ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[F–97–FLXF–FFFFF; FRL–5865–3]

RIN 2050–AE24

Revisions to Criteria for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Land Disposal Program Flexibility Act of 1996 (LDPFA) directed the Administrator of the U.S. Environmental Protection Agency (EPA) to provide additional flexibility to Approved States for any landfill that receives 20 tons or less of municipal solid waste per day. The additional flexibility applies to alternative frequencies of daily cover, frequencies of methane monitoring, infiltration layers for final cover, and means for demonstrating financial assurance. The additional flexibility will allow the owners and operators of small municipal solid waste landfills (MSWLFs) the opportunity to reduce their costs of MSWLF operation while still protecting human health and the environment. This direct final rule recognizes, as did Congress in enacting the LDPFA, that these decisions are best made at the State and local level and, therefore, offers this flexibility to approved States.

In the proposed rules Section of today's **Federal Register**, EPA is concurrently proposing and soliciting comment on this rule. If adverse comments are received, EPA will withdraw this direct final rule and address the comments in a subsequent final rule. EPA will not provide additional opportunity for comment.

DATES: This final action will become effective on October 27, 1997 unless EPA receives adverse comment by August 28, 1997. If such adverse comment is received, EPA will withdraw this direct final rule by publishing timely notice in the **Federal Register**.

ADDRESSES: 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 Docket Identification Number is F–97–FLXF–FFFFF. 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 more detailed information on specific aspects of this rulemaking, contact Mr. Allen J. Geswein, U.S. Environmental Protection Agency, Office of Solid Waste (5306W), 401 M Street, SW, Washington, D.C. 20460, 703 308–7261, [GESWEIN.ALLEN@EPAMAIL. EPA.GOV].

SUPPLEMENTARY INFORMATION: The index and the following supporting materials are available on the Internet:

Memorandum to: RCRA Docket
From: Allen J. Geswein, Environmental Engineer
Subject: Daily Cover Requirements for MSWLFs
Memorandum to: RCRA Docket
From: Allen J. Geswein, Environmental Engineer
Subject: Landfill Gas Monitoring Requirements for MSWLFs
Memorandum to: RCRA Docket
From: Allen J. Geswein, Environmental Engineer
Subject: Infiltration Layer Requirements for MSWLFs
Memorandum to: RCRA Docket
From: Allen J. Geswein, Environmental Engineer
Subject: Financial Assurance Requirements for MSWLFs

Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/nonhazardous waste
FTP: ftp.epa/gov
Login: anonymous
Password: your Internet address

Files are located in /pub/gopher/OSWRCRA.

Regulated Entities

Entities potentially regulated by this action are public or private owners or operators of municipal solid waste landfills (MSWLFs) that dispose 20 tons or less of municipal solid waste daily, based on an annual average. Regulated categories and entities include the following.

Category	Examples of regulated entities
Industry	Owners or operators of small MSWLFs.
Municipal Governments	Owners or operators of small MSWLFs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities EPA is now 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 your facility would be impacted by this action, you should carefully examine the applicability criteria in the proposal. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Authority

The Agency is promulgating these regulations under the authority of sections 1008(a)(3), 2002(a), 4004(a), and 4010(c) of the Resource

Conservation and Recovery Act (RCRA), as amended, 42 USC 6907(a)(3), 6912(a), 6944(a), and 6949a(c).

II. Background

When EPA promulgated the Revised Criteria for Municipal Solid Waste Landfills on October 9, 1991 (56 FR 50978), the Agency included an exemption for owners and operators of certain small municipal solid waste landfills (MSWLF) units from the Design Criteria (Subpart D) and Ground-Water Monitoring and Corrective Action (Subpart E) requirements of the criteria. To qualify for the exemption, the small landfill could only accept twenty tons or less of municipal solid waste per day (based on an annual average), have no evidence of existing ground-water contamination, and either: (1) Serve a community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or (2) be located in an area that annually receives less than or equal to 25 inches of precipitation and serves a community that has no practicable waste management alternative. In adopting this limited exemption, the Agency believed it had complied with the statutory requirement to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators.

