

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 8, 1998.

**Stephen L. Johnson,**

*Deputy Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1200 is added to subpart D to read as follows:

#### § 180.1200 *Pseudomonas fluorescens* strain PRA-25; temporary exemption from the requirement of a tolerance.

A temporary exemption from the requirement of a tolerance is established for residues of the microbial pesticide, *pseudomonas fluorescens* strain PRA-25 when used on peas, snap beans and sweet corn and will expire July 31, 2001.

[FR Doc. 98-18986 Filed 7-16-98; 8:45 am]

BILLING CODE 6560-50-F

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 282

[FRL-6118-1]

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

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

**ACTION:** Immediate final rule.

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

statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions (42 U.S.C. 6991d and 6991e). This rule codifies in part 282 the prior approval of Nevada's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

**DATES:** The regulation is effective September 15, 1998, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of Nevada's underground storage tank program must be received by the close of business on August 17, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register**, as of September 15, 1998, in accordance with 5 U.S.C. 552 (a).

**ADDRESSES:** Comments may be mailed to the U.S. EPA Office of Underground Storage Tanks (WST-8), Waste Management Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105-3901. Comments received by EPA may be inspected in the public docket, located in the Office of Underground Storage Tanks, at the above address, from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

Copies of Nevada's underground storage tank program may be obtained from the Nevada State Office Library, Board Room, 100 Stewart Street, Carson City, Nevada, 89710; the U.S. EPA Region 9 Library, 13th Floor, 75 Hawthorne Street, San Francisco, California, 94105-3901; and the U.S. EPA Underground Storage Tank docket office and the U.S. EPA Office of Underground Storage Tanks, both located at 401 M. Street SW, Washington, D.C., 20460.

**FOR FURTHER INFORMATION CONTACT:** John Thayer, Nevada Program Manager, Office of Underground Storage Tanks (WST-8), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105-3901, Phone: (415) 744-2092.

#### 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. On December 24, 1992, EPA published a **Federal Register** notice announcing its tentative decision to grant approval to Nevada. (See 57 FR 248,61376, December 24, 1992.) Approval was effective on March 30, 1993.

EPA codifies its approval of state programs in Part 282 of Title 40, Code of Federal Regulations (CFR) 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 Nevada underground storage tank program. This codification reflects the state program in effect at the time EPA granted Nevada 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 Nevada 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 Nevada program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Nevada, the status of federally approved requirements of the Nevada program will be readily discernible. Only those provisions of the Nevada 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 Nevada's underground storage tank program, EPA has added section 282.78 to Title 40 of the Code of Federal Regulation. Section 282.78 incorporates by reference for enforcement purposes the state's statutes and regulations. Section 282.78 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 analogues to these provisions. Therefore, the approved Nevada enforcement authorities will not be incorporated by reference. Section 282.78 lists those approved Nevada 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 282.78 of the codification simply lists for reference and clarity the Nevada 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.

#### **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.

#### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of certain regulatory actions on state, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with federal mandates, as defined by the UMRA, that may result in expenditures to state, local, and tribal governments, or to the private sector, of \$100 million or more in the aggregate in any one year. The section 202 and 205 requirements do not apply to today's action, because it is not a "federal mandate" and because it does not impose annual costs of \$100 million or more.

Today's rule contains no federal mandates for state, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any state, local or

tribal governments or the private sector, because it merely makes federally enforceable existing requirements with which regulated entities must already comply under state law. Second, the Act also generally excludes from the definition of a "federal mandate" duties that arise from participation in a voluntary federal program. The requirements being codified today are the result of Nevada's voluntary participation in accordance with RCRA Subtitle I.

Even if today's rule did contain a federal mandate, this rule will not result in annual expenditures of \$100 million or more in the aggregate for state, local, and/or tribal governments, or the private sector, because today's action merely codifies an existing state program that EPA previously approved. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, this codification incorporates into the Code of Federal Regulations Nevada's requirements which have already been approved by EPA under 40 CFR Part 281 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this codification.

#### **Certification Under the Regulatory Flexibility Act**

EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the state requirements authorized by EPA under 40 CFR Part 281. EPA's codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a

significant economic impact on a substantial number of small entities. This codification incorporates Nevada's requirements, which have been approved by EPA under 40 CFR Part 281, into the Code of Federal Regulations. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### **Submission to Congress and the General Accounting Office**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each house of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **Compliance With Executive Order 13045**

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and that EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency has determined that the final rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and does not address environmental health and safety risks. As such, the final rule is not subject to the requirements of Executive Order 13045.

