

NEW MEXICO—OZONE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
AQCR 153 El Paso-Las Cruces-Alamogordo: Dona Ana County (part)—The area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, the Range 3E—Range 2E line on the west, and the N3200 latitude line on the north.	July 12, 1995 ..	Nonattainment	July 12, 1995 ..	Marginal
Remainder of Dona Ana County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Otero County		Unclassifiable/Attainment.		
Sierra County		Unclassifiable/Attainment.		

¹ This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95-24875 Filed 10-5-95; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 258

[FRL-5312-9; F-95-AGDP-FFFFF]

RIN 2050-AE24

Delay of General Compliance Date for Small Municipal Solid Waste Landfills Located in Either Dry or Remote Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 10, 1995, the U.S. Environmental Protection Agency (EPA) published a proposed rule to provide to approved States and Tribes the flexibility to determine alternative ground-water monitoring requirements, on a site-specific basis, for small municipal solid waste landfills (MSWLFs) that are located in either dry or remote areas (hereafter referred to as "qualifying small MSWLFs"). The proposed rule also solicited comments on a two-year delay, until October 9, 1997, of the general compliance date of the MSWLF criteria for qualifying small MSWLFs to allow EPA time to finalize the proposed alternatives. Today's rule finalizes only the delay of the compliance date.

EFFECTIVE DATE: The amendments in this final rule are effective October 2, 1995.

ADDRESSES: The public record for this rulemaking may be found in public docket number F-95-AGDP-FFFFF. All dockets are available for viewing in the RCRA Information Center (RIC), located in Room M2616, U.S. EPA, 401 M Street SW., Washington, DC 20460. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an

appointment to view docket materials. Call 202-260-9327 for an appointment. Copies cost \$0.15 per page for materials exceeding 100 pages.

FOR FURTHER INFORMATION CONTACT: For general questions on this rule, contact the RCRA/Superfund Hotline at 1-800-424-9346, TDD 1-800-553-7672 (hearing impaired); in the Washington, DC metropolitan area the number is 703-412-9810, TDD 703-412-3323. For technical questions, contact Mr. Andrew Teplitzky (703-308-7275) or Mr. Allen Geswein (Phone 703-308-7261): Office of Solid Waste, U.S. Environmental Protection Agency, Mail Code 5306W, 401 M St. SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

- I. Authority
- II. Background
 - A. 40 CFR Part 258 and Small Landfill Exemption
 - B. Summary of Proposed Rule on Alternative Ground-Water Monitoring and Delay of General Compliance Date
 - C. Details of Proposal to Delay the General Compliance Date
- III. Response to Comments and Analysis of Issues Related to the Extension of the General Compliance Date for Qualifying Small MSWLFs
 - A. Comments Regarding the Two-Year General Compliance Date Extension
 - B. Comments Regarding the Two-Year Limited Extension
- IV. Summary of This Rule
- V. Consideration of Issues Related to Environmental Justice
- VI. Impact Analysis
 - A. Executive Order 12866
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Executive Order 12875
 - E. Unfunded Mandates

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 U.S.C. 6907(a)(3), 6912(a), 6944(a), and 6949a(c).

II. Background

A. 40 CFR Part 258 and Small Landfill Exemption

When the Agency promulgated the solid waste disposal facility criteria final rule on October 9, 1991 (56 FR 50978), it included an exemption for owners and operators of certain small MSWLF units from the design and ground-water monitoring requirements of the criteria. To qualify for the exemption, the small landfill could only accept less than twenty tons 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 serve 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 ground-water 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 delaying the effective date of the MSWLF criteria (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. This additional two-year period also was intended to provide time for EPA to determine if there are practical and affordable alternative ground-water monitoring systems or approaches that are adequate to detect contamination.