In January 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a petition with the U.S. Court of Appeals, District of Columbia Circuit, for review of the Subtitle D Criteria. On May 7, 1993, the Court of Appeals determined in *Sierra Club* v. *United States Environmental Protection Agency*, 992 F.2d 337 (D.C. Cir. 1993) that under RCRA section 4010(c), the only factor EPA could consider in determining whether facilities must monitor groundwater was whether such monitoring was ''necessary to detect contamination,'' not whether such monitoring is ''practicable.'' Thus, the Court vacated the small landfill exemption as it pertained to ground-water monitoring, and remanded that portion of the final rule to the Agency for further consideration.

Consequently, as part of the Agency's October 1, 1993 final rule (58 FR 51536; October 1, 1993), EPA rescinded the exemption from ground-water monitoring for qualifying small MSWLFs. Also at that time, EPA delayed the effective date of the MSWLF criteria for qualifying small MSWLFs for two years (until October 9, 1995) to allow owners and operators of such small MSWLFs adequate time to decide whether to continue to operate in light of the Court's ruling, and to prepare financially for the added costs if they decided to continue to operate.

On October 6, 1995, EPA issued a final rule extending the general compliance date of the MSWLF criteria for two years, from October 9, 1995 to October 9, 1997, for qualifying small MSWLFs. The purpose of the extension was to allow Approved States time to determine alternative ground-water monitoring requirements for qualifying small MSWLFs. This means that qualifying small MSWLFs are not subject to the requirements of 40 CFR part 258 until October 9, 1997, so long as the MSWLF continues to qualify for the small landfill exemption in 40 CFR 258.1(f)(1). Should a MSWLF no longer meet the conditions of § 258.1(f)(1), that landfill must comply with all of the requirements of 40 CFR part 258, including the design and ground-water monitoring requirements. Until October 9, 1997, owners and operators of qualifying small MSWLFs are subject to the requirements of 40 CFR part 257, Subpart A. Because owners and operators of qualifying small MSWLFs may be subject to more stringent State requirements, these owners and operators are encouraged to work with their respective State programs to understand the regulatory requirements for their facilities.

On March 26, 1996, the President signed the ''Land Disposal Program Flexibility Act'' (LDPFA), Public Law 104–119, which among other things, reinstated the exemption from ground-water monitoring for qualifying small MSWLFs. EPA has issued a final rule reinstating the exemption (61 FR 50410; September 25, 1996).

The law also directed the Agency to issue rules that grant the Director of an Approved State the flexibility to establish alternative requirements for all MSWLFs that receive 20 tons or less of municipal solid waste per day, based on an annual average. **The additional flexibility is not limited to small MSWLFs in dry or remote locations; rather, the alternative requirements may be applied to any MSWLF receiving 20 tons or less of municipal solid waste as determined by the Director of an Approved State.** Specifically, the LDPFA directed EPA to promulgate revisions to existing criteria which would allow an approved State to establish for small MSWLFs alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance. These alternative requirements are to take into account climatic and hydrogeologic conditions and are to be protective of human health and the environment. There is no provision in the LDPFA that directed the Agency to extend the exemption from ground-water monitoring to other than qualifying small MSWLFs; therefore, the exemption from ground-water monitoring will continue to apply only to small MSWLFs in either dry or remote areas. For the reasons set forth in a prior notice, EPA has no plans to extend this exemption to all small MSWLFs (56 FR 50989, October 9, 1991).

III. Summary of the Direct Final Rule

This direct final rule amends the Revised Criteria for Municipal Solid Waste Landfills to allow the Director of an Approved State the ability to grant additional flexibility to small MSWLFs for alternative frequencies of daily cover, alternative frequencies of methane monitoring, and alternative infiltration layers for final cover. When providing this flexibility, the State Director must consider, after public review and comment, the unique characteristics of small communities and take into account climatic and hydrogeologic conditions while ensuring that any alternative requirements are protective of human health and the environment.

The amendments contained in today's direct final rule may be applied by the Director of Approved States to all MSWLFs receiving 20 tons or less of municipal solid waste per day, based on an annual average, as appropriate.

