Dated: May 16, 2002,

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–14488 Filed 6–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–7223–6]

Clean Air Act Approval of Revisions to Operating Permits Program in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, as a revision to Oregon's title V air operating permits program, a 1999 statute addressing the State's requirements for judicial standing to challenge State-issued title V permits. In a Notice of Deficiency published on November 30, 1998 (63 FR 65783), EPA notified Oregon of EPA's finding that the State's requirements for judicial standing did not meet minimum Federal requirements for program approval. This program revision would resolve the deficiency identified in the Notice of Deficiency. EPA is also proposing to approve, as a revision to Oregon's title V air operating permits program, changes to Oregon's title V regulations made in 1999 that reorganize and renumber the regulations and increase title V fees.

In the Final Rules section of this **Federal Register**, the EPA is publishing its approval as a direct final rule without prior proposal because the Agency views this as a non-controversial determination and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 10, 2002.

ADDRESSES: Written comments should be mailed to Denise Baker, Environmental Protection Specialist, Office of Air Quality, Mailcode OAQ–107, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of Oregon's submittal, and other supporting information used in developing this action, are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality, Mailcode, OAQ–107, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–8087.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: May 22, 2002.

Elbert Moore,

Acting Regional Administrator, Region 10.

[FR Doc. 02–13973 Filed 6–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[F–2001–RDMP–FFFFF; FRL–7228–3]

RIN 2050–AE92

Research, Development, and Demonstration Permits for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to add a new section to the Criteria for Municipal Solid Waste Landfills (MSWLF) to allow states to issue research, development, and demonstration (RD&D) permits for landfill operations at variance with some parts of the MSWLF criteria, provided landfill operators demonstrate that these operations will not result in an increased risk to human health and the environment. EPA is proposing this alternative to promote innovative technologies for the landfilling of municipal solid waste. Variance from the following MSWLF criteria would not be allowed: location restrictions, ground water monitoring, corrective action requirements, the financial assurance criteria, procedures for excluding hazardous waste, and explosive gases control requirements.

DATES: EPA must receive your comments or your comments must be postmarked by August 9, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2002–RDMP–FFFFF to: (1) if using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Commenters are encouraged to submit their comments electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number F–2002–RDMP–FFFFF. You must provide your electronic submittals as ASCII files and avoid the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the ''Supplementary Information'' section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For information on specific aspects of this document: contact Dwight Hlustick, Municipal and Industrial Solid Waste Division of the Office of Solid Waste

(mail code 5306W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, D.C. 20460; 703/308–8647, *hlustick.dwight@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting Materials, and Official Record

The index and the following supporting materials are available on the Internet: ''Finding a Better Cover,'' Stephen F. Dwyer, *Civil Engineering*, January 2001, pages 58–63; ''USEPA Workshop for Bioreactor Landfills, September 6–7, 2000,'' U.S. EPA, September 2001; ''Prediction and Measurement of Leachate Head on Landfill Liners,'' Debra R. Reinhart, Florida Center for Solid and Hazardous Waste Management, Report #98–3, July 1998; ''Technical Resource Document: Assessment and Recommendations for Improving the Performance of Waste Containment Systems,'' EPA, Office of Research and Development, Grant # CR–821448–01–0, February 2002, (R. Bonaparte, D. Daniel, and R. M. Koerner). You can find these materials at: *http://www.epa.gov/epaoswer/non-hw/muncpl/mswlficr/index.htm.*

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Affected Entities.