#### **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: May 25, 1998.

**Felicia Marcus,**

*Regional Administrator, Region 9.*

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, 6991(c), 6991(d), and 6991(e).

**Subpart B—Approved State Programs**

2. Subpart B is amended by adding § 282.78 to read as follows:

**§ 282.78 Nevada State—Administered Program.**

(a) The State of Nevada 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 Nevada Division of Environmental Protection was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Nevada program on December 24, 1992 and it was effective March 30, 1993.

(b) Nevada 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, Nevada must revise its approved program to adopt new changes to the federal Subtitle I program, which makes it more stringent in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Nevada 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) Nevada has final approval for the following elements submitted to EPA in Nevada's program application for final

approval and approved by EPA on December 24, 1992. Copies may be obtained from the Nevada State Office Library, Board Room, 100 Stewart Street, Carson City, Nevada 89710.

(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) Nevada Statutory Requirements Applicable to the Underground Storage Tank Program, 1992.

(B) Nevada Regulatory Requirements Applicable to the Underground Storage Tank Program, 1992.

(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: Nevada Revised Statutes 459 Underground Storage Tank Program (1992) Sections 459.826, 459.830, 459.832, 459.834, 459.844, 459.846, 459.848, 459.850, 459.852, 459.854, and 459.856.

(B) The regulatory provisions include: none.

(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: none.

(2) *Statement of legal authority.* (i) "Attorney General's Statement of Final Approval," signed by the Attorney General of Nevada on December 1, 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.*

(ii) Letter from the Attorney General of Nevada to EPA, dated December 1, 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) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application of October 1, 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.*

(4) *Program description.* The program description and any other material submitted as part of the original application in October 1992, 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 9 and the Nevada Division of Environmental Protection, signed by the EPA Regional Administrator on December 17, 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 "Nevada" and its listing.

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

\* \* \* \* \*

*Nevada*

(a) The statutory provisions include:

(1) Nevada Revised Statute Chapter 459, Underground Storage Tank Program (1992), Nevada Revised Statute 590, Petroleum Fund (1991).

(2) Nevada Revised Statute Chapter 459, Underground Storage Tank Program (1992):  
Section 459.810 "Operator" defined.  
Section 459.814 "Person" defined.  
Section 459.816 "Regulated Substance" defined.

Section 459.818 "Release" defined.  
Section 459.820 "Storage Tanks" defined.  
Section 459.822 Department designated as state agency for regulation of storage tanks.

Section 459.828 Owner or operator of storage tank to provide department with certain information.

Section 459.838 Fund for the management of storage tanks: Creation: Sources: Claims.

Section 459.840 Fund for the management of storage tanks: Use; reimbursement; recovery by attorney general.

(3) Nevada Revised Statute 590, Petroleum Fund (1991):

Section 590.700 Definitions.  
Section 590.710 "Board" defined.  
Section 590.720 "Department" defined.  
Section 590.725 "Diesel fuel of grade number 1" defined.

Section 590.726 "Diesel fuel of grade number 2" defined.

Section 590.730 "Discharge" defined.

Section 590.740 "Division" defined.

Section 590.750 "Fund" defined.

Section 590.760 "Heating oil" defined.

Section 590.765 "Motor vehicle fuel" defined.

Section 590.770 "Operator" defined.

Section 590.780 "Person" defined.

Section 590.790 "Petroleum" defined.

Section 590.800 "Storage tank" defined.

Section 590.810 Legislative findings.

Section 590.820 Board to review claims:

Creation; members; chairman; administrative Assistance; compensation of members.

Section 590.830 Fund for cleaning up discharges of petroleum: Creation;

administration by division; claims; interest.

Section 590.840 Collection of fee for certain fuels and heating coil; exempt products; payment of expenses of department.

Section 590.850 Registration of storage tanks; Collection of annual fee; exempt tanks; liability for noncompliance.

Section 590.860 Balance in fund to determine collection of fees by department.

Section 590.870 Report of discharge from tank required; division to clean up discharge; expectation; test of tank required for coverage.

Section 590.880 Allocation of costs resulting from discharge from certain storage tanks for heating oil.

Section 590.890 Allocation of costs resulting from discharge from other storage tanks.

Section 590.900 Liability for costs to clean up discharge caused by willful or wanton misconduct, gross negligence or violation of statute or regulation.

