtone basket may not include any other "broadband" services. The Order also establishes an initial productivity or "X-Factor" for the video dialtone basket of zero.

The initial rates to be included in the video dialtone basket will be based upon the price cap new services test, as applied to video dialtone services. Consistent with this approach, the Commission will incorporate video dialtone rates into the new price cap basket in the first annual price cap tariff filing following the calendar year in which the new service is first offered, which may occur anywhere from six to eighteen months from the introduction of service. Moreover, as it has done with other price cap baskets, the Commission will assign an initial value of 100 to the PCI and the actual price index (API) for video dialtone service prior to adjustment for inflation and productivity, corresponding to the rates in effect just prior to the effective date of the annual filing in which rates for video dialtone service are included in the new basket.

The Commission decided not to divide the video dialtone basket into separate subcategories at this time. Video dialtone is a nascent service for which LECs have just begun to file tariffs, and the Commission expects that the LECs will employ a variety of architectures to deliver their offerings which could lead to varying rate structures for video dialtone services. Thus, it would be difficult to create a stable set of service categories within the new video dialtone basket at this time.

The Order imposes a lower banding limit on the video dialtone basket in addition to the protection provided by the new services test. Accordingly, LEC tariff filings reducing prices in excess of 15 percent per year relative to the PCI will not carry a presumption of lawfulness. Consistent with existing procedures, filings to implement rates below this level must be made on 45 days' notice, and be accompanied by a showing that the rates exceed average variable costs consistent with the cost