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). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. 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. 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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 28, 2002.

**Winston A. Smith,**

*Acting Regional Administrator, Region 4.*

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart L—Georgia

2. a. In the table in § 52.570(d), the following entries are revised: William L. Bonnell Co.

The revision reads as follows:

**§ 52.570 Identification of plan.**

* * * * *

(d) * * *

EPA APPROVED GEORGIA SOURCE—SPECIFIC REQUIREMENTS

| Name of source | Permit No. | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| William L. Bonnell | 3354–038–O conditions 17 through 32 | 10/7/99 | 07/11/02 [and FR Cite]. | |
| * | * | * | * | * |

[FR Doc. 02–17455 Filed 7–10–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 258

**[F–2002–AIRF–FFFF; FRL–7227–9]**

**RIN 2050–AE91**

## Municipal Solid Waste Landfill Location Restrictions for Airport Safety

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to amend the location restriction requirements in the criteria for municipal solid waste landfills (MSWLFs). EPA is amending this provision in order to incorporate new landfill siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act). The Ford Act siting restrictions apply to specified smaller public airports to address the potential hazard that birds attracted to MSWLFs may pose to aircraft operations. Today's amendment does not affect existing MSWLFs.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to this rule in the event the public chooses to file adverse comments. In that event, we will address all public comments in a subsequent final rule based on the proposed rule; and, we will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** This direct final rule is effective on October 9, 2002, without further notice, unless EPA receives adverse comment by August 12, 2002. If adverse comment is received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** This section provides addresses regarding: (1) Where and in what form you should submit responses to today's direct final rule and (2) where you can view public comments responding to this rule. Please reference RCRA Docket No. F–2002–AIRF–FFFF in your comments. You may submit your comments (1) in hard copy (paper) either by mail or by hand or (2) using electronic mail, as follows:

- Mail: Submit an original and two hard copies to the RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Deliveries: Submit an original and two hard copies to the RCRA Information Center (RIC), Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia 22202.
- Electronic Submissions: Via the Internet to: *rcra-docket@epa.gov.* Comments in electronic format should also be identified by RCRA Docket No. F–2002–AIRF–FFFF. You must provide your electronic submissions as ASCII files; and, you must avoid the use of special characters and any form of encryption.

See the **SUPPLEMENTARY INFORMATION** section for information about where and how you can view the docket for this rule, including electronic access to some of the information such as the docket index and supporting documents.

**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, D.C., metropolitan area, call 703–412–9810 or TDD 703–412–3323 (hearing impaired).

For information on specific aspects of this rule, contact Mary T. Moorcones, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: 540–338–1348; e-mail: <*moorcones.mary@epamail.epa.gov*>.

Some information about this rule can also be accessed via the Internet at: <*http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/airport.htm*>.

**SUPPLEMENTARY INFORMATION:**

## Regulated Entities

Entities potentially regulated by this action are public or private individuals or groups seeking to construct or establish new municipal solid waste landfills (MSWLFs) near specified airports after April 5, 2000. Affected categories and entities include the following:

| Category | Examples of regulated entities |
|---|---|
| Federal Government | Agencies constructing or establishing new MSWLFs within six miles of a public airport. |
| State, Local and Tribal Government | Governments constructing or establishing new MSWLFs within six miles of a public airport. |

The table above is not intended to be exhaustive but rather to provide examples of entities likely to be regulated by this action. To determine whether your facility would be impacted by this action, you should carefully examine the applicability criteria in the rule. If you have questions regarding the applicability of this action to a particular facility, please contact Mary T. Moorcones, U.S. Environmental Protection Agency, Office of Solid Waste (5305W), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: 540–338–1348; e-mail: <*moorcones.mary@epamail.epa.gov*>. Entities considering construction or establishment of a new MSWLF also should contact the Federal Aviation Administration (FAA) to determine if an airport within six statute miles of the new MSWLF meets the criteria established by FAA to comply with the statute. The FAA can be contacted at the FAA's Office of Airport Safety and Standards, Airport Safety and Certification Branch, at 800–842–8736, Ext. 73085 or via e-mail at <*WebmasterARP@faa.gov*>.