Section 590.910 Pro rata reduction required, if balance in fund insufficient for full payment.

Section 590.920 Tanks exempted from provisions of Sections 590.850 to 590.910 inclusive; optional coverage of exempted tank.

(4) Nevada Civil Procedure, Rule 24 (1971): Nevada Civil Procedure, Rule 24 .

(b) The regulatory provisions includes:

(1) Nevada Administrative Code 459, UST Program (1990):

Section 459.9929 "Storage Tank" defined.

Section 459.993 Compliance with federal regulations.

Section 459.995 Financial responsibility of owners and operators.

Section 459.996 Releases: Reporting.

(2) Nevada Administrative Code 590, Petroleum Fund (1991):

Section 590.720 Adoption by reference of provisions of Code of Federal Regulations.

(3) Nevada Administrative Code, Reportable Quantities (1989):

Section 445.240 Notice required.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 980402084-8166-02; I.D. 032398B]

RIN 0648-AJ51

#### Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery off Alaska; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 3 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which delegates to the State of Alaska (State) the authority to manage all aspects of the scallop fishery, except limited access. This final rule repeals all Federal regulations governing the scallop fishery off Alaska, except for the scallop vessel moratorium program. This action is necessary to eliminate duplicative regulations and management programs at the State and Federal levels and is intended to further the goals and objectives of the FMP.

**DATES:** Effective July 14, 1998.

**ADDRESSES:** Copies of Amendment 3 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendment 3 are available from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907-586-7228 or kent.lind@noaa.gov.

**SUPPLEMENTARY INFORMATION:** NMFS and the State of Alaska manage the scallop fishery off Alaska pursuant to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Federal regulations governing the scallop fishery appear at 50 CFR parts 600 and 679. State regulations governing the scallop fishery appear in the Alaska Administrative Code (AAC) at 5 AAC Chapter 38--Miscellaneous Shellfish.

The Council submitted Amendment 3 for Secretarial review on March 26, 1998, and a Notice of Availability of the amendment was published March 31, 1998 (63 FR 15376), with comments on the FMP amendment invited through June 1, 1998. NMFS published a proposed rule to implement Amendment 3 on April 16, 1998 (63 FR 18863), with comments on the proposed rule invited until June 1. No comments were received on the FMP amendment or the proposed rule by the end of the comment periods.

Based on a review of the FMP amendment, proposed rule, EA/RIR, and applicable State laws, the Administrator, Alaska Region, NMFS, determined that Amendment 3 is necessary for the conservation and management of the scallop fishery off Alaska and that it is consistent with the

Magnuson-Stevens Act and other applicable laws.

#### Management Background and Need for Action

The history of the scallop fishery off Alaska and the events leading up to the development of the joint State-Federal management regime under Amendment 1 to the FMP are discussed in detail in the proposed rule (63 FR 18863, April 16, 1998) and in the EA/RIR prepared for this action (see ADDRESSES). Amendment 1 established a joint State-Federal management regime under which NMFS implemented Federal scallop regulations that duplicate most State scallop regulations, including definitions of scallop registration areas and districts, scallop fishing seasons, closed waters, gear restrictions, efficiency limits, crab bycatch limits, scallop catch limits, inseason adjustments, and observer coverage requirements. This joint State-Federal management regime was designed as a temporary measure to prevent unregulated fishing in Federal waters until changes in the Magnuson-Stevens Act would enable the Council to delegate management of the fishery to the State.

While the joint State-Federal management regime established under Amendment 1 has enabled NMFS to reopen the Exclusive Economic Zone to fishing for scallops, it has proven to be cumbersome in practice. Every management action, including inseason openings and closures, must be coordinated so that State and Federal actions are simultaneously effective. NMFS must draft and publish in the **Federal Register** inseason actions that duplicate every State inseason scallop action. State scallop managers are now constrained in their ability to implement management decisions rapidly because they must coordinate each action with NMFS and provide sufficient lead-time for publication of the action in the **Federal Register**.

The only purpose of maintaining duplicate regulations at the State and Federal level is to prevent unregulated fishing by vessels not registered under the laws of the State. The State-Federal management regime established under Amendment 1 is no longer necessary to prevent unregulated fishing for scallops in Federal waters because the Sustainable Fisheries Act of 1996, which amended the Magnuson-Stevens Act, now provides authority for the Council to delegate to the State management responsibility for the scallop fishery in Federal waters off Alaska. The statutory requirements for delegation of fisheries management