Entities potentially affected by this action are public or private owners or operators of landfills. Affected categories and entities include the following:

Category	Examples of affected entities
Federal Government.	Agencies procuring waste services
Industry	Owners or operators of municipal solid waste landfills
Municipalities, including Tribal Governments.	Owners or operators of municipal solid waste landfills

This table is a guide for readers that describes which entities are likely to be affected by this action. It lists the types of entities that EPA is aware could potentially be impacted by today's action. It is possible that other types of entities not listed in the table could also be affected. To determine whether you would be impacted by this action, you should carefully examine the applicability criteria. If you have questions about whether this action applies to a particular facility, please consult Mr. Dwight Hlustick, U. S. Environmental Protection Agency, Office of Solid Waste (5306W), 1200 Pennsylvania Ave., SW., Washington, DC 20460, 703 308–8647, *hlustick.dwight@epamail.epa.gov.*

Outline

I. Authority for this Proposed Rule
II. EPA's Role in Developing Municipal Solid Waste Landfill Criteria
III. Proposed Research, Development, and Demonstration Permits
A. Duration of RD&D Permit
B. Size Limitations
C. Testing, Monitoring, and Reporting Requirements
IV. State and Tribal Implementation
V. Applicable statutes and executive orders
A. Executive Order 12866 (Regulatory Planning and Review)
B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.
C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. Executive Order 13132 (Federalism)
F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. National Technology Transfer and Advancement Act of 1995
I. Executive Order 12898: Environmental Justice
J. Executive Order 13211: Energy Effects

I. Legal Authority for This Proposed Rule

The authority for this proposed revision to the Criteria for Municipal Solid Waste Landfills (40 CFR part 258) is sections 1008, 2002(a), 4004, 4005(c) and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6907, 6912(a), 6944, 6945(c), 6949a.

II. EPA's Role in Developing Municipal Solid Waste Landfill Criteria

Subtitle D of the Resource Conservation and Recovery Act (RCRA) provides that states will have the primary authority for regulating municipal solid waste. The role of the federal government is to establish an overall regulatory direction through the development of minimum national standards for nonhazardous solid waste disposal facilities, which include municipal solid waste landfills (MSWLFs). On October 9, 1991, EPA issued revised Criteria for Municipal Solid Waste Landfills (56 FR 50978). These criteria, codified in 40 CFR part 258, establish minimum national standards to ensure that ''no reasonable probability of adverse effects on health or the environment'' will result from solid waste disposal facilities receiving hazardous household waste and small quantity generator hazardous wastes (56 FR 50979). Today, EPA is proposing an amendment to the MSWLF criteria to allow for the issuance of limited permits for research, development, and demonstration projects. States with permit programs determinated to be adequate pursuant to RCRA section 4005(c) and 40 CFR part 239 (''approved States'') would decide whether or not to adopt this provision in their approved programs.

III. Research, Development, and Demonstration Permits

Today's proposed rule would allow the Director of an approved State to issue research, development, and demonstration (RD&D) permits to owners and operators of municipal solid waste landfills. The Director of a non-approved State would not have the option of issuing RD&D permits. EPA is proposing this provision to stimulate the development of new technologies and alternative operational processes for the landfilling of municipal solid waste. This proposed rule would allow the State director to waive specific provisions of the MSWLF criteria, including the (1) operating criteria, except procedures for excluding hazardous waste and explosive gas control in subpart C; (2) the design criteria in subpart D; and (3) the closure and post-closure care criteria in subpart F. In order to issue an RD&D permit waiving any of these criteria, the State Director must be satisfied that a landfill operating under an RD&D permit will pose no additional risk to human health and the environment beyond that which would result from a landfill operating under the current MSWLF criteria. Today's proposed rule is modeled on

the research, development, and demonstration permit provisions in 40 CFR 270.65. That provision allows states with approved hazardous waste management programs to issue RD&D permits for innovative and experimental treatment technologies or processes at hazardous waste treatment facilities.

The permit variance proposed today is similar to that already allowed by some States which have more restrictive or stringent standards than those established in the 1991 MSWLF criteria. However, under the present federal standards set forth in the criteria, these state research permits are very limited in their scope, i.e., state rules cannot be less stringent than the MSWLF criteria. Today's proposed rule would allow more latitude in these existing state programs as well as allowing the development of new programs in other States.

EPA is proposing to allow permits for alternative design and operating requirements because EPA has become aware of new or improved technologies for landfill operations and design since the promulgation of the MSWLF criteria in 1991. These include: (1) Improvements in liner system design and materials; (2) improvements in the design of, and materials used in leachate drainage and recirculation systems; (3) new processes for more rapid degradation of waste which require the addition of water or steam; (4) new liquid distribution techniques (see EPA Docket Number F–2000–ALPA–FFFFF for FR Notice: Alternative Liner Performance, Leachate Recirculation, and Bioreactor Landfills: Request for Information and Data, April 6, 2000, FR18014); and (5) improvements in various monitoring devices (i.e., ''Prediction and Measurement of Leachate Head on Landfill Liners,'' Debra R. Reinhart, Florida Center for Solid and Hazardous Waste Management, Report #98–3, July 1998). As a result, the approved States would have flexibility in allowing the operation of new and innovative technologies in permitting the landfilling of municipal solid waste. The State and the owner/operator must assure there is no increased risk to human health and the environment when instituting any of the new techniques or processes which would be allowed by today's proposed rule changes.

EPA has determined that in order to ensure that human health and the environment are protected, specific criteria developed for municipal solid waste landfills should not be able to be waived. Therefore, today's proposed rule would not allow State directors to deviate from the requirements addressing: (1) Location restrictions in subpart B; (2) ground-water monitoring and corrective action in subpart E; (3) financial assurance in subpart G; (4) explosive gases control in 40 CFR 258.23 of subpart C; and (5) hazardous waste control in 40 CFR 258.20 of subpart C. EPA believes that these provisions are necessary to assure a national minimum level of protection by requiring (1) landfills to be properly located safe distances from airports, outside of wetlands, and floodplains; (2) ground-water to be adequately monitored and corrective action measures to be implemented, if needed; (3) adequate financial safeguards to be in place for closure and post-closure action; (4) explosive gases to be monitored and controlled; and (5) procedures to be in place to prevent the dumping of regulated quantities of hazardous waste in MSW landfills.

An example of a modification to the operation of an MSWLF that would be allowed to be issued under an RD&D permit would be the addition of non-hazardous liquids to accelerate decomposition in a MSWLF unit constructed with an alternative liner (*i.e.*, a liner that complies with the performance design criteria in 40 CFR 258.40(a)(1) rather than a liner that complies with the design specifications in 40 CFR 258.40(a)(2)). This practice is not allowed under the existing municipal landfill criteria. Today's proposed rule would grant State Directors in approved States the authority to issue permits allowing for the addition of these liquids, provided the owner/operator demonstrates that there will be no increased risk to human health and the environment. The MSWLF owner/operator would therefore be required to demonstrate groundwater protection, landfill stability, as well as earlier landfill gas collection and control sooner than is currently required under EPA air regulations (40 CFR part 60, subparts CC and WWW). The plan for landfill gas control would need to be included as a requirement in the RD&D permit.

Another example of a variance for which an RD&D permit could be issued is use of an alternate landfill cover rather than that which is specified in the MSWLF criteria. Although the current regulations provide approved States with flexibility regarding covers for landfills, this proposed rule would allow State directors in approved States additional flexibility, while maintaining the assurance that human health and the environment are protected. EPA believes that flexibility is warranted due to varying climates, topography, and waste handling techniques in approved States. However with additional flexibility, there is the need to more closely monitor the operations of those landfills that have been issued RD&D permits.

EPA has also considered the applicability of this proposed rule to owners/operators of small landfills that are exempt from part 258 subparts D and E as specified in 40 CFR 258.1(f). EPA concluded that these small landfills should also be allowed to apply and receive RD&D permits under today's rule for the following reason: EPA is proposing to allow this because permits will be issued on a site-specific basis and the State Director has the authority to modify or eliminate the above exemptions as is needed to protect human health and the environment. Therefore, the exemptions for these facilities would remain applicable if the owner/operator applies for a permit under today's proposal, unless the State Director determines otherwise.

EPA is not proposing a process or methodology for obtaining an RD&D permit, but is leaving permit application and issuance procedures up to the States wishing to issue these permits. EPA will work with interested States in developing these procedures and will issue guidance if we determine that there is sufficient interest and need for such guidance.

A. Duration of RD&D Permits

Today's proposed rule would limit the duration of initial RD&D permits to three years. EPA believes that three years is an appropriate length of time to initially test and assess the performance of an innovative technology or process in an MSWLF. Similar to the RD&D permit provision for hazardous waste treatment facilities, this rule would allow the permit to be renewed for three years up to three times. Therefore, this proposal would allow for a maximum permit period of 12 years. While this is a relatively short time in the life of a landfill and a longer time may be needed for some projects, EPA believes that this is sufficient time to determine whether a project will be successful in meeting its stated goals. If a project proves successful and the owner/operator and State agree that it should continue longer than 12 years, EPA may develop a site-specific rule or other appropriate regulatory modification to the MSWLF criteria. EPA requests comment on whether three years is an appropriate permit duration and whether three permit renewals for a total project duration of 12 years is also appropriate.

B. Size Limitations

EPA considered placing a size limitation on the RD&D projects to be permitted. This included the area of the landfill, as well as the quantity of waste placed in the landfill. EPA determined that due to the variation in types of projects, limitations based on size of landfill, quantity of waste, or other limitations should be determined by the State Director on a site-specific basis. Therefore, EPA is not proposing to establish any limitations based on size or waste quantity, but rather, recommends that the Directors of approved States consider whether size or capacity limitations are warranted, based on the project goals, in order to protect the environment and human health and stay within the maximum duration of the RD&D permit. However, EPA requests comment on whether there should be any limitations on the size of the landfill or quantity of waste placed in the landfill.

C. Testing, Monitoring, and Reporting Requirements

To ensure that projects operating under an RD&D permit meet the expectations of the research, development, or demonstration project, EPA is also proposing to require that the permittee test, monitor, and submit information to the State Director as specified in the RD&D permit in order for the Director to determine the progress of the project, insure proper operation of the landfill, and assure protection of human health and the environment. EPA is not proposing particular monitoring testing, or recordkeeping requirements, nor does the proposal specify monitoring frequency. The Agency believes that each project should be evaluated individually to determine the appropriate monitoring, testing, and records to be kept, as well as to determine how often such monitoring or testing should take place. Therefore, under the proposed rule, the State Director would make this assessment and include specific monitoring, testing, and recordkeeping requirements in each permit. Similarly, EPA is proposing that the State Director specify the reporting requirements in the permit on a site-specific basis.

As a separate requirement, the proposed rule would require the landfill owner/operator to submit an annual report to the State Director summarizing progress on how well the project is attaining its goals. Examples of goals include environmental protection, cost benefits, community benefits, compost recovery, improved ground water protection, more rapid and/or complete decomposition of waste, improved landfill gas recovery. These goals should be clearly stated in the permit in objective, measurable terms where possible. EPA specifically requests comments on whether these monitoring and reporting requirements are appropriate.

IV. State and Tribal Implementation

The municipal solid waste landfill criteria are implemented in one of two ways. The first, and preferred alternative, is that each State implements the criteria after EPA reviews its municipal solid waste landfill permit program or other system of prior approval and finds it to be adequate pursuant to 40 CFR part 239. The criteria contain provisions that allow States to develop and rely on alternative approaches to address site-specific conditions. Therefore, the actual planning and direct implementation of solid waste programs is principally a function of State governments and those owners and operators, including local governments, of MSWLFs, rather than the federal government. The criteria can also be ''self-implementing'' by landfill owners and operators in those States that have not received EPA approval of their MSWLF permitting programs. In this case, the regulations provide less flexibility for owners and operators. As of January 1, 2002, 49 States and territories had received approval of their programs and are implementing these regulations.

As discussed in a prior Federal Register notice (63 FR 57027, October 23, 1998), Tribes are not included in the definition of State under RCRA, and therefore EPA does not have authority under RCRA to approve tribal MSWLF permitting programs. However, tribes can seek the same flexibility as afforded owners and operators located in approved States through a site-specific rulemaking as discussed in the EPA draft guidance entitled, ''Site Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country,'' EPA530–97–016, August 1997.