## Acronyms

The full names for the acronyms used in this document are:

| Acronym | Definition |
|---|---|
| AC | Federal Aviation Administration Advisory Circular 150/5200–34, together with its Appendix 1, dated August 26, 2000. |
| CFR | The United States Code of Federal Regulations. |
| EPA | The United States Environmental Protection Agency. |
| FAA | The United States Federal Aviation Administration. |
| Ford Act | Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. |
| MSWLF | Municipal Solid Waste Landfill. |
| NTTA | National Technology and Transfer Act of 1995. |
| OMB | The United States Office of Management and Budget. |
| RCRA | The Resource Conservation and Recovery Act. |
| RIC | Resource Conservation and Recovery Act Information Center. |
| UMRA | Unfunded Mandates Reform Act of 1995. |
| U.S. | United States. |
| U.S.C. | United States Code. |

## Where To Find and View Information About This Rule

All documents in the docket for this rulemaking, including public comments, are available for review 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 the docket materials in person, we recommend that the public make an appointment by calling 703–603–9230. The public can hard copy a maximum of 100 pages from the docket at no charge. Additional copies cost $0.15/page.

You can access the Index to the docket and the supporting documents electronically on the Internet at: <*http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/airport.htm*>. If you access the information electronically, you can download or print copies free of charge.

## Preamble

*Outline*

I. Legal Authority for Today's Direct Final Rule
II. Why We Are Amending the MSWLF Location Restrictions for Airport Safety
III. Description of Current Regulations Before Today's Action
IV. Description of Today's Amendment to MSWLF Location Restrictions for Airport Safety Criteria for MSWLFs
A. Landfills to Which the New Restrictions Apply
B. Exemptions to the Limitations
V. How the States and Tribes Implement This Rule

VI. Why Today's Rule is Direct Final Promulgation Without Prior Proposal
VII. Applicability of Relevant Statutes and Executive Orders to Today's Rule
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act
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 & Advancement Act of 1995
I. Executive Order 12898: Environmental Justice
J. Executive Order 13211: Energy Effects
K. Congressional Review Act

## I. Legal Authority for Today's Direct Final Rule

The EPA is promulgating this rule under Sections 1008(a), 2002 (general rule making authority), and 4004 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6907(a), 6912, 6944.

## II. Why We Are Amending the MSWLF Location Restrictions for Airport Safety

On April 5, 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Public Law 106–181. Section 503 of the Ford Act includes a provision limiting the ''construction or establishment'' of municipal solid waste landfills (MSWLFs) within six miles of certain smaller public airports. The FAA issued guidance regarding the requirements of the Ford Act in FAA Advisory Circular (AC) 150/5200–34 (August 26, 2000). Today's rule incorporates the statutory requirement into EPA's Criteria for Municipal Solid Waste Landfills, 40 CFR part 258. Specifically, we are amending the location restriction requirements pertaining to airport safety found in § 258.10 of the criteria by adding this new location restriction to the existing location restrictions.

Section 503 of the Ford Act was enacted to address the potential hazard posed to aircraft by birds attracted to landfills. According to the Federal Aviation Administration (FAA), an estimated 87 percent of the collisions between wildlife and civil aircraft occurred on or near airports when aircraft were less than 2,000 feet above ground level. Collisions with wildlife at these altitudes are especially dangerous because aircraft pilots have minimal time to recover. Databases managed by the FAA and the United States Air Force show that more than 54,000 civil and military aircraft reported strikes with wildlife from 1990 to 1999 (FAA AC No. 150/5200–34).