B. Summary of Proposed Rule on Alternative Ground-Water Monitoring and Delay of General Compliance Date

Since October 1993, the Agency has been collecting information and soliciting comment on cost-effective ground-water monitoring alternatives for small MSWLFs located in dry or remote locations. On August 10, 1995, EPA published a proposed rule (60 FR 40799) to provide to approved States and Tribes the flexibility to determine alternative ground-water monitoring requirements, on a site-specific basis, for qualifying small MSWLFs. Under this proposal, approved States and Tribes may consider site-specific alternatives to conventional ground-water monitoring that are relatively low in cost and will ensure ground-water contamination is detected in a timely manner. The August 10, 1995 proposed rule also requested comment on an extension of the general compliance date for qualifying small MSWLFs to allow time for the Agency to act on the proposed alternative standards.

The Agency established separate dockets and comment periods for the two aspects of this proposed rule. The docket number for the alternative ground-water monitoring requirements is F-95-AGAP-FFFFF and the comment

period for this aspect of the August 10 proposal ends on November 8, 1995. The docket number for the extension is F-95-AGDP-FFFFF and the comment period for this aspect of the proposal ended on September 8, 1995. As noted in the August 10, 1995 proposed rule, the Agency established a shorter comment period for the extension to facilitate finalization of an extension by the time the current compliance date expires on October 9, 1995. Therefore, today's final rule pertains only to the extension of the compliance date; the Agency plans to publish a separate final rule pertaining to ground-water monitoring alternatives by October 1996.

C. Details of Proposal To Delay the General Compliance Date

In the August 10, 1995 proposed rule, the Agency requested comment on two approaches for extending the compliance date of the Part 258 criteria for qualifying small MSWLFs. The following discussion provides an overview of these two approaches.

1. Two-year Extension of the General Compliance Date

The first approach would provide a two-year extension of the general compliance date for qualifying small MSWLFs, from October 9, 1995 to October 9, 1997. Thus, qualifying small MSWLF units would not become subject to compliance with any of the Part 258 requirements until October 9, 1997 (one year after the alternative ground-water monitoring standards are expected to be finalized). At that time, these MSWLF units would be required to be in compliance with all applicable requirements of Part 258, including the ground-water monitoring (or alternative ground-water monitoring) requirements and financial assurance requirements. Should a qualifying small MSWLF unit cease receipt of waste prior to October 9, 1997, the owner/operator of that unit need only comply with the final cover requirements as specified in § 258.60(a). The final cover would have to be installed by October 9, 1998.

2. Limited Extension for Only Ground-water Monitoring and Financial Assurance

The second approach proposed in the August 10 proposed rule would maintain a general compliance date for qualifying small landfills of October 9, 1995, but would extend the effective date of ground-water monitoring and financial assurance until October 9, 1997. Under this alternative approach, an owner/operator that accepted waste after October 9, 1995 would have to

comply with the location restrictions and operating requirements. Should that owner/operator cease receipt of waste by October 9, 1997 and place final cover on the landfill by October 9, 1998, that facility would be exempt from the ground-water monitoring requirements during the post-closure care period and from the financial assurance requirements for closure and post-closure care.

III. Response to Comments and Analysis of Issues Related to the Extension of the General Compliance Date for Qualifying Small MSWLFs

By the close of the public comment period, the Agency received 77 comments addressing the August 10 proposed extension of the compliance date. All of the comments received in response to this proposed rule were supportive of some type of an extension; i.e., either in favor of the general compliance date extension or the limited extension. None of the commenters suggested that qualifying small MSWLFs become subject to all of the requirements of 40 CFR Part 258 on October 9, 1995. Overall, 72 of the 77 comments were supportive of the two-year general compliance date extension, four commenters were supportive of the two-year limited extension, and one commenter did not take a position. The Agency also received and considered a number of comments after the close of the comment period; all of these comments were supportive of the two-year general compliance date delay. The following section summarizes and addresses the major public comments. A discussion of, and response to, the comments can be found in the docket for this rulemaking (95-AGDP-FFFFF).

A. Comments Regarding the Two-Year General Compliance Date Extension

Commenters expressing support for the general compliance date extension cited a number of reasons for their position. Many of the commenters in favor of the two-year general compliance date extension believed a full extension was necessary so that owners/operators of qualifying small MSWLFs could make economically and environmentally sound decisions regarding closure versus continued operation of their landfill after EPA has issued its final requirements for ground-water monitoring.

These commenters reaffirm, in part, the Agency's reasoning for an extension of the compliance date. As stated in the August 10 proposed rule, the Agency believes that qualifying small MSWLFs should be able to consider all site-specific flexibilities allowed under a

final rule on alternatives to ground-water monitoring in determining whether to remain in operation past the general compliance date of the regulation.

The majority of commenters also supported the two-year general compliance date extension because it would allow them to concentrate their efforts on a number of related activities: exploring alternative waste management options, completing arrangements for regional agreements, determining the feasibility of employing alternative ground-water monitoring technologies at their sites, and investigating the possibility of a successful no-migration demonstration under § 258.50(b) to become exempt from ground-water monitoring requirements. The Agency is aware, based on public comment, that many of these qualifying small MSWLF owners/operators simply do not have access to the resources and expertise to begin implementing the landfill criteria while also carrying out these other activities.

Based on the comments received, the Agency is encouraged by the commitment of qualifying small MSWLF owners/operators to either come into compliance with Part 258 or find alternative means of waste management. During this next two-year period, the Agency intends to issue final regulations governing alternative ground-water monitoring so that qualifying small MSWLF owners/operators may proceed with certainty. At the same time, during this extension period, the Agency strongly encourages qualifying small MSWLFs to complete their plans for safe management of their municipal solid waste.

A number of commenters from the State of Alaska, including the State Department of Environmental Conservation (DEC), submitted comments in favor of the two-year general compliance date extension. Alaska is important because the Agency estimates that nearly forty percent of all the qualifying small MSWLFs in the U.S., and virtually all of the MSWLFs considered "remote," are located in the State of Alaska. These commenters provided a number of reasons why the extension is so important to qualifying small MSWLFs in Alaska.

First, Alaska is still in the process of acquiring MSWLF permit program approval. Until the State is approved, owners/operators of MSWLFs in Alaska are not able to take advantage of the flexibility available only to owners/operators in approved States and Tribes. For example, owners/operators may not use an alternative daily cover material unless that alternative is approved by

the Director of an approved State/Tribe. If the operating requirements in the Part 258 criteria became effective (as in the case of the proposed limited extension), owners/operators in Alaska could not avail themselves of that flexibility. The State DEC contends that the two-year extension will allow the State time to complete the program approval process, thereby allowing communities, which generally have no other option but to operate their own landfills, to take advantage of the flexibility possible in approved States.

The Alaska State DEC described how location restrictions and land ownership problems in Alaska are complicating implementation of the MSWLF criteria for a number of communities who intend to upgrade their facilities. The State DEC contends that it is difficult to find land that is not in a flood plain, wetland, or adjacent to an airport, and, once a possible landfill location has been identified, land ownership becomes a problem. Because over 90 percent of the land in Alaska is owned by State or federal governments, with less than one-half of one percent in private ownership, and property transfer from public to private use is a long and cumbersome process, Alaska DEC contends that more time is needed for these communities to secure an alternative site. The DEC contends that requiring compliance at this time will force closure of many qualifying small MSWLFs, creating a significant environmental crisis in the State.

The Agency agrees with the Alaska commenters. Given this high concentration of qualifying small MSWLFs in the State, and considering the complicating factors unique to the State, the Agency believes these comments, as well as similar ones from the majority of other commenters, fully support and justify an extension of all of the Part 258 requirements. The Agency continues to be encouraged with the progress that the State is making towards completion of the permit program approval process and by the commitment on the part of the Alaskan villages in working towards safe solid waste disposal.

The Agency received several comments from Tribes in support of the two-year general compliance date extension. These commenters expressed many of the same concerns and views expressed by other commenters who are in favor of the two-year general compliance extension. In addition to these concerns, the Agency understands that many of the Tribes in the U.S. are located in the sparsely populated arid west in areas that are not conducive to regionalization and that many of these

Tribes have not yet sought approval for a Tribal MSWLF permit program and therefore will not be able to take advantage of the flexibility in the Part 258 criteria that is available only to approved States and Tribes. Therefore, the Agency believes that many of these Tribes could use the additional time to consider applying for permit program approval or secure alternative waste management opportunities.

Finally, several commenters indicated that the two-year general compliance date extension would simply be easier for qualifying small MSWLF owners/operators to understand and implement than the alternative extension (i.e., an extension for ground-water monitoring and financial assurance only) discussed in the August 10, 1995 proposed rule. The Agency agrees with these commenters. In fact, while reviewing the public comments received in response to the proposed rule, the Agency found that a number of the commenters expressed some confusion with the two proposed extension options. The Agency does not believe that a simplified approach to an extension should stand alone as the sole reason for choosing the two-year general compliance date extension. However, in light of the potential confusion associated with the implementation of the alternative approach, together with all the other reasons cited in favor of the general extension, the Agency has decided to finalize the two-year extension of all provisions of Part 258 for qualifying small MSWLFs.

Four commenters expressed opposition to the two-year general compliance date extension. One commenter, a State environmental agency, expressed concern that a two-year general compliance date extension would encourage some of the communities that closed their landfills to join a regional facility to reopen their landfills and cancel their disposal contracts. The commenter indicated that this would disrupt the regional planning and capacity-building efforts already accomplished and could impair the ability of regional facilities to survive.

EPA is sympathetic to these concerns and recognizes that some qualifying small MSWLFs may opt to withdraw, perhaps temporarily, from a regional facility given today's two-year compliance date extension. However, the Agency did receive comments from two other State environmental agencies indicating that the reopening of landfills and subsequent withdrawal from regional contracts may not be a widespread phenomenon. One State environmental agency indicated that the regional commitments made by small

communities would not necessarily dissolve as a result of a two-year general compliance date extension. This State agency suggested that while the two-year general compliance date extension may delay certain regional projects, the extension would not eliminate the long-term finalization of such plans, if regionalization is in fact the appropriate choice in a certain area. This State agency, as well as a number of other commenters, added that the extra time will allow owners/operators to study their alternatives more fully and make better decisions.

A second State environmental agency commented that for landfills already closed, substantial effort would be required to reopen these facilities. This State also commented that communities that had previously been served by these closed landfills have already developed practical methods to dispose of their waste, therefore making it difficult for the MSWLF owner/operator to argue that the community has no practicable alternative to manage solid waste. The Agency agrees with this reasoning. To qualify for the small landfill exemption, the community must demonstrate that it has no practicable alternative to operating their own landfill. Many of the closed landfills have likely closed because they found it more practicable to join a regional facility than operate their own.

Based on many of the public comments received, the Agency generally is impressed by the progress that owners/operators of many qualifying small MSWLFs have made in their efforts to regionalize their waste management practices. The Agency encourages these facilities to continue honoring their regional commitments wherever practicable and does not believe that the two-year general compliance date extension will have a significant impact on efforts to develop regional arrangements. The Agency also wishes to remind owners/operators that have closed their MSWLFs and now wish to reopen to take advantage of today's two-year extension of the general compliance date must continue to demonstrate, pursuant to § 251.1(f)(2), that their landfill meets the criteria for the small landfill exemption described in § 258.1(f)(1).

Two commenters (one private MSWLF owner/operator and one State environmental agency) explained that a two-year general compliance date extension would be unfair to those landfills that have decided to remain open and expend the resources to comply with the MSWLF criteria. The Agency understands the position of these commenters. Furthermore, the

Agency is encouraged by the private MSWLF owner's commitment to regulatory compliance. The Agency wishes to stress that today's extension does not imply that the Agency will eventually exempt qualifying small MSWLFs from the requirements of Part 258; it is simply a delay of the compliance date. At the time the new compliance date of October 9, 1997, becomes effective, all qualifying small MSWLFs will be required to comply with all applicable requirements of Part 258.

Two commenters discussed the environmental consequences of a general compliance date extension. One of the commenters argued that qualifying small MSWLFs should comply with a baseline level of environmental protection and proper operating practices that would be required under the limited extension. The other commenter, a State environmental agency, raised concerns that a two-year general extension could wipe out many years of progress made towards cleaning up small landfills that, in the past, have performed open burning and illegally disposed of "dead animals, septage, liquids, and other 'unacceptable wastes.'"

The Agency appreciates the concerns expressed by these two commenters. However, the Agency wishes to clarify that qualifying small MSWLFs that remain open during the two-year delay period should be in compliance with a number of location and operating requirements that have been federal standards since 1979 when the Criteria for Classification of Solid Waste Disposal Facilities and Practices were promulgated under 40 CFR Part 257. Such requirements include location restrictions related to floodplains and airports, as well as operational requirements regarding surface water discharges, disease vector control, daily cover, methane gas generation, access control, and open burning. Qualifying MSWLF owners/operators should continue to employ these proper operating practices at their facilities during the two-year general compliance date extension. Additionally, States and Tribes may choose to impose additional requirements as warranted and necessary to protect human health and the environment.

The Agency is concerned about the receipt of "unacceptable" wastes at qualifying small MSWLFs. The Agency notes that the acceptance of bulk, noncontainerized waste is restricted under the Part 258 regulations and owners/operators of qualifying small MSWLFs are encouraged to abide by this restriction during the two-year

delay period. As discussed in the Agency's MSWLF criteria final rule preamble (56 FR 50978, October 9, 1991), restriction of noncontainerized bulk liquids should minimize the amount of leachate generation in the landfill. Additionally, qualifying small MSWLFs that accept regulated quantities of hazardous waste could become subject to the requirements of the hazardous waste regulations under Subtitle C of RCRA.

Finally, a State environmental agency commented that a two-year delay of the general compliance date will provide small communities with a false sense that the extension of the federal deadline provides an automatic extension to State deadlines where a State wishes to require earlier compliance dates. The Agency understands the concerns expressed by this commenter; however, the Agency wishes to clarify that today's rule is not intended to prevent States and Tribes from being more stringent than the federal regulations, including the establishment of earlier compliance dates.

B. Comments Regarding the Two-Year Limited Extension

The Agency received four comments in support of the alternative two-year limited extension for ground-water monitoring and financial assurance. These commenters generally declared their support for the two-year limited delay by expressing their concerns with the two-year general compliance date delay. These concerns have been noted and addressed in section III.A of today's preamble. Beyond their concerns with the two-year general delay, the four commenters did not provide major compelling arguments based solely on the merits of a two-year limited extension. A discussion of, and response to, these four comments can be found in the docket for this rulemaking (95-AGDP-FFFFF).

IV. Summary of This Rule

Today's final rule extends the general compliance date of the MSWLF criteria for two years, from October 9, 1995 to October 9, 1997, 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 would become subject to all of the requirements of 40 CFR Part 258, including the design and ground-water monitoring requirements.

The Agency wishes to remind owners/operators of qualifying small MSWLFs that, until October 9, 1997, their MSWLFs are subject to the requirements of 40 CFR Part 257. Additionally, owners/operators of qualifying small MSWLFs may be subject to more stringent State/Tribal requirements; therefore, these owners/operators are encouraged to work with their respective State/Tribal programs to understand the requirements for their facilities.

As a result of today's final rule extending the general compliance date for two years for qualifying small MSWLFs, the Agency is making final conforming changes to appropriate portions of the regulatory language in 40 CFR Part 258. First, § 258.1(d)(3) and (e)(4) are revised to reflect the new compliance date of October 9, 1997. Second, the definition of "New MSWLF unit" under § 258.2 is modified to account for the new general compliance date of October 9, 1997. Third, the applicability section under Section 258.50(e) is revised by removing paragraphs (1) and (2), which allowed for two different effective dates for the ground-water monitoring requirements based on the distance of the MSWLF unit to a drinking water intake. Today's final rule creates one effective date (i.e., October 9, 1997) for ground-water monitoring for all qualifying small MSWLFs, regardless of their distance to a drinking water intake.

Finally, the Agency wishes to clarify that with respect to qualifying small MSWLFs, today's final rule overrides a recent Agency final rule that extended the effective date of the financial assurance requirements, until April 9, 1997, for all MSWLFs subject to regulation under 40 CFR Part 258 (60 FR 17649, April 7, 1995). Today's rule delays the compliance date of the financial assurance requirements for qualifying small MSWLFs until October 9, 1997; the compliance date of the financial assurance requirements for all other MSWLFs continues to be April 9, 1997. Today's final rule amends the financial assurance regulatory language in § 258.70(b) and § 258.74(a)(5), (b)(1), (c)(1), and (d)(1) to clarify that the compliance date of the financial assurance requirements for qualifying small MSWLFs is October 9, 1997.

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 believes that today's rule extending the general compliance date for qualifying small MSWLFs will not 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. The Agency believes that this rulemaking will enable some minority and/or low-income communities to continue to be served by a local landfill while they study their waste management alternatives in order to make an informed decision on how to provide safe management of municipal solid waste 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 final rule does not meet the definition of a major regulation. Thus, the Agency is not conducting a Regulatory Impact Analysis, and today's final rule is not subject to review by the Office of Management and Budget (OMB) based upon Executive Order 12886.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (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). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

The effect of this final rule is to provide small entities with additional time to meet the requirements of Part 258. Therefore, pursuant to 5 U.S.C. 605b, the Agency believes that this final rule will not have a significant adverse impact on a substantial number of small entities.

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 final rule delaying the general compliance date of 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 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, particularly those in arid or remote locations. Therefore, the Agency believes that this consultation with States, Tribes, and local governments, in addition to the 30-day public comment period provided in the proposed rule, satisfies the requirement of this Executive Order.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 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.

List of Subjects in 40 CFR Part 258

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

Dated: October 2, 1995.
 Carol M. Browner,
Administrator.

For reasons set out in the preamble, title 40, chapter I 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 258.1 is amended by revising paragraphs (d)(3) and (e)(4) to read as follows:

§ 258.1 Purpose, scope, and applicability.

* * * * *

(d) * * *

(3) MSWLF units that meet the conditions of paragraph (f)(1) of this section and receive waste after October 9, 1991 but stop receiving waste before October 9, 1997, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1998. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1998 will be subject to all the requirements of this part 258, unless otherwise specified.

* * * * *

(e) * * *

(4) For a MSWLF unit that meets the conditions for the exemption in paragraph (f)(1) of this section, the compliance date for all applicable requirements of part 258, unless otherwise specified, is October 9, 1997.

* * * * *

3. Section 258.2 is amended by revising the definition of "new MSWLF unit" to read as follows:

§ 258.2 Definitions.

* * * * *

New MSWLF unit means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1997 if the MSWLF unit meets the conditions of § 258.1(f)(1).

* * * * *

4. Section 258.50 is amended by revising paragraph (e) to read as follows:

§ 258.50 Applicability.

* * * * *

(e) Owners and operators of all MSWLF units that meet the conditions of § 258.1(f)(1) must comply with all applicable ground-water monitoring requirements of this part by October 9, 1997.

* * * * *

5. Section 258.70 is amended by revising paragraph (b) to read as follows:

§ 258.70 Applicability and effective date.

* * * * *

(b) The requirements of this section are effective April 9, 1997 except for MSWLF units meeting the conditions of § 258.1(f)(1), in which case the effective date is October 9, 1997.

6. Section 258.74 is amended by revising paragraph (a)(5), the third sentence of paragraph (b)(1); the second sentence of paragraph (c)(1); and the second sentence of paragraph (d)(1) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(a) * * *

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

(b) * * *

(1) * * * The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. * * *

* * * * *

(c) * * *

(1) * * * The letter of credit must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. * * *

* * * * *

(d) * * *

(1) * * * The insurance must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997, or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. * * *