In the proposed rules Section of today's **Federal Register**, EPA is proposing this identical rule and soliciting public comment. If adverse comments are received, EPA will withdraw this direct final rule and address the comments in a subsequent final rule. EPA will not provide additional opportunity for comment.

IV. Description of Direct Final Rule

The purpose of this direct final rule is to allow the Director of an Approved State to establish alternative requirements to certain provisions of the Revised Criteria for Municipal Solid Waste Landfills for small MSWLFs, provided the Director determines that the alternative requirements are protective of human health and the environment.

A. Daily Cover

Section 258.21 currently requires owners or operators to cover disposed solid waste at the end of each operating day, or more frequently if necessary, with six inches of earthen material.

Alternative materials of an alternative thickness may be used when approved by the Director of an Approved State if the owner or operator demonstrates that the alternative material and thickness control disease vectors, fires, odors, blowing litter, scavenging without presenting a threat to human health and the environment. The use of daily cover to control disease vectors, fires, odors, blowing litter, and scavenging has been a requirement of Federal regulations applicable to MSWLFs for nearly twenty years (40 CFR 257.3–6(a) and (c)(4)). At least 45 States have had this requirement for ten or more years.

While the owner or operator is required to place cover on waste at the end of each operating day, the owner or operator can reduce the cost of daily cover by limiting the number of days per week that waste is accepted. If the facility accepts waste for disposal two days per week, then daily cover is required on those two operating days and not on the other days of the week. While § 258.21(c) allows a temporary waiver of daily cover during extreme seasonal climatic conditions, the current rules do not allow the State to substantially alter the requirement that cover be applied on a daily basis.

Consistent with the LDPFA, to provide additional flexibility to Approved States, this rule contains a provision that allows the Director of an Approved State, after public review and comment, to establish alternative frequencies for daily cover for small MSWLFs provided that the Director takes into account climatic and hydrogeologic conditions and determines that the alternative requirements are protective of human health and the environment.

B. Methane Gas Monitoring

The decomposition of municipal solid waste produces methane, an explosive gas. Section 258.23 requires quarterly monitoring for methane gas to control the possibility of an explosion and does not afford the opportunity for the Director of an Approved State to allow monitoring on a less frequent basis. The current rule further requires that if the methane levels exceed the allowable levels, a danger of an explosion may exist, and the Subtitle D Criteria establish the actions that must be taken to control the explosion potential. These allowable levels are based on safety considerations and are derived from allowable concentrations of methane contained in mining regulations. EPA estimates that monitoring can cost less than $100 per quarter.

However, consistent with the LDPFA, this rule contains a provision that allows the Director of an Approved State to establish alternative frequencies of methane monitoring for any small MSWLFs provided that the Director, after public review and comment, takes into account climatic and hydrogeologic conditions and determines that the alternative requirements are protective of human health and the environment.

C. Final Cover and Discussion of Performance Standard in § 258.60(a)(1)

1. Additional Flexibility

Section 258.60(a) establishes a two-part performance standard for final cover of MSWLFs. The final cover must keep the closed facility as dry as possible by reducing infiltration and performs the added function of minimizing maintenance by reducing erosion. Sections 258.60(a) (1) through (3) indicate the types of layers that are known to provide appropriate control. Section 258.60(b) allows the Director of an Approved State to approve alternative designs that provide an equivalent reduction in infiltration and an equivalent protection from wind and water erosion.

The purpose of the performance standard is to reduce the possibility of the ''bathtub effect'' which can lead to ground-water contamination. The ''bathtub effect'' occurs when more liquid enters the MSWLF than escapes causing the MSWLF to fill with liquid. As the unit fills with liquid, more leachate is formed, the hydraulic head in the MSWLF increases, causing the leachate to migrate to groundwater.

The Agency is aware that there may have been misunderstandings regarding the performance standard in § 258.60(a)(1) which addresses the permeability of the final cover system. The most common misconception is that this provision dictates that in all cases the infiltration barrier **must** include a flexible membrane if the landfill contains a flexible membrane liner (FML) or if the permeability of the soil underlying the landfill is comparable to the permeability of an FML. This may not necessarily be true. The Agency believes that in certain site-specific situations it may be possible to construct an infiltration layer that achieves an equivalent reduction in infiltration without matching the permeability in the liner material.

In selecting the alternative infiltration barrier that achieves an equivalent reduction in infiltration, the Director of an Approved State may base the decision on mathematical models (e.g., EPA's Hydrologic Evaluation of Landfill Performance (HELP)) or can utilize mass water balance calculations. The design of a final cover system that minimizes run-on and maximizes factors such as run-off, lateral drainage within the cover system, water storage capacity in the cover, and the ability of the vegetative layer to utilize water may meet the performance standard (''have a permeability less than or equal to the permeability of any bottom liner system'') without the need for a flexible membrane. In making this decision, it may be feasible that the Director of the Approved State could establish an alternative infiltration layer requirement that would be applicable Statewide for MSWLFs or could make the decision on a site-specific basis for individual MSWLFs.

The LDPFA requires that EPA provide additional flexibilities to the Director of Approved States regarding final cover design than that afforded by the current regulations at § 258.60(a)(1). Thus, consistent with the LDPFA, in order to provide this additional flexibility to Approved States, today's rule contains a provision that allows the Director of an Approved State to establish alternative infiltration barriers in the final cover for any small MSWLFs provided that the Director, after public review and comment, takes into account climatic and hydrogeologic conditions and determines that the alternative requirements are protective of human health and the environment.

2. Applicability to ''Qualifying Small MSWLFs'' That Close

In extending the effective date for qualifying small MSWLFs in dry or remote locations, EPA amended section 258.1(d) to exempt such small MSWLFs which stop receiving waste before October 9, 1997 from having to comply with Part 258 requirements except for the final cover requirements in § 258.60(a) [60 FR 52337; October 6, 1995]. Such a qualifying MSWLF would have to complete the final cover requirements within one year (60 FR 52337; October 6, 1995). During the course of developing this direct final rule, a question arose as to whether such a qualifying small MSWLF in a dry or remote location which stops receiving waste prior to the effective date of October 9, 1997 may utilize an alternative final cover design authorized by the Director of an Approved State, including an alternative final cover design for the infiltration layer being addressed in today's rule. This question arose because the language in § 258.1(d)(1) requiring qualifying small MSWLFs to comply with final cover requirements only refers to the requirements under § 258.60(a) which sets forth a federal cover design.

Despite referring only to the federal final cover design standard, EPA intended to provide maximum flexibility in complying with the revised criteria to owners or operators of MSWLFs located in States with approved programs (56 FR 50992; Oct. 9, 1991). This intent extended to allowing MSWLFs located in Approved States to utilize a final cover design which the Director has determined meets the performance standard in § 258.60(b) [56 FR 51040; Oct. 9, 1991]. The final cover requirement for MSWLFs which stop receiving waste prior to the effective date is consistent with many State programs, thus, EPA believes that qualifying small landfills which stop receiving waste prior to October 9, 1997 may utilize any of the final cover designs, including an Approved State alternative for the infiltration layer as specified in today's rule, which meet the performance standards in § 258.60(b).

D. Financial Assurance

Subpart G of Part 258 contains the Financial Assurance requirements applicable to MSWLFs. As noted in the preamble to the Revised Criteria for Municipal Solid Waste Landfills (56 FR 51104; October 9, 1991), EPA has determined that financial responsibility is a necessary component of the regulatory program and is essential to protecting human health and the environment. Further, EPA considered its requirements as the minimum that it considered necessary. ''The financial assurance requirements in today's rule have been structured such that the assurance is required only for costs of activities that are certain to be needed, and the amount of financial assurance is based on site-specific estimates of the costs of closure, post-closure care, and corrective action. Less stringent financial assurance requirements would not ensure that adequate funds will be available when needed to cover these costs.'' (56 FR 51105; October 9, 1991). Having adequate funds available is necessary since, ''Technical requirements are effective in protecting human health and the environment only if funds are available in a timely manner to conduct these activities'' (*ibid*). EPA was and remains concerned that a general relaxation of the standards beyond the considerable flexibility EPA is already providing might not be protective.

However, EPA's rules allow States to adopt a range of approaches that would also be protective and promote compliance by all owners and operators. In establishing its financial assurance regulations for MSWLFs, EPA provided several federally specified mechanisms, and the option for States to determine mechanisms that would meet a highly flexible performance standard. This performance standard allows the Director of an Approved State to approve any financial mechanism that (a) ensures sufficient coverage, (b) ensures funds are available in a timely fashion when needed, (c) is obtained by the deadline, and (d) is legally valid, binding, and enforceable. EPA encouraged State Directors to consider adopting a broad range of financial approaches to promote compliance by all owners and operators.

Generally, these requirements became effective for MSWLFs on April 9, 1997, although there is a provision that delays the effective date for qualifying small MSWLFs until October 9, 1997. Additionally, EPA recently published an amendment (61 FR 60327; November 27, 1996) to the Criteria that allows the Director of an Approved State to delay the effective date of the Financial Assurance requirements for an additional 12 months beyond the April 9, 1997 effective date, if the owner or operator demonstrates to the Director of an Approved State that the applicable effective date does not provide sufficient time to comply with these requirements and that such a waiver will not adversely affect human health and the environment.

The November 27, 1996, amendment also established a financial test for local governments, including local governments that own or operate small MSWLFs. This test allows a local government to use its financial strength to avoid incurring the expenses associated with the use of a third-party financial instrument (61 FR 60327).

Additionally, this summer EPA intends to promulgate a regulation providing a financial test and corporate guarantee as a mechanism private owners and operators of MSWLFs may use to demonstrate financial assurance. This test will extend to private owners and operators the regulatory flexibility already provided to municipal owners or operators of MSWLFs. These regulations would allow a firm to demonstrate financial assurance by passing a financial test. For firms that qualify for the financial test, this mechanism will be less costly than the use of a third party financial instrument such as a trust fund or a surety bond.

EPA believes that considerable additional flexibility has been or soon will be afforded to the Director of Approved States. These changes include the following;

a. the additional flexibility to extend the effective date for financial assurance, as described above,

b. the local government test, and

c. the corporate financial test.

These flexibilities coupled with the flexibility available to Directors of Approved States in the Criteria for MSWLFs promulgated on October 9, 1991, also described above, provide the flexibility contemplated by the LDPFA. Thus, today's rule does not include any additional changes to the Financial Assurance requirements. As described above, EPA will establish an additional area of flexibility when the corporate financial test is promulgated later this fiscal year.

V. Consideration of Issues Related to Environmental Justice

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 does not currently have data on the demographics of populations surrounding the small MSWLFs affected by today's rule. The Agency does not believe, however, that today's rule granting additional flexibility to owners and operators of small MSWLFs will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community. In addition, any minority group or low-income group affected by alternative requirements will have an opportunity to review and comment on the alternative requirement proposed by the Director of the Approved State prior to its implementation. The Agency believes that this rulemaking will enable some minority and/or low-income communities to continue to be served by a local landfill at the lowest possible cost to residents, including minority and low income residents.

VI. Impact Analysis

A. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to OMB review and the other

provisions 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.

The Agency believes that this direct final rule does not meet the definition of a major regulation because it does not have an annual effect on the economy of $100 million or more; nor does the rule fall within the other definitional criteria for a significant regulatory action described above. The rule is deregulatory and will result in requirements applicable to specific MSWLFs that are protective of human health and the environment at a lower cost than would be the case without the additional flexibility afforded by these amendments. For this reason, the Agency is not conducting a Regulatory Impact Analysis.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse impact on a substantial number of small entities.

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. The following discussion explains EPA's determination.

Implementation of the various requirements imposes increased costs on small MSWLFs and the small communities, including small Indian Tribes, that they serve. MSWLFs that dispose of 20 TPD of waste generally serve populations of 10,000 persons or less (based on a waste generation rate of 4 pounds per person per day). Because these owners/operators may lack practicable solid waste management alternatives, such as the option of joining regional waste management systems, these communities may have been required to absorb higher than necessary costs of compliance in the absence of the additional flexibility afforded by today's rule.

The effect of this rule is to provide small entities with additional flexibility to meet the requirements of Part 258. The rule does not impose new burdens on small entities. Therefore, pursuant to 5 U.S.C. 605b, I hereby certify that this rule will not have a significant adverse impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Agency has determined that there are no new reporting, notification, or recordkeeping provisions associated with today's final rule.

D. Executive Order 12875

Under Executive Order 12875, Federal agencies are charged with enhancing intergovernmental partnerships by allowing State and local governments the flexibility to design solutions to problems the citizenry is facing. Executive Order 12875 calls on Federal agencies to either pay the direct costs of complying with Federal mandates or to consult with representatives of State, local, or Tribal governments prior to formal promulgation of the requirement. The Executive Order also relates to increasing flexibility for State, Tribal, and local governments through waivers. Today's notice grants additional flexibility in complying with the MSWLF criteria, does not impose unfunded federal mandates on State, Tribal, and local governments, and is being undertaken to ensure that EPA is providing maximum flexibility to States, Tribes, and local governments. Additionally, the Agency has maintained a dialog with States, Tribes, and local governments regarding ways of ensuring appropriate flexibility while maintaining protection of human health and the environment for small MSWLFs. Therefore, the Agency believes that this consultation with States, Tribes, and local governments, in addition to the public comment period provided in the proposed rules section of today's **Federal Register**, satisfies the requirement of this Executive Order.

E. Unfunded Mandates

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

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. In fact, today's rule provides States with additional flexibility that will lower the cost of compliance with the Criteria for Municipal Solid Waste Landfills. In accordance with section 203, EPA has worked closely with the States in the development of this rule.

F. Small Business Regulatory Enforcement Act of 1996 (SBREFA)

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Act of 1996, before this

rule takes effect, EPA has submitted a report containing this rule and other required information to the U.S. Senate, U.S. House of Representatives, and the Comptroller General of the General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 258

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

Dated: July 23, 1997.

Carol M. Browner,

Administrator.

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

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

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

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

2. Section 258.21 is amended by adding a new paragraph (d) to read as follows:

§ 258.21 Cover material requirements.

* * * * *

(d) The Director of an Approved State may establish alternative frequencies for cover requirements in paragraphs (a) and (b) of this section, after public review and comment, for any owners or operators of MSWLFs that dispose of 20 tons of municipal solid waste per day or less, based on an annual average. Any alternative requirements established under this paragraph must:

(1) Consider the unique characteristics of small communities;

(2) Take into account climatic and hydrogeologic conditions; and

(3) Be protective of human health and the environment.

3. Section 258.23 is amended by adding a new paragraph (e) to read as follows:

§ 258.23 Explosive gases control.

* * * * *

(e) The Director of an Approved State may establish alternative frequencies for the monitoring requirement of paragraph (b)(2) of this section, after public review and comment, for any owners or operators of MSWLFs that dispose of 20 tons of municipal solid waste per day or less, based on an annual average. Any alternative monitoring frequencies established under this paragraph must:

(1) Consider the unique characteristics of small communities;

(2) Take into account climatic and hydrogeologic conditions; and

(3) Be protective of human health and the environment.

4. Section 258.60 is amended by adding a new paragraph (b) (3) to read as follows:

§ 258.60 Closure criteria.

* * * * *

(b) * * *

(3) The Director of an Approved State may establish alternative requirements for the infiltration barrier in a paragraph (b)(1) of this section, after public review and comment, for any owners or operators of MSWLFs that dispose of 20 tons of municipal solid waste per day or less, based on an annual average. Any alternative requirements established under this paragraph must:

(i) Consider the unique characteristics of small communities:

(ii) Take into account climatic and hydrogeologic conditions; and

(iii) Be protective of human health and the environment.

* * * * *

[FR Doc. 97–19942 Filed 7–28–97; 8:45 am]

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