## III. Description of Current Regulations Before Today's Action

40 CFR 258.10 sets forth location restrictions for MSWLFs to address airport safety. Section 258.10(a) and (c) contain requirements for new MSWLFs, existing MSWLFs and lateral expansions of landfills that are located within 10,000 feet of any airport runway used by turbojet aircraft or within 5,000 of any airport runway used only by piston-type aircraft. Owners or operators of such landfills are required to (1) demonstrate that the MSWLFs are designed and operated so as not to ''pose a bird hazard to aircraft,'' (2) place a copy of the demonstration in the MSWLF operating record, and (3) notify the State Director that it has been placed in the operating file. ''State Director'' is defined as ''the chief administrative officer of the lead state agency responsible for implementing the state permit program for 40 CFR part 257, subpart B and 40 CFR part 258 regulated facilities.''

Section 258.10(b) applies to new MSWLFs and lateral expansions proposed to be constructed within a five-mile radius of the end of any airport runway used by turbojet or piston-type aircraft. For such proposed new MSWLFs and lateral expansions, the owner or operator must notify the affected airport and the FAA.

Section 258.10(d) defines ''airport'' to mean a ''public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.'' This subsection also defines ''bird hazard.''

## IV. Description of Today's Amendment to MSWLF Location Restrictions for Airport Safety

Today's direct final rule adds a new paragraph (e) to § 258.10 that incorporates the location restrictions enacted in Section 503 of the Ford Act prohibiting construction or establishment of a new MSWLF within six miles of a ''public airport.'' A ''public airport'' is one that: (1) Has received grants under the Airport and Airway Improvement Act of 1982, as amended (chapter 471, 49 U.S.C. 47101, et seq.) and (2) is primarily served by general aviation aircraft and regularly scheduled air carrier operations that use aircraft designed for 60 passengers or less. Today's direct final rule applies to MSWLFs (as defined in 40 CFR 257.3 through 257.8) that receive putrescible waste (as defined in 40 CFR 257.3 through 257.8).

### *A. Landfills to Which the New Restrictions Apply*

The new six (6) mile restriction only applies to new MSWLFs constructed or established after April 5, 2000. ''Construct a MSWLF'' is defined as in Appendix 1 of the FAA AC No. 150/5200–34 as ''excavate or grade land, or raise structures, to prepare a municipal solid waste landfill as permitted by the appropriate regulatory or permitting authority.'' ''Establish a MSWLF'' is defined in Appendix 1 of the AC as a MSWLF that ''receives[s] the first load of putrescible waste on site for placement in a prepared municipal solid waste landfill.''

To determine whether an airport in the vicinity of a proposed MSWLF is an airport that is subject to the Ford Act, the landfill owner or operator should contact the FAA. As the FAA guidance indicates, those airports covered by the Ford Act do not fall into a classification or category that has been established by the FAA or other legislation. See FAA AC No. 150/5200–34, section 8. If the airport in question does not meet the definition in the Ford Act, then today's rule does not apply to the proposed landfill. If the airport in question meets the Ford Act definition, then the proposed landfill must be located at least six miles from the airport. The AC also provides guidance for determining whether a new MSWLF falls within the six mile range. The six mile distance is to be measured from ''the closest point of the airport property boundary to the closest point of the MSWLF property boundary. (FAA AC No. 150/5200–34, section 9.)

### *B. Exemptions to the Limitations*

The six mile siting limitation does not apply to: (1) A MSWLF where construction or establishment began on or before April 5, 2000; (2) an existing MSWLF that received putrescible waste on or before April 5, 2000; (3) an existing MSWLF (constructed or established before April 5, 2000) that is expanded or modified after April 5, 2000; or (4) MSWLFs in the State of Alaska. In addition, the aviation agency of the state in which the airport is located can request an exemption from the six mile limitation from the FAA for a new MSWLF. Section 10 of FAA AC No. 150/5200–34 sets out the procedure for applying for an exemption.

New MSWLFs that are not subject to the six mile siting limitation, including those in the State of Alaska, continue to be subject to the landfill siting criteria at 40 CFR 258(a)–(d).

## V. How the States and Tribes Implement This Rule

EPA recognizes that today's rule and the language in the Ford Act are more stringent than the existing § 258.10 location restrictions, because the boundary for newly constructed or established MSWLFs is moved from five to six miles from certain airports. However, EPA does not deem this change to be significant. This provision concerns only new MSWLFs constructed or established after April 5, 2001; and, EPA does not expect many new landfills to be constructed, and expects fewer still to be located in the vicinity of an airport defined in section 503 of the Ford Act. In addition, EPA notes that the statutory restriction in section 503 of the Ford Act applies to such new MSWLFs regardless of whether EPA incorporates its terms into the MSWLF criteria. Therefore states are not required to amend permit programs which have been determined to be adequate under 40 CFR part 239. States however have the option to amend statutory or regulatory definitions pursuant to today's direct final rule. If a state chooses to amend its permit program pursuant to today's action, the state must notify the Regional Administration of the modification as provided by 40 CFR 239.12. Today's amendments are directly applicable to landfills in states without an approved permit program under part 239 and in Indian Country. We also encourage tribes to adopt today's amendments into their programs.

## VI. Why Today's Rule Is Direct Final Promulgation Without Prior Proposal

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment because it simply incorporates the legislative directive of the Ford Act. EPA is making this change in order to eliminate potential confusion between the new requirements under the Ford Act and the MSWLF criteria, promulgated in 1991 pursuant to the Resource Conservation and Recovery Act (RCRA).

However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to amend the location restrictions' provision of the MSWLF criteria in the event adverse comments are received. This final rule will be effective on October 9, 2002, without further notice unless we receive adverse comment on the direct final rule by August 12, 2002. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. A comment will be considered adverse if it: (1) Is negative and addresses the basis or purpose of the direct final rule; (2) suggests that the rule should not be adopted or offers facts or data contrary to the basis upon which EPA relied in issuing the direct final rule; (3) recommends changes that suggest that the rule without these changes would be inappropriate; and (4) is germane. A comment is not adverse if it: (1) Is not clearly related to the subject of the rule and/or (2) supports the rule or is irrelevant to the rule (e.g., a comment addressing an aspect of the program not considered in the rule).

## VII. Applicability of Relevant Statutes and Executive Orders to Today's Rule

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the other provisions of the Executive Order. Executive Order 12866 defines a significant regulatory action as one that is likely to result in actions 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 the rights and obligations of 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 the Executive Order.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. Today's rule, deals only with siting of future individual MSWLFs after the statute's passage, does not have an adverse impact on the economy, the environment, the public, or governments. Similarly, it neither interferes with other agencies nor impacts other programs, the President's priorities, or legal mandates. Indeed, today's direct final rule codifies a legal mandate that enhances public safety and is more protective of wildlife than doing nothing.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, 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). The regulatory flexibility analysis is not required if the head of an agency certifies that the rule will not have a significant adverse impact on a substantial number of small entities. If the agency certifies that there is no such impact, the agency must provide a statement of the factual basis for the certification.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

The following discussion explains EPA's factual basis for our certification that the rule will not have a significant adverse impact on a substantial number of small entities. This direct final rule does not impact any existing MSWLFs, only future construction and establishment of MSWLFs begun after the date of the enactment of the statute (April 5, 2000). There will be no added costs to those entities involved in establishing or constructing new MSWLFs because this direct final rule will not increase the requirements for landfills begun on or before the enactment of the statute; it will only affect their location. Similarly, it will not increase requirements for existing landfills, regardless of size. As a result, today's direct final rule will not impose significant new burdens on small entities. Therefore, for the reasons stated above, the EPA certifies that the rule will not have a significant impact on a substantial number of small entities.

### *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 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—either 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 above requirements 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: (1) Notifying potentially affected small governments; (2) 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 (3) informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule does not contain any federal mandates that are covered under the regulatory provision of Title II of the UMRA that apply to state, local, or tribal governments or the private sector. The rule does not impose any additional enforceable duty on any state, local, or tribal governments or on the private sector. Thus, today's direct final rule is not subject to the requirements of Sections 202 and 205 of UMRA.

*D. Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, requires the federal government (and thus EPA) to minimize the paperwork burden resulting from any collection of information by or for the federal government. Under 44 U.S.C. 3501 *et seq.*, EPA must submit a request to collect the information, together with a copy of the rule, to the Office of Management and Budget (OMB) in those cases where EPA is collecting information in a notice of proposed or final rule making. EPA does not plan to submit an ICR to OMB for review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because there are no information collection requirements associated with today's direct final rule.

*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.'' The phrase, ''policies that have federalism implications,'' is 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.''

Today's direct final rule does not have federalism implications. It 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. The direct final rule does not impose any requirements, implementation duties, enforcement duties, monitoring requirements, or reporting requirements on states. Thus, Executive Order 13132 does not apply to this direct final rule.

*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 or 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.

This direct final rule does not have tribal implications, as specified in Executive Order 13175. Today's action incorporates requirements that are already in effect pursuant to the Ford Act. Thus, Executive Order 13175 does 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 must explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

This direct final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action, i.e., hazards to aircraft from birds attracted to municipal solid waste landfills, present a disproportionate risk to children.

*H. National Technology Transfer and Advancement Act of 1995*

Section 2(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTA''), Public Law 104–113, Section 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 would be 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 NTTA directs EPA to provide Congress, through OMB, explanations when the EPA decides not

to use available and applicable voluntary consensus standards.

Today's direct final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*I. Executive Order 12898: Environmental Justice*

EPA has undertaken to incorporate environmental justice into its policies and programs through: (1) Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''; (2) EPA's April 1995, ''Environmental Justice Strategy, Office of Solid Waste and Emergency Response Environmental Justice Task Force Action Agenda Report''; and (3) the National Environmental Justice Advisory Council. EPA is committed to addressing environmental justice concerns, and has assumed 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: (1) 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 (2) that all people live in clean and sustainable communities. The EPA believes that today's direct final rule, which conforms the language in 40 CFR 258.10 to the Ford Act, has no adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community. These standards would not affect the location of any MSWLF other than to prohibit the location of MSWLFs within six miles of a public airport as defined in the direct final rule.

*J. Executive Order 13211: Energy Effects*

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' because it is not a significant regulatory action under Executive Order 12866.

*K. Congressional Review Act*

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 the U.S. Senate, the U.S. House of Representatives, and to the Comptroller General of the United States. Additionally, under Section 804, a major rule cannot take effect until 60 days after it is published in the **Federal Register**.

Accordingly, EPA submitted a report containing today's direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. Although this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2), this rule will be effective October 9, 2002, unless EPA publishes a withdrawal in the **Federal Register**.

**List of Subjects in 40 CFR Part 258**

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 31, 2002.

**Christine Todd Whitman,**

*Administrator.*

For the reasons discussed in the preamble, title 40 Chapter 1 of the Code of Federal Regulations, is amended 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. Section 258.10 is amended by adding paragraph (e) to read as follows:

**§ 258.10 Airport safety.**

* * * * *

(e) A new MSWLF unit that receives putrescible waste shall not be constructed or established after April 5, 2000 within six (6) miles of a public airport that has received federal grant funds under 49 U.S.C. 47101 and is primarily served by general aviation aircraft and regularly scheduled flights of aircraft designed for sixty (60) passengers or less. The Federal Aviation Administration has issued guidance which includes criteria for determining when an airport is covered and has identified those airports meeting the criteria. Anyone considering construction or establishment of a new MSWLF within six (6) miles of a public airport should contact the Federal Aviation Administration. This paragraph (e) does not apply to a new MSWLF unit if:

(1) The state aviation agency of the state in which the airport is located requests that the Administrator of the Federal Aviation Administration exempt the landfill from the application of this paragraph (e), and the Federal Aviation Administration Administrator determines that such exemption would have no adverse impact on aviation safety;

(2) The new MSWLF unit is to be constructed or established in the State of Alaska; or

(3) The new MSWLF unit is a lateral expansion of an existing MSWLF unit constructed or established as of April 5, 2000.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 011218304–1304–01; I.D. 070802A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific ocean perch in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 8, 2002, through 2400 hrs, A.l.t., December 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of Pacific ocean perch for the West Yakutat District was established as 780 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR