

| Commodity                          | Parts per million |
|------------------------------------|-------------------|
| Cherry, sweet .....                | 1.5               |
| Cherry, tart .....                 | 1.5               |
| Strawberry .....                   | 2.0               |
| Vegetable, cucurbit, Group 9 ..... | 0.5               |

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 271**

[FRL-7228-1]

**Nevada: Final Authorization of State Hazardous Waste Management Program Revisions****AGENCY:** Environmental Protection Agency.**ACTION:** Immediate final rule.

**SUMMARY:** The State of Nevada applied for final authorization of revisions to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has completed its review of Nevada's application and made a decision, subject to public review and comment, that Nevada's hazardous waste management program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, with respect to the revisions identified below, EPA is authorizing Nevada's hazardous waste management program revisions through this immediate final rule. EPA is publishing this rule to authorize the changes without a prior proposal because we believe that this action is not controversial and do not expect comments that oppose it. In the Proposed Rules section of this **Federal Register**, EPA is also publishing a proposal to authorize these changes to Nevada's hazardous waste management program. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize Nevada's changes to its hazardous waste management program will take effect as provided below. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and the separate document in the proposed rules section of this **Federal Register** will serve as the proposal for purposes of this rulemaking action. EPA

will respond to public comments in a later final rule based on the proposal. Nevada's application for program revision is available for public review and comment. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

**DATES:** Final authorization for Nevada is effective August 12, 2002 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Nevada's program revision application must be received by the close of business July 12, 2002.

**ADDRESSES:** Copies of Nevada's program revision application are available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 W. Nye Lane, Carson City, NV 89710  
Phone: 775/687-5872 Contact Allen Biaggi, Administrator.

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/947-4406.

Written comments should be sent to Lisa McClain-Vanderpool, U.S. EPA Region IX (WST-2), 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/972-3316.

**FOR FURTHER INFORMATION CONTACT:** Lisa McClain-Vanderpool, U.S. EPA Region IX (WST-2), 75 Hawthorne Street, San Francisco, CA 94105 Phone: 415/972-3316.

**SUPPLEMENTARY INFORMATION:****A. Why Are Revisions to State Programs Necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste management program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must revise their programs and ask EPA to authorize the revisions. Revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain

other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Nevada initially received final authorization from EPA on August 19, 1985, effective October 18, 1985 (50 FR 33359), to implement the RCRA hazardous waste management program in Nevada. EPA has also authorized revisions to Nevada's authorized program to reflect changes in the Federal program. Currently Nevada's hazardous waste management program includes Federal changes through July 1, 1997. On March 13, 2000 and November 6, 2001, Nevada submitted final complete program revision applications for changes to the Federal program that occurred between July 1, 1997 and July 6, 1999, seeking authorization of its revisions in accordance with 40 CFR 271.21. This rulemaking action addresses those revisions.

**B. What Decisions Have We Made in This Rule?**

We conclude that Nevada's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nevada final authorization to operate its hazardous waste management program with the changes described in this rulemaking. Nevada has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by HSWA regulations take effect as a matter of federal law in authorized States before those states are authorized for such requirements and prohibitions. Thus, EPA implements those requirements and new prohibitions in Nevada, including issuing permits, until the State is granted authorization to do so.

### C. What Is the Effect of Today's Authorization Decision?

A facility in Nevada subject to RCRA will now have to comply with the authorized State requirements instead of the corresponding Federal requirements in order to comply with RCRA.

Additionally, facilities must comply with any applicable Federally issued requirements, such as, for example, HSWA regulations issued by EPA for which Nevada has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Nevada continues to have enforcement responsibilities under its State law to pursue violations of its hazardous waste management program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements (including State-issued statutes and regulations that are authorized by EPA and any applicable federally-issued statutes and regulations) and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This authorization action does not impose additional requirements on the regulated community because the regulations for which Nevada is being authorized are already effective under State law, and are not changed by today's authorization action.

### D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a

routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. You may not have another opportunity to comment. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize these State program changes.

### E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will then use the proposal mentioned in the previous paragraph in making any further decision on the authorization of the State program changes. EPA will also address all public comments in a later final rule. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste management program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

### F. What Has Nevada Previously Been Authorized for?

Nevada initially received final authorization for the base RCRA program on August 19, 1985 effective October 18, 1985 (50 FR 33359). Nevada has since received authorization for all revisions to the Federal RCRA program

through June 1997. The following **Federal Register** publication and effective dates apply to those revisions: April 29, 1992 effective June 29, 1992 (57 FR 18083), May 27, 1994 effective July 26, 1994 (59 FR 27472), April 11, 1995 effective June 12, 1995 (60 FR 18358), June 24, 1996 effective August 23, 1996 (60 FR 32345) and January 29, 1999 effective March 30, 1999 (64 FR 4596).

### G. What Changes Are We Authorizing With Today's Action?

On March 13, 2000 and November 6, 2001, Nevada submitted final complete program revision applications for changes and additions to the Federal RCRA implementing regulations that occurred between July 1, 1997 and July 6, 1999, seeking authorization of those changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Nevada's hazardous waste management program revision satisfies all of the requirements necessary to qualify for final authorization. These revisions are analogous to the RCRA statutory provisions or Federal RCRA regulations in effect as of July 6, 1999. Upon authorization, the following Nevada hazardous waste management requirements that are either equivalent to or more stringent than the corresponding Federal requirements will apply instead of the Federal requirements:

| Federal requirement   | State analog   |
|---|--|
| Land Disposal Restrictions Phase III-Emergency Extension of the K088 National Capacity Variance, Amendment (62 FR 37694, July 14, 1997) (HSWA) (Checklist 160).   | Nevada Revised Statutes (NRS) 459.485 (1981, amended 1991) and 459.490 (1981, amended 1987, 1993); Nevada Administrative Code (NAC) 444.8632 through 444.8634 and regulations included as Sections 4 of LCB File No. R-124-98 (filed with the Secretary of State on November 2, 1998). |
| Emergency Revision of the Carbamate Land Disposal Restrictions (62 FR 45568, August 28, 1997) (HSWA) (Checklist 161).   | Same as above.   |
| Organic Air Emissions Standards for Tanks, Surface Impoundments and Containers: Clarification and Technical Amendment (62 FR 64636, December 8, 1997) (HSWA) (Checklist 163).   | Same as above.   |
| Kraft Mill Steam Stripper Condensate Exclusion (63 FR 18504, April 15, 1998) (HSWA) (Checklist 164).  | Same as above.   |
| Recycled Used Oil Management Standards: Technical Correction and Clarification (63 FR 24963, May 6, 1998) (Non-HSWA) (Checklist 166).   | Same as above.   |
| Land Disposal Restrictions Phase IV Treatment Standards for Metal Wastes and Mineral Processing Wastes; Hazardous Soils Treatment Standards and Exclusions; Corrections; Mineral Processing Secondary Materials Exclusion; Bevill Exclusion Revisions and Clarification; Exclusion of Recycled Wood Preserving Wastewaters (63 FR 28556, May 26, 1998 and 63 FR 31266, June 8, 1998) (HSWA/Non-HSWA) (Checklists 167 A, B, C, E and F). | Same as above. However, this authorization does not include the mineral processing secondary materials exclusion portion of this rule (Checklist 167D)   |

| Federal requirement  | State analog   |
|--|--|
| Hazardous Waste Combustors Revised Standards (63 FR 33782, June 19, 1998) (Non-HSWA) (Checklist 168).  | Same as above.   |
| Petroleum Refining Process Waste (63 FR 42110, August 6, 1998 and 63 FR 54356, October 9, 1998) (HSWA/Non-HSWA) (Checklist 169).   | Nevada Revised Statutes (NRS) 459.485 (1981, amended 1991) and 459.490 (1981, amended 1987, 1993); Nevada Administrative Code (NAC) 444.8632 through 444.8634 and regulations included as Sections 8 and 9 of LCB File No. R-170-99 (filed with the Secretary of State on January 26, 2000). |
| Land Disposal Restrictions Phase IV—Zinc Micronutrients, Administrative Stay (63 FR 46332, August 31, 1998) (HSWA) (Checklist 170).  | Same as above.   |
| Emergency Revision of the LDR Treatment Standards for Listed Hazardous Waste from Carbamate Production (63 FR 47410, September 4, 1998) (HSWA) (Checklist 171).                  | Same as above.   |
| Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags (63 FR 48124, September 9, 1998) (HSWA) (Checklist 172).                               | Same as above.   |
| Land Disposal Restrictions treatment Standards for Spent Potliners from Primary Aluminum Production (K088), Final Rule (63 FR 51254, September 24, 1998) (HSWA) (Checklist 173). | Same as above.   |
| Post Closure Requirements and Closure Process (63 FR 56710, October 22, 1998) (HSWA/Non-HSWA) (Checklist 174).   | Same as above.   |
| Hazardous Waste Remediation Management Requirements—HWIR Media (63 FR 65874, November 30, 1998) (HSWA/Non-HSWA) (Checklist 175).   | Same as above.   |
| Universal Waste Rule—Technical Amendments (63 FR 71225, December 24, 1998) (Non-HSWA) (Checklist 176).   | Same as above.   |
| Organic Air Emission Standards: Clarification and Technical Amendments (64 FR 3382, January 21, 1999) (HSWA) (Checklist 177).  | Same as above.   |
| Petroleum Refining Process Wastes—Leachate Exemption (64 FR 6806, February 11, 1999) (HSWA) (Checklist 178).   | Same as above.   |
| LDR Phase IV—Technical Corrections and Clarifications to Treatment Standards (64 FR 25408, May 11, 1999) (HSWA/Non-HSWA) (Checklist 179).  |  |
| Test Procedures for the Analysis of Oil and Grease and Nonpolar Material (64 FR 26315, May 14, 1999) (Non-HSWA) (Checklist 180).   | Same as above.   |
| Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps (64 FR 36466, July 6, 1999) (Non-HSWA) (Checklist 181).  | Same as above.   |

**Note:** NRS 459.485 effective 1981, amended 1991; NRS 459.490 effective 1981, amended 1987, 1993. NAC 444.8632 adopts by reference 40 CFR part 2, subpart A; part 124, subparts A and B; parts 260 through 270, inclusive; part 273 and part 279 as modified by NAC 444.8633, NAC 444.8634, 444.86325 and the regulations included as Section 4 of LCB File No. R-124-98 and Sections 8 and 9 of LCB File No. R-170-99 (filed with the Secretary of State on November 2, 1998 and January 26, 2000).

## H. Where Are the Revised State Rules Different From the Federal Rules?

Nevada has adopted by reference the Federal revisions identified above. There are no significant differences between the Federal rules and the revised State rules being authorized today.

## I. Who Handles Permits After the Authorization Takes Effect?

NDEP will issue permits for all the provisions for which it is authorized and will administer the permits it issues. Section 3006(g)(1) of RCRA gives EPA the authority to issue or deny permits or parts of permits for requirements for which the state is not authorized. Therefore, whenever EPA adopts standards under HSWA for activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in Nevada for the new or revised HSWA standards until NDEP has received final authorization for such new or revised HSWA standards. EPA and NDEP have agreed to a joint permitting process for

facilities covered by both the authorized program and standards under HSWA for which the State is not yet authorized, and for handling existing EPA permits after the State receives authorization.

## J. How Does Today's Action Affect Indian Country in Nevada?

Nevada is not being authorized to operate any portion of the hazardous waste management program in Indian country. Nevada is not authorized to carry out its hazardous waste management program in Indian country within the State, which includes the following: The Confederated Tribes of the Goshute Reservation; Duckwater Shoshone Tribe; Ely Shoshone Tribe; Fort McDermitt Paiute and Shoshone Tribes; Fort Mohave Indian Tribe; Las Vegas Tribe of Paiute Indians; Lovelock Paiute Tribe; Moapa Band of Paiute Indians; Paiute-Shoshone Tribe of the Fallon Reservation and Colony; Pyramid Lake Paiute Tribe; Reno-Sparks Indian Colony; Shoshone-Paiute Tribes of Duck Valley Reservation; Summit Lake Paiute Tribe; Te-Moak Tribes of Western

Shoshone Indians; Walker River Paiute Tribe; Washoe Tribe; Winnemucca Indian Colony; Yerington Paiute Tribe; and the Yomba Shoshone Tribe. This authorization action has no effect in Indian country. EPA will continue to implement and administer the RCRA program in Indian country within the State.

## K. What Is Codification and Is EPA Codifying Nevada's Hazardous Waste Management Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart DD for this authorization of Nevada's program changes.

## L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. Furthermore, this rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action authorizes State requirements for the purpose of RCRA Section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. Law 104-4). For the same reason, this action also does not have implication within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste management program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA section 3006(b), EPA grants a State's application for

authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective August 12, 2002.

### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 3, 2002.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

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**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 020311051-2135-02; I.D. 022002C]

**RIN 0648-AN75**

#### **Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Gear Restrictions, Seasonal Area Closure, and Other Sea Turtle Take Mitigation Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) that implements the reasonable and prudent alternative of the March 29, 2001, Biological Opinion (BiOp) issued by NMFS under the Endangered Species Act (ESA). This rule is intended to reduce interactions between endangered and threatened sea turtles and pelagic fishing gear and to mitigate the harmful effects of interactions that occur. The rule applies to the owners and operators of all vessels fishing for pelagic species under Federal western Pacific limited access longline permits (longline vessels) within the U.S. exclusive economic zone (EEZ) and the high seas around Hawaii, as well as those fishing for pelagic species with other types of hook-and-line gear (non-longline pelagic vessels) within the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands (western Pacific region). This rule prohibits the targeting of swordfish north of the equator by longline vessels, closes all fishing to longline vessels during April and May in waters south of the Hawaiian Islands (from 15° N. lat. to the equator, and from 145° W. long. to 180° long.), prohibits the landing or possessing of more than 10 swordfish per fishing trip by longline vessels