Today's proposed rule to allow RD&D permits would not be self implementing. MSWLF owners/operators would only be able to obtain an RD&D permit in approved States that adopt authority to issue such permits. Because today's proposed rule provides more flexibility than existing federal criteria, States would not be required to amend their permit programs which have been determined to be adequate under 40 CFR part 239. States would have the option to amend statutory or regulatory definitions pursuant to today's proposed rule. If a State chooses to amend its statutory or regulatory authority, and if doing so modifies the State's solid waste permit program, the State would be required to notify the EPA Regional Administrator of the modification as provided by 40 CFR 239.12. Whether a State chooses to incorporate today's proposed rule into its solid waste program would have no effect on its existing status with respect to EPA approval, i.e., State revisions to issue RD&D permits will not open previously approved solid waste programs for Federal review.

Tribes may also receive RD&D permits allowed by today's proposed rule similar to owners and operators located in approved States through a site-specific rulemaking outlined in the previously referenced draft guidance document, ''Site Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country.''

V. How Does This Proposed Rule Comply With Applicable Statues and Executive Orders?

A. Executive Order 12866 (Regulatory Planning and Review)

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether a regulatory action is significant and therefore subject to OMB review and the requirements of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Today's proposed rule would allow, but would not require, States to provide RD&D permits to individual MSWLFs. The proposed rule would not require any MSWLF to apply for such a permit, but would provide an opportunity to those MSWLFs seeking to try innovative or new technology or processes with respect to landfilling municipal solid waste.

It has been determined that today's proposed rule is not a significant regulatory action under Executive Order 12866 and is therefore not subject to OMB review. Today's proposed rule would impose no new requirements and is intended to give more flexibility to the regulated community with significant potential net cost savings. Although net cost savings are expected, EPA is unable to estimate the magnitude of the savings because it is yet to be seen how many RD&D permits will be authorized or what kinds of permit changes or innovations might be undertaken.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by NAICS codes 562212 and 924110 (also defined by SIC codes 4953 and 9511) with annual receipts less than 10 million dollars, as defined in accordance with the Small Business Administration (SBA) size standards established for industries listed in the North American Industry Classification System (*see http://www.sba.gov/size/NAICS-cover-page.html*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

SBREFA amended the Regulatory Flexibility Act to require Federal Agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities (SISNOSE). The following discussion explains EPA's determination.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE), since the rule has direct effects only on state agencies. The purpose of this rule is to add flexibility to the MSWLF criteria. This rule would add no new requirements to the MSWLF criteria for either existing or new facilities, nor will it increase costs for new or existing MSWLFs regardless of size. In conclusion, EPA has determined that this rule would not impose significant new burdens on small entities. Instead, this rule is expected to provide net annual benefits (in the form of regulatory relief; potential research, development, and innovation advancements; and long-term benefits) from the voluntary participation by facilities in the private sector.

C. 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 their 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's analysis of compliance with the Unfunded Mandates Reform Act of 1995 found that this proposed rule imposes no additional enforceable burden on any State, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202, 203, and 205 of UMRA.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document will be prepared by EPA and a copy, when completed, may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *auby.susan@epamail.epa.gov,* or by calling (202) 260–2740. A copy can also be downloaded off the internet at *http://www.epa.gov/icr* when it is available.

The ICRs affected by this rule are for 40 CFR parts 239, Requirements for State Permit Program Determination of Adequacy and part 258, MSWLF Criteria. EPA has submitted the ICR for part 239 (ICR# 1608.03, OMB# 2050–152) to OMB for review. EPA included estimates of the cost for approved States to revise their existing program for today's rule. The estimated cost was $5,680 per respondent. EPA is requesting comments from States which plan to make these revisions so that EPA can better understand the expected burden that would be incurred by states who wish to make these changes. EPA is estimating that approximately five states will revise their rules to take advantage of today's proposal. In addition, EPA is also requesting information from MSWLF owners/operators on the reporting burden that they would incur due to this rule under the part 258, MSWLF criteria ICR (ICR# 1381.06, OMB# 2050–0122). Information which States are expected to require include the annual report specified in the rule as well as additional monitoring and testing requirements which may be specified by a State authority. Additional monitoring requirements could include the measurement of leachate head on the liner; landfill temperature at various locations; type, application rate and application method of various wastes including liquid wastes and water that maybe placed in the landfill; additional hydraulic studies; landfill settlement

rate determinations, etc. At present EPA estimates that only two to three landfills a year will be permitted under this proposed rule over the next few years. Reporting requirements are estimated to cost between $15,000 and $25,000 per year per landfill. So total reporting costs are estimated at $30,000 to $75,000 per year for the first year and increasing at a rate of $50,000 per year for the next three years thereafter. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2823); 1200 Pennsylvania Avenue, N.W., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 10, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by July 10, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.''

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, 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. Implementation of this proposed rule by a State would be at the State's discretion and would not be required. Nevertheless, although section 6 of Executive Order 13132 does not apply to this rule, EPA has consulted with States through the Association of State and Territorial Solid Waste Management Officials during the development of this proposal. Thus, Executive Order 13132 does not apply to this proposed rule change.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, 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.''

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule would have no new tribal implications. It would not present any additional burden on the tribes, but would allow more flexibility for compliance with the MSWLF criteria. It would neither impose substantial direct compliance costs on tribal governments, nor preempt State law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it would not affect decisions involving the environmental health or safety risks to children.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide explanations to Congress, through OMB, when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Executive Order 12898: Environmental Justice.

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

The Agency believes that today's proposed rule which would provide for research, development, and demonstration permits for municipal solid waste landfills would not have an adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community since these standards would not significantly affect the location of any solid waste collection facility.

J. Executive Order 13211: Energy Effects

This proposed 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.

List of Subjects in 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Municipal Landfills, Waste treatment and disposal.

Dated: May 31, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, EPA is proposing to amend 40 CFR part 258 as follows:

PART 258—[AMENDED]

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

Authority: 33 U.S.C.1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

2. New § 258.4 is added to part 258 to read as follows

§ 258.4 Research, development, and demonstration permits.

(a) The Director of an approved State may issue a research, development, and demonstration permit for a new or existing municipal solid waste landfill for which the owner or operator proposes to utilize innovative and new methods for operation, design, or landfill cover which vary from any of the following criteria:

(1) The operating criteria in subpart C of this part except the procedures for excluding the receipt of hazardous waste in § 258.20 and the explosive gases control requirements in § 258.23;

(2) The design criteria in subpart D of this part; and

(3) The final cover criteria in § 258.60(a) and (b).

(b) Any permit issued under this section must include such terms and conditions as least as protective as the criteria in the part to assure protection of human health and the environment. Such permits shall:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than three years unless renewed as provided in paragraph (c) of this section;

(2) Provide for the receipt by the landfill of only those types and quantities of municipal solid waste and non-hazardous wastes which the State Director deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) Include such requirements as necessary to protect human health and the environment (including but not limited to, requirements regarding monitoring, design, operation, financial responsibility, closure and post-closure, and remedial action), including such requirements as necessary regarding testing and providing information to the State Director with respect to the operation of the facility;

(4) Require the owner or operator of a landfill permitted under this section to submit an annual report to the State Director showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing requirements as well as any other operating information specified by the State Director in the permit; and

(5) Require compliance with the criteria in subpart B (location restrictions), subpart E (ground water monitoring and corrective action), and subpart G (financial assurance) of this part.

(c) The Director of an approved State may order an immediate termination of all operations at the facility at any time he determines that the overall goals of the projects are not being attained, including protection of human health or the environment.

(d) Any permit issued under this section may not be renewed more than three times by the Director of an approved State. Each such renewal shall be for a period of not more than three years.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals: Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), we, the Fish and Wildlife Service, intend to prepare an EIS to evaluate the effects of authorizing the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*). Pursuant to the Marine Mammal Protection Act (MMPA), we are currently in the process of developing incidental take regulations for government activities related to the operation of watercraft and watercraft access facilities within the geographic area of the species' range in Florida for a period of not more than five years.

DATES: We will consider comments on the proposed Programmatic Environmental Impact Statement that are received by July 25, 2002.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods: