Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on December 1, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

****Effective JAN 04, 1996*

Madera, CA Madera Muni, VOR or GPS RWY 30, Amdt 9 CANCELLED
Madera, CA Madera Muni, VOR RWY 30, Amdt 9
Webster City, IA, Webster City Muni, NDB or GPS RWY 32, Amdt 7 CANCELLED
Webster City, IA, Webster City Muni, NDB RWY 32, Amdt 8
Augusta, KS, Augusta Muni, VOR/DME RNAV or GPS RWY 36, Orig-A CANCELLED
Augusta, KS, Augusta Muni, VOR/DME RNAV RWY 36, Orig-A
Olathe, KS, Johnson County Executive, VOR or GPS RWY 35, Amdt 10 CANCELLED
Olathe, KS, Johnson County Executive, VOR RWY 35, Amdt 10
Eastport, ME, Eastport Muni, NDB or GPS RWY 15, Orig CANCELLED
Eastport, ME, Eastport Muni, NDB RWY 15, Orig
Harrisonville, MO, Lawrence Smith Memorial, VOR/DME or GPS RWY 35, Orig CANCELLED
Harrisonville, MO, Lawrence Smith Memorial, VOR/DME RWY 35, Orig
Omaha, NE, Millard, VOR/DME RNAV or GPS RWY 12, Amdt 6 CANCELLED
Omaha, NE, Millard, VOR/DME RNAV RWY 12, Amdt 6
Sidney, NE, Sidney Muni, VOR/DME OR TACAN or GPS RWY 30 Amdt 4 CANCELLED
Sidney, NE, Sidney Muni, VOR/DME OR TACAN RWY 30 Amdt 4
Clinton, OK, Clinton-Sherman, NDB or GPS RWY 17R, Amdt 10 CANCELLED
Clinton, OK, Clinton-Sherman, NDB RWY 17R, Amdt 10
Pauls Valley, OK, Pauls Valley Muni, NDB or GPS RWY 35, Amdt 2 CANCELLED
Pauls Valley, OK, Pauls Valley Muni, NDB RWY 35, Amdt 3
Gainesville, TX, Gainesville Muni, NDB or GPS RWY 17, Amdt 8 CANCELLED
Gainesville, TX, Gainesville Muni, NDB RWY 17, Amdt 8

[FR Doc. 95–30098 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–33–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 124 and 270

[FRL–5319–4 RIN 2050–AD97]

RCRA Expanded Public Participation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing new regulations under the Resource Conservation and Recovery Act (RCRA). The new regulations will improve the process for permitting facilities that store, treat, or dispose of hazardous wastes by providing earlier opportunities for public involvement in the process and expanding public access to information throughout the permitting process and the operational lives of facilities.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC) located at 1235 Jefferson Davis Highway, Arlington VA. The Docket Identification Number is F–95–PPCF–FFFFF (the docket number for the proposed rule is F–94–PPCP–FFFFF). The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must 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 $.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 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rulemaking, contact Patricia Buzzell, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8632, email address buzzell.tricia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Access

An abstract and fact sheet on this rule are available on the Internet. Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov

Dial-up: (919) 558–0335.

From the main EPA Gopher menu, select: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/ Hazardous Waste/Permits and Permitting.

FTP: ftp.epa.gov
Login: anonymous
Password: Your Internet address

Files are located in /pub/gopher/ OSWRCRA

Preamble Outline

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I. Statutory Authority

EPA is issuing these regulations under the authority of sections 2002, 3004, 3005 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

II. Background

A. Overview of the RCRA Permitting Program

In RCRA, Congress gave EPA the authority to write regulations, or ''rules,'' to govern, among other things, the permitting of hazardous waste management facilities. EPA is issuing today's regulations to enhance public participation in the hazardous waste facility permitting process.

Under RCRA, EPA is responsible for regulating the ''cradle to grave'' management of hazardous wastes. Hazardous wastes come in many shapes and forms. They may be liquids, solids, or sludges. They may be the by-products of manufacturing processes, or simply commercial products—such as household cleaning fluids or battery acid—that have been discarded. EPA determines if wastes are hazardous by judging, among other things, the characteristics of the wastes and their potential to cause harm to human health and the environment when not properly managed. RCRA regulations identify hazardous wastes based on their characteristics and also provide a list of specific hazardous wastes (refer to 40 CFR 261 for more information). To manage hazardous waste in an environmentally sound manner, companies often need to store it, treat it (for instance, by burning it or mixing it with stabilizing chemicals), and/or dispose of it into specially built landfills. In most cases, a business that stores, treats, or disposes of hazardous waste, needs a permit under RCRA.

Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous wastes to comply with standards that are ''necessary to protect human health and the environment.'' EPA or EPA-authorized States implement these standards by issuing RCRA permits to facilities that treat, store, or dispose of hazardous wastes. In some circumstances, existing facilities may continue to operate without a full RCRA permit under the ''interim status'' provision of RCRA § 3005(e). In RCRA, Congress gave EPA broad authority to provide for public participation in the RCRA permitting process. Section 7004(b) of RCRA requires EPA to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under the Act.

Under RCRA section 3006, States may seek EPA authorization to administer and enforce the RCRA program in lieu of EPA. Once a State adopts today's rule and receives EPA authorization for the rule, the State will become the primary implementor of the rule (see Section V. below for more information). In today's preamble, we refer to the primary implementing agency for this rule as ''the permitting agency'' or ''the agency.'' ''The Director'' refers to the head of the primary implementing agency. We refer to EPA as ''EPA'' or ''the Agency.''

B. Shortcomings of the Current Program

Many stakeholders have expressed the concern that the current RCRA permitting process does not involve the public at an early stage in the process, does not provide adequate information, and does not provide an equitable opportunity to participate. EPA is responding to these concerns in today's rule. In fact, EPA has emphasized the need for more public involvement in all its activities. The Agency's Hazardous Waste Minimization and Combustion Strategy calls for the development of mechanisms to ensure that local communities are fully informed about the RCRA decision-making process and have an opportunity to participate in that process. Recommendations from the National Performance Review, the RCRA Implementation Study, and the Permits Improvement Team have all emphasized the need for expanded public participation in permitting. A number of sources outside the Agency (e.g., environmental groups, and business trade associations) have also supported enhanced public participation.

C. How Today's Rule Will Improve the Program

Today's final rule will require a prospective applicant to hold an informal public meeting before submitting an application for a RCRA permit. Also, the regulations will require the applicant to advertise the meeting in the newspaper, through a broadcast announcement (e.g., by radio or television), and on a sign posted at or near the property. This meeting will provide a chance for the community to interact with and provide input to a facility owner or operator before the owner or operator submits a permit application. The rule also directs the permitting agency to mail a notice to interested people when the facility submits its application. The notice will tell members of the public where they can examine the application at the same time that the agency reviews it.

In some cases, RCRA permits can be the subject of intense debate. When permits raise a lot of public interest, the public's demand for information increases. Today's rule will give the permitting agency the authority to require a facility owner or operator to set up an information repository at any time during the permitting process or the permit life. We anticipate that agencies will use this authority only in those permitting cases that raise a lot of public interest, or in other cases where the public needs more access to information. The repository will hold all information and documents that the permitting agency decides are necessary to fulfill the purposes for which the repository was established. Finally, today's rule will require combustion facilities (i.e., incinerators and other

facilities that burn hazardous wastes) to notify the public before they hold a trial burn.[1]

EPA anticipates that these regulations will provide an opportunity for the public to participate earlier in the permitting process. In addition, the rule will give the public increased access to facility and permitting information. Finally, we hope that the rule will help people become involved in the permitting process and increase understanding of hazardous waste management facilities.

D. The Rule: From Proposal to Final

EPA proposed the RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures rule on June 2, 1994 (59 FR 28680–28711). The proposed rule contained changes and additions to the RCRA public participation regulations (40 CFR 124) and RCRA Subtitle C permitting regulations (40 CFR 270).

Today, EPA is finalizing the public participation portion of the proposal (with a number of changes in response to comments received by the Agency during the comment period for the proposed rule—see Section IV below), which includes changes to both Parts 124 and 270. The Agency is not finalizing the proposed revisions to combustion permitting procedures at this time.

EPA decided to separate the two portions for a number of reasons. First, the public comments on the proposed rule were more favorable towards the public participation changes. On the other hand, the commenters were less satisfied with the proposed combustion permitting changes, particularly those changes regarding the trial burn. The Agency is currently considering and addressing the commenters' concerns on the proposed combustion permitting changes. In the meantime, EPA sees no reason to delay the important changes to the public participation provisions.

Moreover, EPA is committed to issuing comprehensive emissions standards for combustion facilities under RCRA and the Clean Air Act. The Agency anticipates issuing a proposed rule on these standards in the fall of 1995. Due to potential overlap between the procedures in the emissions standards proposed rule and the combustion permitting procedures in the June 2, 1994 proposed rule, EPA has decided to take more time to consider the permitting provisions in the June 2 proposal. We intend to find the best possible solution to coordinate these two rulemakings.

Finally, EPA realized that the proposed rule may have caused some confusion. A few commenters pointed to the different character of the public participation changes and the combustion permitting changes. The commenters expressed concern over combining these two dissimilar portions in the same rule. Moreover, a number of commenters seemed to be confused over the applicability of the rule. In particular, since the combustion permitting provisions would apply only to combustion facilities, and the proposed rule was an outgrowth of the Combustion Strategy, a number of commenters seemed confused over the applicability of the public participation procedures to all RCRA TSDFs.

III. Applicability of Today's Rule

Today's rule promulgates changes and additions to Parts 124 and 270 in the Code of Federal Regulations (CFR). The Part 124 changes, which include new and earlier public involvement steps and procedures, apply to every facility that has or is seeking a RCRA subtitle C permit to treat, store, or dispose of hazardous waste, unless exempted under a specific section. The changes to Part 270, in §§ 270.2, 270.14, and 270.30, also apply to every facility. The changes to §§ 270.62 and 270.66, however, apply only to combustion facilities.

The rule does not require RCRA facilities that are already involved in the permitting process to step back in the process to comply with the new requirements. Instead, the rule will apply to a facility according to what stage of the process the facility is in when the rule becomes effective. For instance, if a facility has submitted its part B permit application before the effective date of this rule, then the rule does not require the facility to hold a pre-application meeting under § 124.31. This facility would, however, have to comply with all requirements relating to steps in the permitting process that it has not yet undertaken.

IV. Review of Public Comments, Responses, and Changes From the Proposed Rule

The following (IV. A through E) is a section-by-section summary of the most significant comments on the proposed rule, EPA's responses to those comments, and an explanation of any changes from the proposed rule to the final. All of the public comments and EPA's comprehensive response to comments document on this rulemaking are available through the RCRA Docket (see the paragraph entitled **ADDRESSES**, above).

The most significant changes in the final rule involve our decision to use guidance, instead of rule language, to encourage facilities to strive toward some of the important goals in the proposed rule. EPA recognized in the proposal that some of the proposed regulatory provisions were very general and requested comment on how they could be effectively implemented (see, e.g., 59 FR 28702). In response, commenters argued that several portions of the proposed regulatory language were vague and would spawn disputes, controversy, and litigation. The commenters suggested that EPA relocate some of the proposed regulatory text to the preamble as guidance.

EPA found these comments persuasive in certain instances. The development of today's rule has, from the start, involved a balance between promoting broader, more equitable public participation while maintaining the flexibility for individual permit writers, facilities, and communities to adopt the most appropriate, site-specific approach consistent with the principles of fairness and openness. Some of the principles underlying the proposed and final rules are inherently difficult to prescribe through regulation. For example, it is possible to require an applicant to hold a meeting; it is much more difficult to require through regulation that the meeting be conducted in an equitable fashion, since the steps required to accomplish this objective will necessarily vary from situation to situation. Although the final rule retains most of the proposed regulatory changes, EPA concluded that, in certain instances, the need to maintain flexibility is inconsistent with a national regulatory approach. In these instances, as explained more fully in the sections below, EPA has decided to proceed by using guidance, rather than regulations, to encourage facilities to adopt and strive towards a number of the goals in the proposed rule. The Agency will provide some guidance in today's preamble; however, we also anticipate releasing a guidance document, in the near future, to help permitting agencies and facilities to implement today's rule.

The Agency believes that facility owners, State environmental agencies, tribes, and private citizens are often in the best position to determine what modes of communication and

[1] The owner or operator of a combustion unit must conduct a trial burn as part of the permitting process for a combustion unit. The trial burn is a demonstration period held by the owner or operator of a combustion unit to test the unit's ability to meet the regulatory performance standards for treatment of hazardous wastes. The permitting agency uses the results of the trial burn to establish operating conditions in the RCRA permit.

participation will work best in their communities. The final rule provides the flexibility necessary to find the best local solutions to ensure equal opportunities for all members of the community.

A. Equitable Public Participation and Environmental Justice

Proposed § 124.30 and Preamble. In section 124.30 of the proposed rule, entitled ''Equitable Public Participation,'' EPA proposed to require facilities and permitting agencies to ''make all reasonable efforts'' to ensure equal opportunity for the public to participate in the permitting process. The proposed rule language defined ''reasonable efforts'' as including the use of multilingual fact sheets and interpreters at meetings and hearings, when the ''affected community contains a significant non-English speaking population.''

In the preamble to the proposed rule (see 59 FR 28686), EPA solicited comments on several key environmental justice issues for the RCRA permitting program: (1) The siting of hazardous waste facilities; (2) the manner in which EPA should respond when confronted with a challenge to a RCRA permit based on environmental justice issues; (3) environmental justice concerns in corrective action cleanups; and (4) how EPA programs can take account of ''cumulative risk'' and ''cumulative effects'' associated with the siting of a hazardous waste management facility. The Agency noted that, while it did not expect to address these issues in this rulemaking, public input on these topics would be helpful.

Synopsis of Major Comments on § 124.30 and Preamble. The major comments on this section of the proposal involved definitions. Commenters asked the Agency to define many of the terms in § 124.30, including ''all reasonable efforts,'' ''significant,'' ''non-English speaking'' and ''affected community.'' The commenters were concerned about the disputes, controversy, and litigation that could arise from these undefined terms. Other commenters supported the concept of equitable public participation, particularly as an approach to addressing any environmental justice concerns that might be present.

The Agency received a number of comments supporting expanded public participation as an effective approach to addressing environmental justice issues. Commenters stated that additional opportunities for public involvement and access to information will increase the probability that all communities will have input into the permitting process, and should strengthen involvement of those who have felt disenfranchised from the process. Some commenters urged EPA to avoid a one-size-fits-all approach and allow flexibility for State, local, and facility leadership to make suitable determinations about how to address environmental justice issues.

EPA's Response to Commenters. EPA is committed to the principles of equitable public participation and equal treatment of all people under our environmental statutes and regulations. The regulatory changes we are making today will enhance the RCRA public participation process for all citizens. We urge all permitting agencies, permit holders, and applicants, to make all reasonable efforts to provide equal access to information and participation in the RCRA permitting process.

While we continue to promote equitable public participation, we have decided to address the objectives of § 124.30 in guidance rather than through regulatory language. In response to the concerns expressed by many commenters, we are not including § 124.30 in the final rule. The Agency agrees with the commenters who expressed concern that the language in the proposal was ambiguous, making compliance with the requirements difficult to evaluate and enforce, and could engender disputes and litigation without advancing the objectives of today's rulemaking.

As we noted earlier, EPA continues to support the principles embodied in § 124.30 of the proposed rule. We encourage permitting agencies and facilities to follow the spirit of that section and use all reasonable means to ensure that all segments of the population have an equal opportunity to participate in the permitting process and have equal access to information in the process. These means may include, but are not limited to, multilingual notices and fact sheets, as well as translators, in areas where the affected community contains significant numbers of people who do not speak English as a first language.

In lieu of a regulation, the Agency will take additional steps to encourage equitable public participation in RCRA permitting. In the near future, EPA will issue further guidance to assist facilities, permitting agencies, and communities in implementing the expanded public participation requirements in today's rule. In this guidance document, EPA plans to discuss additional options for increasing public participation by going beyond the regulatory requirements. The guidance document will address, in more detail, the approaches to equitable public participation that we are emphasizing in this preamble.

EPA believes that this rule presents significant opportunities to be responsive to environmental justice concerns in the context of public involvement. Prior to the promulgation of today's rule, the permitting process did not formally involve the public until the permitting agency issued a draft permit or an intent to deny a permit. In many cases, communities around RCRA facilities felt that the draft permit stage was too late to enter the process, that the facility and the permitting agency had already made all the major decisions by that point, and any comments the public offered would have no real effect. Insufficient opportunity for communities to become involved in environmental decision-making is a contributing factor to environmental justice concerns. The provisions in today's rule will address many of these concerns by expanding public participation and access to permitting information.

EPA continues to see public participation as an important activity that empowers communities to become actively involved in local waste management activities. The Agency believes that this rulemaking is an important step in empowering all communities, including communities of color and low-income communities.

EPA agrees with the commenters who stated that the expanded public participation requirements in today's rule will be useful tools for addressing environmental justice concerns. Today's rule provides all communities with a greater voice in decision making and a stronger opportunity to influence permit decisions early in the process. EPA also agrees with the commenters who stated that environmental justice issues should be addressed at a local level and on a site-specific basis. Local agencies and leaders have an important role to play in addressing environmental justice concerns. States and EPA Regional offices are the principal implementors of the RCRA permitting program, and have been directed to develop mechanisms that respond effectively to environmental justice concerns during permitting activities (RCRA Implementation Plan (RIP), 1995). In the RIP, EPA asked RCRA implementing agencies to continue their commitment to seek opportunities to address patterns of disproportionately high and adverse environmental effects and human health impacts on low-income communities and communities of color that may result from hazardous waste management activities. The States and Regions have been involved in

environmental justice pilot projects, which have included, among other activities, increasing public involvement by tailoring outreach activities to affected communities.

EPA and its Office of Solid Waste and Emergency Response (OSWER) also remain committed to addressing environmental justice concerns beyond those related to public participation. The preamble to the proposed rule (see 59 FR 28686) discussed OSWER's environmental justice efforts. Elliott P. Laws, OSWER Assistant Administrator, formed the OSWER Environmental Justice Task Force (''EJ Task Force'') to begin addressing many of these issues. EPA released the ''OSWER Environmental Justice Task Force Draft Final Report'' (OSWER 9200.3–16 Draft) and its separate executive summary (OSWER 9200.3–16–1 Draft) on April 25, 1994. Since that time, the EPA Regional offices and the OSWER program offices have been implementing the recommendations outlined in the EJ Task Force's draft final report. The report was distributed to the National Environmental Justice Advisory Council (NEJAC) for comment. In June 1995, after careful consideration of all comments, EPA released the ''OSWER Environmental Justice Action Agenda.'' The Action Agenda provides a concise summary of OSWER's current strategy and describes the implementation process for ensuring that major issues, identified by the NEJAC and others, continue to be recognized and addressed. A full report on implementation progress and accomplishments, entitled ''Waste Programs Environmental Justice Accomplishments Report,'' was released concurrently with the Action Agenda. All of these documents are ''living documents'' and, as such, are a part of the process of continuously addressing environmental justice concerns. This process represents OSWER's commitment to adhere to the principles of Executive Order 12898, in which the President directed federal agencies to identify and address the environmental concerns and issues of minority and low-income communities. Furthermore, in an effort to make environmental justice an integral part of the way we do business, the Agency issued a policy directive, in September 1994 (OSWER 9200.3–17), that requires all future OSWER policy and guidance documents to consider environmental justice issues.

During the public comment period on the proposed rule, EPA received a large number of comments on preliminary recommendations that the EJ Task Force had developed regarding several other (i.e., beyond today's public involvement rule) key environmental justice issues facing the RCRA permitting program. The comments ranged from general observations to more detailed suggestions, particularly with regard to siting criteria, cumulative risk assessments, and the need to base decisions on sound science.

We are disseminating the comments that deal with these environmental justice issues in the following manner: (1) We are forwarding the comments on RCRA facility siting to the Office of Solid Waste's (OSW) RCRA Siting Workgroup and to the NEJAC's Waste and Facility Siting Subcommittee's Siting Workgroup; (2) we are forwarding the comments on issues affecting RCRA corrective action to the RCRA Subpart S Workgroup, which is developing a rule to establish corrective action requirements for releases of hazardous wastes or hazardous waste constituents to any environmental medium, including ground water, from any solid waste management unit, including regulated units; (3) we are sharing the comments on cumulative risk, multiple exposure, and synergistic effects with the EPA Science Policy Council, the group actively working to address these issues; and (4) the comments on how EPA should respond to RCRA permit challenges based on environmental justice issues are being addressed by OSWER with assistance from the Office of General Counsel, Office of Civil Rights, and any other appropriate party.

EPA also received several comments that did not approve of the Agency's decision to discuss and solicit comments on the more technical environmental justice issues in the context of a RCRA public involvement rule. Many commenters argued that these issues are broad, far-reaching, and impact a much larger constituency than the intended audience for the public participation rulemaking.

EPA acknowledges the breadth of these issues. The preamble to the proposed rule has not been the only forum for discussing these issues. As we discussed above, EPA has received and considered comments from additional stakeholders, including States, the NEJAC, environmental groups, environmental justice groups, and regulated industries in developing the ''OSWER Environmental Justice Action Agenda.'' Furthermore, since the Action Agenda is a living document, OSWER will continue to seek external comments, suggestions and experiences as we strive to ensure environmental justice in all our programs.

B. Pre-Application Meeting and Notice

1. Applicability (Proposed § 124.31(d)). EPA proposed to exempt permit modifications, permit renewals, and permit applications submitted for the sole purpose of conducting post-closure activities from the requirements in § 124.31.

Synopsis of Major Comments on § 124.31(d). A number of commenters stated that the rule should require facilities seeking permit renewals to hold a pre-application meeting. Other commenters recommended that the pre-application meeting requirements apply to facilities making significant changes during the renewal process, or that the permitting agency should have discretion in applying the requirement to renewals. Opposing these commenters, several commenters supported the requirement as proposed and urged EPA to keep the exemption for renewals since many renewal applications simply continue ''business as usual.'' In these cases, said the commenters, the community will have adequate opportunity to participate in the renewal process; for instance, at the draft permit stage.

EPA's Response to Commenters. EPA has decided to expand § 124.31 to cover facilities that make a significant change at permit renewal. For the purposes of § 124.31, a ''significant'' change in facility operations is a change that is equivalent to a class 3 modification in § 270.42, e.g., operating conditions change significantly.

The Agency believes that this approach is a common sense compromise that will ensure adequate public participation in the necessary cases. At the same time, the regulated community will have the assurance that facilities undergoing minor changes will be spared unnecessary administrative burden.

EPA will continue the exemption for facilities that submit permits for the purpose of conducting post-closure activities. As we stated in the proposed rule, the goals of the pre-application meeting (e.g., establishing an early dialogue between the facility and the public) do not apply at most post-closure facilities. EPA's experience is that the public has usually been concerned with permit decisions relating to active hazardous waste management operations, as opposed to decisions relating to closed facilities. In addition, most post-closure activities are mandatory (e.g., maintenance of a closed unit) and involve fewer discretionary judgments than are involved in issuing an operating permit. The existing public participation

requirements in Part 124 (e.g., the notice and comment period at the draft permit stage) will continue to apply. Since closure and post-closure plans are included in the permit application, and become part of the permit, they will be available for public review and comment along with the application and the draft permit. Any changes to these plans after permit issuance will follow the modification procedures in § 270.42, which also have public notice requirements. We think that the existing process provides sufficient public involvement in post-closure permitting.

While we are retaining the exemption for post-closure permit applications in the final rule, we have tried to clarify our intent in the applicability requirements. Specifically, we have clarified that the exemption applies to facilities seeking permits solely to conduct post-closure activities, as well as to facilities seeking permits to conduct post-closure activities along with corrective action. Our intent in the proposal, which remains our intent in the final rule, was to distinguish post-closure facilities from facilities with operating units. However, someone could have read the proposed rule as not providing an exemption for post-closure facilities with remaining corrective action obligations (which post-closure facilities often have). Because the rationale for exempting post-closure activities applies whether or not the facility is also performing corrective action, EPA has added language to §§ 124.31(a) and 124.33(a) to clarify our intent.

2. Meeting Requirements (Proposed § 124.31(a)–(b)). In these two paragraphs, EPA proposed to require the permit applicant to hold at least one meeting with the public before submitting the part B permit application. The proposed rule listed topics that the applicant must cover and required the applicant to submit a record of the meeting and a list of attendees.

Synopsis of the Major Comments on § 124.31(a)–(b). The commenters generally expressed support for the pre-application meeting. Few commenters opposed EPA's proposal to have a meeting early in the process, though many suggested changes to the proposed rule itself.

Several commenters thought that the pre-application stage is too early for a public meeting. Some commenters stated that neither the applicant nor the agency could provide the public with accurate and complete information about the facility at such an early stage. Moreover, they noted, the application could change dramatically between the pre-application meeting and application submittal.

Some commenters asked EPA to clarify the record-keeping requirements in the final rule. A number of commenters opposed the requirement, with some commenters opposing the term ''record'' because it would qualify the meeting summary as an official document and make it subject to litigation. Other commenters opposed the rule's requirement that the applicant submit the record as a component of the part B permit application.

Concerning whether the permitting agency should conduct, or even attend, the meeting, the comments varied. Some commenters supported agency attendance because the agency would provide the meeting with credibility and a source of accurate information. Other commenters expressed concern that agency attendance would interfere with the ''open and informal dialogue'' between the facility owner and the public.

Finally, many commenters supported alternatives to the pre-application meeting. Numerous commenters backed the idea of combining pre-application meetings with the siting meetings that many States already require. A few commenters noted that EPA should allow such a combination only where the State meeting fulfills all the requirements of the pre-application meeting. Another group of commenters supported other options, such as using an Intent-to-Submit form in place of the meeting or holding the meeting after application submittal.

EPA's Response to Commenters. Section 124.31(b) of the final rule requires the facility to hold a meeting prior to submitting the part B permit application; however, the rule language no longer lists specific topics that the facility must cover in the meeting, requiring instead that the facility solicit questions from the community and inform the community about proposed hazardous waste management activities. After the meeting, the facility must prepare a ''summary'' of the meeting and submit it as a component of the part B permit application. The agency should use its judgement in deciding whether to attend the meeting.

EPA disagrees with the commenters who stated that the pre-application stage is too early to hold a meeting with the public. The most important goal we hope to achieve from the pre-application meeting requirement is the opening of a dialogue between the permit applicant and the community. We believe that the applicant should open this dialogue at the beginning of the process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications (see the discussion two paragraphs below). We hope that this requirement will help address the public concern that public involvement occurs too late in the RCRA permitting process. Although the Agency agrees with the commenters that the early timing of the meeting may prevent the agency and the applicant from having complete information, we believe that the benefits of early public involvement and early access to information outweigh the drawbacks of incomplete information.

In any case, EPA does not intend for the pre-application meeting to be a forum for examining technical aspects of the permit application in extensive detail; such technical examination is more suited to the draft permit stage. Instead, the pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of a hazardous waste management facility's operations. We anticipate that the applicant and the public will share ideas, educate each other, and start building the framework for a solid working relationship. Of course, the public retains the opportunity to submit comments throughout the process.

EPA has also revised the pre-application meeting requirements in the final rule to make them more straightforward and more flexible than the requirements in the proposed rule. The Agency is trying to provide flexibility in the way that permit applicants hold pre-application meetings. To this end, we have removed the list of required discussion topics, proposed in § 124.31(a). In addition, we have removed from the rule provisions that the commenters considered vague, including the requirement that the applicant describe the facility ''in sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility and the implications for human health and the environment.'' We agree with commenters that such a requirement would be difficult to implement and enforce.

While we have removed such requirements from the final rule, we expect permit applicants to follow the spirit of the proposed requirements. For instance, we encourage permit applicants to address, at the level of detail that is practical at the time of the meeting, the topics we identified in § 124.31(a) of the proposed rule: the

type of facility, the location, the general processes involved, the types of wastes generated and managed, and implementation of waste minimization and pollution control measures. The discussions may also include such topics as the transportation routes to be used by waste transporters and planned procedures and equipment for preventing or responding to accidents or releases. These are examples of the types of issues that might be of particular concern to a community and about which the community might be able to provide useful suggestions to the applicant. The applicant might then be able to incorporate that information into the proposed facility design or operations, either as part of the initial application, if time allows, or at subsequent stages in the process (e.g., in submitting revisions to its application, or in responding to a Notice of Deficiency issued by the permitting agency). By learning about and addressing public concerns up front, the applicant may be able to prevent misunderstanding from escalating into community opposition.

Moreover, the applicant should make a good faith effort to provide the public with sufficient information about the proposed facility operations. While we do not expect applicants to go into extensive detail at the pre-application stage, they should provide the public with enough information to understand the facility operations and the potential impacts on human health and the environment. In addition, as we emphasized in the preamble to the proposed rule (59 FR 28691), the permit applicant should encourage full and equitable public participation by selecting a meeting date, time, and place that are convenient to the public.

The final rule requires the applicant to submit a ''summary'' of the pre-application meeting as a component of the part B permit application. EPA shares the concern of several commenters that ''the record'' could be subject to litigation, for instance, on the basis of inaccuracy. EPA's intent in this rule is to foster communication and mutual understanding, not to create divisiveness and additional points of dispute in the permitting process. Thus, we have deleted the word ''record'' and replaced it with ''summary'' in the final rule. We do not intend for the meeting summary to be a verbatim account of the meeting; the Agency is aware of how difficult it is to keep a word-for-word record of a public meeting. Applicants should make a good faith effort to provide an accurate summary of the meeting and a list of all attendees who wish to identify themselves (see § 124.31(b) of the final rule).

In accordance with our intent in the proposed rule, we are requiring the permit applicant, in the final rule, to submit the summary as a component of the part B permit application. Since the part B application is available for review by the public, requiring the meeting summary to be part of the application assures that people who are unable to attend the meeting will have an opportunity to learn what transpired at the meeting. In the proposed rule, however, the Agency neglected to add the summary to the list of part B requirements in § 270.14(b). We have added this reference in the final rule.

The pre-application meeting summary will be useful to the permitting agency. The summary will alert the agency to important community concerns, areas of potential conflict, and other issues that may be relevant to agency permitting decisions. In addition, the meeting attendee list will help generate a mailing list of interested citizens. (The permitting agency is responsible for developing a representative mailing list for public notices under § 124.10). The list of attendees from the pre-application meeting will assist the permitting agency in identifying people or organizations to include on the mailing list so that it represents everyone who demonstrates an interest in the facility and the permit process. It has been EPA's experience that mailing lists often are not fully developed until the permitting agency issues the draft permit for public comment. Since EPA seeks to increase public participation earlier in the process, generation of a mailing list should precede such activities. A mailing list developed pursuant to § 124.10 could also be available to enhance public participation in other Agency or community-based initiatives.

The actual timing of the meeting is flexible in the final rule. The Agency believes that flexibility is necessary because the optimal timing for the meeting will vary depending on a number of factors, including the nature of the facility and the public's familiarity with the proposed project and its owner/operator.

In today's rule, we require the facility to conduct the pre-application meeting. We believe that the applicant should conduct the meeting in an effort to establish a dialogue with the community. We encourage permitting agencies to attend pre-application meetings, in appropriate circumstances, but the agency should not run the pre-application meeting. Although agency attendance may, at times, be useful in gaining a better understanding of public perceptions and issues for a particular facility, it may undercut some of the main purposes of the meeting, such as opening a dialogue between the facility and the community, and clarifying for the public the role of the applicant in the permitting process.

In the proposed rule, EPA solicited comments (see 59 FR 28702) on the option of allowing a State siting meeting to substitute for the pre-application meeting. EPA is not including this option in the final rule, because doing so would defeat some of the purposes of the pre-application meeting (e.g., establishing an open dialogue on a range of RCRA permitting issues that may differ from siting issues). Some commenters suggested that siting meetings and pre-application meetings be combined. There is nothing in today's rule to preclude States and permit applicants from working together to combine these meetings. EPA encourages them to do so, provided that the combined meetings fulfill the pre-application meeting requirements in today's rule.

3. Notice of the Pre-Application Meeting (§ 124.31(c)). Paragraph (c) of proposed § 124.31 required the facility to give notice of the pre-application meeting at least 30 days prior to the meeting ''in a manner that is likely to reach all affected members of the community.'' EPA proposed to require the facility to give the notice in three ways: as a display advertisement in a newspaper of general circulation; as a clearly-marked sign on the facility property; and as a radio broadcast. Each of these notices had to include the date, time and location of the meeting, a brief description of the purpose, a brief description of the facility, and a statement asking people who need special access to notify the applicant in advance.

Synopsis of the Major Comments on § 124.31(c). Most commenters expressed general support for the expanded notice requirements, but questioned specific aspects of the proposal. The commenters also asked for flexibility in choosing the types of notice that would best reach different communities.

The newspaper advertisement requirement brought up the most controversy. Some commenters challenged as vague the provision that the facility publish the notice in the local paper and also in papers of adjacent counties.

A number of commenters pointed out problems with requiring a large sign at the facility. Some commenters mentioned that nobody would pass near enough to some rural facilities to see the

sign. Other commenters reminded EPA that some communities have ordinances that ban large signs. The commenters urged that the rule be more flexible and allow applicants to place signs at nearby intersections or on town bulletin boards. Other commenters recommended that the agency approve the sign or grant waivers where communities ban signs.

The commenters did not express many objections to the radio requirement, but asked for overall flexibility in the notice requirements.

EPA's Response to Commenters. In response to these comments, EPA has enhanced the flexibility of the final rule. Instead of requiring the applicant to provide three specific types of public notice, as in the proposed rule, the final rule specifies only one type of notice (i.e., the display advertisement). The other notices must fall within broader categories—one must be a broadcast announcement and one must be a sign—but are otherwise flexible.

We have decided to retain the display ad requirement because of the expanded public notice it will provide; at the same time, we have increased the flexibility of the requirement by moving some of the proposed rule's more general provisions out of rule language and into guidance, both in today's preamble (see below) and in the future guidance document for implementing this rule.

Section 124.31(d) requires the applicant to keep documentation of the public notice and provide the documentation to the permitting agency upon request. The reason for this requirement is to provide proof of the public notice that can be verified by the permitting agency. We do not want this requirement to be burdensome for the facility. Instead, we encourage the facility to keep a simple file for the notice requirements. Items for inclusion in the file may include: copies of the newspaper announcement, a receipt or affidavit of the radio announcement, a photograph of the sign, or a receipt of purchase for the sign.

The Agency expects that applicants and permit holders will make a good faith effort to announce the pre-application meeting to as many members of the affected community as possible.

- The newspaper advertisement. The applicant must print a display advertisement in a newspaper of general circulation in the community. The display ad should be located at a spot in the paper calculated to give effective notice to the general public. The ad should be large enough to be seen easily by the reader. In addition to the display ad, we also encourage facilities to place advertisements in free newspapers and community bulletins.

In some cases, potential interest in the facility may extend beyond the host community. Under these circumstances, we encourage the applicant either to publish the display ad so that it reaches neighboring communities or to place additional ads in the newspapers of those communities.

- The visible and accessible sign. The final rule requires the applicant to post the notice on a clearly-marked sign at or near the facility. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass, on foot or by vehicle, by the site. The Agency anticipates that the signs will be similar in size to zoning notice signs required by local zoning boards. If a sign on the facility grounds is not practical or useful—for instance, if the facility is in a remote area—then the applicant should choose a suitable alternative, such as placing the sign at a nearby point of significant vehicular or pedestrian traffic. In the case that local zoning restrictions prohibit the use of such a sign in the immediate vicinity of the facility, the facility should pursue other available options, such as placing notices on a community bulletin board or a sign at the town hall or community center. EPA intends the requirement that the sign be posted ''at or near'' the facility to be interpreted flexibly, in view of local circumstances and our intent to inform the public about the meeting. In addition to the requirements of § 124.31, we encourage the applicant to place additional signs in nearby commercial, residential, or downtown areas.

- The broadcast media announcement. The final rule requires the applicant to broadcast the notice at least once on at least one local radio or television station. EPA expects that the applicant will broadcast the notice at a time and on a station that will effectively disseminate the notice. The applicant may employ another medium with prior approval of the Director. We encourage the applicant to consult the preamble to the proposed rule (59 FR 28690) for recommendations on choosing the best circumstances for the broadcast announcement.

EPA will soon issue a guidance document to assist facilities and agencies in implementing the expanded public participation requirements. The guidance document will include more detailed discussions on the approaches to broad and equitable public notice that we are emphasizing in today's preamble.

C. *Notice at Application Submittal (§ 124.32)*

1. Applicability (Proposed § 124.32(c)). The proposed rule required the permitting agency to send a notice to the facility mailing list upon receipt of a permit application. EPA proposed that the rule apply to all new and interim status facilities, but not to permit modifications or applications submitted for the sole purpose of conducting post-closure activities.

Synopsis of Major Comments on Proposed § 124.32(c). The commenters generally supported this provision of the proposed rule. A few commenters recommended that EPA apply the provision to modifications, post-closure permits, and interim status facilities.

EPA's Response to Commenters. The final rule retains the applicability standards of the proposed rule. We continue to believe that the notice at application submittal is an effective means to let the community know that the permitting agency has received a permit application. The notice allows members of the community to keep track of new or existing facilities and to review, concurrently with the permitting agency, the permit application, which will be available for review at a location specified by the permitting agency (either in the vicinity of the facility or at the permitting agency's office). We suggest that the permitting agency consult the public when choosing a suitable location to place the application materials for public review.

The notice requirement does not apply to permit modifications or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility. The permit modification requirements in § 270.42 already include provisions for providing public notice of modification requests. We explain the exemption for post-closure activities in section B.1. above.

2. Responsibility and Timing (Proposed § 124.32(a) and (b)). The proposed rule directed the permitting agency to give the notice ''within a reasonable period of time after the application is received by the Director.'' The proposed rule also listed the information that must go in the notice.

Synopsis of Major Comments on Proposed § 124.32(a) and (b). Many of the commenters provided suggestions on who should be responsible for the notice at application submittal. The majority of these commenters supported EPA's proposal, agreeing that the Director should issue the notice. A few commenters expressed concern over the

timing of the notice. They suggested that EPA rewrite the rule to require the Director to issue the notice within 30 days of application submittal.

EPA's Response to Commenters. These provisions have not changed from the proposed rule to the final rule. EPA maintains its position that the permitting agency should be responsible for providing the public notice at application submittal. Providing the notice will demonstrate clearly that the permitting agency's role in the process has begun.

We anticipate that the permitting agencies will issue timely notices and, thus, we have decided not to prescribe a time frame for agency issuance of the notice at permit application.

D. Information Repository

1. Applicability/Use/Responsibility (Proposed §§ 124.33(a) and 270.30(m)). EPA proposed to give the Director the authority to require the facility to establish and maintain an information repository during the permitting process (§ 124.33(a)) or during the life of a permit (§ 270.30(m)). The purpose of the repository, as proposed, was to make information available to the public during the permit issuance process and during the life of a permit.

Synopsis of Comments on Proposed §§ 124.33(a) and 270.30(m). A number of the comments asked EPA for exemptions from the repository ''requirement,'' especially for boilers and industrial furnaces (BIFs) and federal facilities that must fulfill similar standards under other rules. Many commenters asked for flexibility, suggesting that EPA allow the Director to decide when to require a repository. Some commenters suggested that the Director use this authority only in cases where the community shows true need or public interest when the facility is high. Making a contrary point, a group of commenters argued that the repository should be mandatory for all facilities. Another group of commenters insisted that the permitting agency should be responsible for the repository, or at least split the responsibility with the facility.

EPA's Response to Commenters. In the final rule, EPA has rewritten §§ 124.33(a) and 270.30(m) to better reflect our original intent in proposing the information repository requirement. Our intent was for permitting agencies to use the information repository requirement sparingly. We anticipate that the Director will require such a repository only in special cases where a significant amount of public concern has surfaced or where the community has unique information needs.

Many commenters suggested exemptions from the ''information repository requirement.'' However, the information repository is not a requirement that applies to a pre-determined group of facilities. Instead, the information repository is a public involvement tool that today's rule makes available to permitting agencies for use on a case-by-case basis. Accordingly, there is no need for exemptions from §§ 124.33 or 270.30(m).

Some of the confusion over this section may be the result of the language in the proposed rule. We have reworded §§ 124.33 and 270.30(m) in the final rule to make clear that the Director shall assess a variety of factors, including the status of existing repositories and the community's proximity to a copy of the administrative record, when considering whether or not to require a repository at any facility. So, for instance, if the Director determines that public interest warrants a repository at hypothetical Facility X, but finds that a BIF repository already existing at the facility is responsive to the public interest, then the Director may determine that the facility has no need for a repository under §§ 124.33 or 270.30(m). Or, if the existing repository does not completely satisfy the need that the Director identified, then the Director may specify additional steps that the facility must take to make the repository meet the public need. At Facility X, for instance, the Director may require the facility to make available more information on the general permitting standards, or on the permit application and technical standards for the other units on site, aside from the BIF unit. The facility could then add this information to the existing repository if the repository meets the requirements of §§ 124.33 or 270.30(m).

2. Contents (Proposed § 124.33(b) and (e)). The proposed rule language required the repository to contain all ''documents, reports, data, and other information deemed sufficient by the Director for public understanding,'' as well as information on public involvement activities and how to get on the facility mailing list.

Synopsis of the Major Comments on Proposed § 124.33(b) and (e). A number of commenters recommended specific documents and types of documents (e.g., the permit application, all relevant fact sheets) that EPA should require in the information repository provisions. Some commenters insisted that the content requirements in the proposed rule were too vague. Other commenters thought that EPA should ban certain materials (e.g., public relations literature) from the information repository.

EPA's Response to Commenters. We have changed the repository content requirements in the final rule. The new provision requires the repository to hold ''all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established.'' We have tried to be as flexible as possible in this section since the permitting agency could require a facility to establish a repository at any stage during any permit process or for any time during the life of the facility. Moreover, the requirement to establish a repository will be imposed by the Director on a case-by-case basis; after taking into account the site-specific factors in each case, the Director will decide what materials are appropriate for the repository.

The final rule gives the Director the authority to limit the contents of the repository. While the rule creates no outright bans on materials, EPA anticipates that the Director will use his or her discretion to ensure that repository materials are relevant to permitting activities and to prevent parties from placing inappropriate materials in the repository. We encourage permitting agencies, in the spirit of equitable public participation and access to information, to consult the public regarding what materials would be most useful to members of the surrounding community.

3. Location (Proposed § 124.33(c)). The proposed rule stated that the facility should choose the location for the repository in a place with suitable public access. If the Director opposed the site, then the Director could choose a more appropriate location. The proposed rule also required the repository to be open during reasonable hours and to give the public access to photocopy service (or an alternative means for people to obtain copies).

Synopsis of Public Comments on § 124.33(c). Several commenters expressed concern over the geographic location of the repository. Other commenters asked that EPA rewrite the rule to allow for on-site repositories.

EPA's Response to Commenters. EPA has tried to be flexible in revising the final rule. While we expect that the Director will only infrequently require a repository, we anticipate that those situations will all be different. For this reason, we have avoided writing narrow prescriptions for the location of the repository. Instead, § 124.33(d) of the final rule retains the provision allowing the facility to choose the location. We encourage facilities, in the spirit of

equitable public participation and access to information, to involve the public when suggesting a location for the repository. The Director has the discretion to choose a more suitable location if he or she finds that the one chosen by the facility is unsuitable based on access, location, hours of availability, or other relevant criteria. The Director should exercise this authority sparingly; we are anticipating that, in the great majority of cases, the facility will choose a suitable location. EPA encourages facilities to establish repositories off-site (i.e., within the community where the facility is located) whenever an off-site repository is feasible and would be more readily accessible to the public. Today's rule does not, however, preclude the use of on-site repositories.

4. Timing and Duration (Proposed § 124.33(f)). The proposed rule required the facility to maintain and update the repository for a time period determined by the Director. The proposal also stated that the Director could require the repository at any time during the application process for a RCRA permit or during the active life of a facility.

Synopsis of the Major Comments on Proposed § 124.33(f). The commenters submitted a variety of comments concerning the timing and duration of the repository. Some commenters thought that permitting agencies need flexibility in applying the repository requirement. Others thought that EPA should require the repository to open and close at specific points during the permitting process. One group of commenters insisted that EPA include a provision in the rule to allow for automatic closure of the repository once the permit is issued, denied, or appealed.

EPA's Response to Commenters. In the final rule, EPA clarifies its intent that the Director have the discretion to apply the repository requirement at any time during the permitting process or the life of a facility. Given that it is within the Director's discretion whether to establish a repository at all, we believe that it would be inappropriate to prescribe specific timing and duration requirements that are triggered by the creation of a repository; rather, the Director should decide on questions of timing and duration on a case-by-case basis. The final rule continues the proposed rule's provision that the Director determine the duration of the repository. The final rule provides that the Director can close the repository, based on the same standards (found in paragraph (a)) that the Director uses when assessing the need for a repository.

E. Trial Burn Notices

1. Notice of the Trial Burn for Permitted Combustion Facilities (Proposed §§ 270.62(b)(6) and 270.66(d)(3)). Permits for new hazardous waste combustion facilities must include a plan, approved by the permitting agency as part of the permit, that describes how the facility will conduct the trial burn. However, because construction of a new facility may take a considerable period of time, the trial burn itself might not take place until several years after permit issuance. The proposed rule required the permitting agency to give public notice of the impending trial burn for permitted incinerators and BIFs. Under the proposed rule, the permitting agency would send a notice to the facility mailing list and appropriate units of State and local governments announcing the scheduled commencement and completion dates for the trial burn. The notice would also provide the public with contact information at the permitting agency and the facility and a location where members of the public could review the approved trial burn plan. The proposal required the permitting agency to mail the notice within a reasonable time period prior to the trial burn.

Synopsis of the Major Comments on Proposed §§ 270.62(b)(6) and 270.66(d)(3). We received both positive and negative comments on the proposed notice of trial burn for permitted combustion facilities. The supporters noted the importance of informing the public of the anticipated time period for conducting the burn, because a significant amount of time may elapse between issuing the permit and conducting the trial burn.

Those who opposed the trial burn notice asked what benefit would accrue from public notice of an impending, scheduled trial burn for a new (permitted) facility. One commenter asked EPA to discuss the purpose for requiring this notice from a new facility, considering that the schedule is set out in the permit and the trial burn plan is already open for public comment as part of the draft permit. Some commenters thought that the other permitting events already provide sufficient opportunity for public comment. Other commenters opposed the requirement that the permitting agency give the trial burn notice, claiming that delays would ensue when the agency could not publish the notice on time.

EPA's Response to Commenters. EPA has decided to finalize the trial burn notice provisions for permitted facilities as proposed. The Agency agrees with the commenters who noted the importance of keeping the community up to date on permitting activities at the facility. Several years may pass between the approval of the trial burn plan and the actual date of the trial burn. During the intervening time, the public may not necessarily remain up to date on activities at the facility. The trial burn is a significant step in the process of a combustor moving toward full operation; experience has shown that the public is often interested in knowing when the burn will occur so that citizens can review the trial burn results. Thus, we remain committed to giving notice of the impending trial burn at permitted facilities.

The final rule requires the permitting agency to send the notice to the facility mailing list. While we do not specify a time period during which the permitting agency should send out the notice, we anticipate that permitting agencies will typically notify the public at least 30 days before the trial burn.

The final rule does not provide for a comment period after the permitting agency gives notice of the trial burn dates. A number of commenters asked EPA what the purpose of such a notice would be, if not to open a comment period. Other commenters asked the Agency to make clear whether or not the rule would require a comment period during the trial burn stage. EPA decided that a comment period during the trial burn phase would not be necessary or appropriate. The public has already had the opportunity to be involved with, and comment on, the trial burn plan during the draft permit stage. Our intent in providing for the notice at this stage is to make the public aware of an impending trial burn. The notice will serve as an update, rather than the opening of a comment period.

Finally, EPA has clarified in §§ 270.62(b)(6) and 270.66(d)(3) that a new hazardous waste combustion facility applying for a permit may not commence its trial burn until after the permitting agency has issued the required notice. It was clear from the proposal that we intended for the permitting agency to issue the notice before the trial burn. However, the proposed rule language did not explicitly state the obvious corollary, which was that the facility may not commence the trial burn until after the notice.

EPA does not believe that the notice requirement established by today's rule will delay trial burns. The notice requirement is straightforward and easy to implement; we do not anticipate that permitting agencies will fail to issue the required notices in a timely fashion.

Because the notice is purely informational, EPA will be flexible in interpreting the requirement that the notice be mailed a reasonable time before the commencement of the trial burn. Ideally, the Agency anticipates that permitting agencies will mail the notice at least thirty days before the trial burn. However, as long as the notice is mailed sufficiently in advance of the scheduled trial burn so that the recipients would be expected to receive the notice prior to the commencement date, EPA would consider the notice timely.

It is EPA's intent that the trial burn notice requirements in §§ 270.62(b)(6) and 270.66(d)(3) apply only to initial trial burns, and not to subsequent trial burns that may be conducted as part of the permit modification procedures. EPA believes that the trial burn notices required by today's rule are not necessary in these latter circumstances, since the amount of time between modification approval and the subsequent trial burn is typically much shorter than the amount of time that may elapse between permit issuance and the initial trial burn. Moreover, the modification procedures in § 270.42 include provisions for involving the public throughout the modification submittal and approval process (e.g., through notices or public meetings). Of course, if there are substantial unforeseen delays between the approval of the modification request and the trial burn, EPA suggests that the permitting agency issue a notice in accordance with the procedures set forth in today's rule.

2. Notice of Planned Trial Burn Plan Approval for Interim Status Combustion Facilities (Proposed § 270.74(b) and (c)(3)). Trial burns at interim status facilities generally take place before permit issuance so that the permitting agency can set operating conditions in the permit based on the results of the trial burn. The proposed rule required the permitting agency to give public notice of the tentative approval of a trial burn plan for interim status incinerators and BIFs. The notice requirements are the same as those proposed for permitted incinerators and BIFs, except for an additional provision that the notice contain a schedule of activities that are required prior to permit issuance, including the permitting agency's anticipated schedule for trial burn plan approval and the actual trial burn.

Synopsis of Major Comments on § 270.74(b) and (c)(3). Many of the comments described in section E.1. above with regard to the trial burn notice for permitted incinerators and BIFs also are relevant to the trial burn notice for interim status incinerators and BIFs (e.g., comments on the timing of the notice). A number of commenters raised the issue of a comment period on the trial burn plan for interim status facilities. A few commenters supported the idea, some opposed it, and several more asked EPA to clarify whether or not we would require a comment period on the tentatively approved trial burn plan. One commenter noted that this additional information was critical for interim status facilities where the public has not yet had an opportunity for involvement.

EPA's Response to Commenters. EPA has decided to finalize the provisions for interim status facilities with two slight changes from the proposal. First, the final rule provides for notice of the Director's intention to approve a trial burn plan, rather than his or her ''tentative approval.'' In response to commenter concerns that the notice could be an extra time-consuming step in the process, EPA has changed the language to better reflect its intent that the notice occurs in the final stages of review, rather than being a separate step following completion of review.

Second, we proposed to place the notice requirements in a newly created § 270.74, which contained interim status combustion permitting requirements. However, since EPA is not finalizing the combustion permitting sections of the proposed rule at this time, we have integrated the notice requirements with the regulations for the permitting of interim status combustion facilities, i.e., § 270.62(d) for incinerators and § 270.66(g) for BIFs.

Although the Agency has not changed the trial burn plan notice requirements for interim status combustors in the final rule, the requirements are in a different format than in the proposal. First, the notice requirements are now located in the centers of the paragraphs (§ 270.62(d) for incinerators and § 270.66(g) for BIFs) along with other permitting requirements. Since the notice contents for interim status facilities differ from the contents for permitted facilities with regard to announcing planned approval of the trial burn plan, we are amending §§ 270.62(d) and 270.66(g) to list the specific information that the permitting agency must include in the notices for interim status combustors. Second, we do not list the timing and distribution requirements for the notice for interim status facilities, as we did in the proposed rule. Instead, each of these paragraphs refers the reader to another paragraph (§ 270.62(b) and § 270.66(d), respectively) that covers the notice of the trial burn for permitted facilities. For instance, § 270.62(d) states that the agency shall issue the notice ''in accordance with the timing and distribution requirements of (b)(6) of this section.'' The requirements in (b)(6) are the new notice requirements that we are issuing today for permitted combustion facilities (see section E.1. above). In following the standards in (b)(6), the permitting agency will send the notice to the facility mailing list and the appropriate units of State and local government within a reasonable period of time before the trial burn. Section 270.66(g) takes the same approach for BIFs by referring to paragraph (d) of that section.

For permitted combustion facilities, EPA has clarified in §§ 270.62(b)(6) and 270.66(d)(3) that a facility applying for a permit may not commence its trial burn until after the permitting agency has issued the required notice. EPA does not believe that comparable clarifying language is necessary in §§ 270.62(d) or 270.66(g) for the notice of planned approval of a trial burn plan for an interim status facility. EPA believes it is clear under these provisions that the permitting agency will not approve a plan and, consequently, the facility cannot commence its trial burn, until issuance of the required notice.

The role of the notice for interim status BIFs and incinerators is much the same as the notice for permitted facilities, i.e., to keep the public informed throughout the trial burn stage. The final rule does not require a comment period after the permitting agency gives notice of the planned approval of the trial burn plan and the trial burn dates for interim status facilities. The trial burn notice, like the other notices required by this rule, is primarily intended to keep the community informed while not slowing down the permitting process. Since interim status facilities are already operating, and continue to operate while the permitting agency evaluates the permit application, EPA does not believe it would generally be in the public interest to delay the evaluation process in order to provide a formal response to comments on the trial burn plan. However, if members of the public submit significant information or views relating to the trial burn plan, the Director should consider this information, and may choose to respond in writing at the time of plan approval. In addition, a formal comment period will, of course, still take place after draft permit issuance.

EPA believes that the final rule strikes the appropriate balance between public

involvement and the efficiency of the permitting process. The notice alerts the public of the impending trial burn, and of the opportunity to review the trial burn plan. Since EPA is not yet finalizing the other revisions to combustion permitting procedures proposed in § 270.74, trial burn plans for interim status combustors may not always be available for review with the rest of the application. Through today's notice requirement, the public will still have an opportunity to stay informed and to review the plan before the Director approves it.

EPA is currently considering and addressing the comments it received on the revised combustion permitting procedures. If those procedures are finalized and go into effect as proposed, including the provision requiring facilities to submit trial burn plans with permit applications, the public will have the opportunity to review and submit opinions or suggestions on the proposed trial burn plan at any time after the facility submits the application. At that time, EPA will have the opportunity to consider any such submissions in the process of reviewing the plan. Accordingly, EPA is not requiring a comment period for the planned trial burn plan approval in this rule, since such a requirement could likely be rendered unnecessary in the future.

V. State Authority

A. Applicability of Today's Rule in Authorized States

The overall effect of today's final rule is to increase the stringency of the RCRA permitting process. Therefore, States that are authorized to administer and enforce the RCRA program in lieu of EPA under section 3006 of RCRA are required to modify their programs by adopting equivalent requirements if necessary (see § 271.21(e)). States must submit their proposed program modifications to EPA for approval according to the schedules set forth in section V.B. below.

EPA is promulgating today's rule pursuant to statutory authority that existed prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984. As we explained in more detail in the proposed rule (59 FR 28703–04), EPA will implement §§ 124.31 (the pre-application meeting), 124.32 (the notice at application submittal), and 124.33 (the information repository) of this rule in authorized States only when EPA is processing permit applications for hazardous waste management units over which it has the basic permit issuance authority (e.g., BIFs in States not yet authorized to issue BIF permits). EPA has added language to §§ 124.31(a), 124.32(a), and 124.33(a) of the final rule to clarify that EPA will implement these sections only for such applications. For all other permit applications in authorized States, the requirements of these sections will not take effect until the States adopt and become authorized for this rule.[2]

Under this approach, EPA will be implementing §§ 124.31, 124.32, and 124.33 only where it is the basic permitting authority for the unit. EPA will, of course, implement these sections in non-authorized States. EPA will also implement these sections in authorized States when the permit application in question contains one or more hazardous waste management units for which the State is not authorized to issue RCRA permits and, thus, EPA has basic permit issuance authority. For example, EPA will implement today's rule when processing an application that includes a BIF if the State is not authorized to issue BIF permits. The facility with the BIF unit will be subject to all the applicable requirements in today's rule.

However, if the State is authorized to issue RCRA permits for all of the hazardous waste management units in an application, then EPA will not implement the requirements in §§ 124.31, 124.32, and 124.33. EPA will not implement those provisions in such a case, even though EPA may retain authority to issue a HSWA ''rider'' relating to the units in the application (e.g., authority to control air emissions from certain units under 40 CFR Part 264 Subparts AA, BB, and CC), or relating to the facility as a whole (e.g., corrective action authority under 40 CFR § 264.101). For example, EPA will not implement §§ 124.31, 124.32, and 124.33 when processing the corrective action portion of a tank storage permit application in an authorized State.

The Agency believes that this arrangement best implements the intent of today's rule. EPA designed the pre-application meeting, the notice at application submittal, and repository requirements to enhance communication and understanding between the public, the facility owners and operators, and the permitting agency. These requirements will foster a dialogue between facilities and communities with a focus on fundamental permitting issues. EPA believes that these interactions are properly part of the application process for the basic permit to conduct hazardous waste management operations, and not part of the process to evaluate and issue additional conditions through a HSWA rider. Accordingly, and consistent with the proposal, we have explicitly tied these requirements to the basic permit issuance authority for hazardous waste management units.

For most units in most States, the basic permit issuance authority rests with the State. Accordingly, EPA strongly urges authorized States to adopt this rule in an expeditious manner. Specifically, EPA encourages States that have not yet adopted the BIF rule to adopt the new public participation procedures concurrently with their BIF rules, rather than deferring adoption to the somewhat later deadline that applies to today's rule.

In adopting today's rule, authorized States should not include in their approved regulations the limiting language added to the final applicability sections of §§ 124.31, 124.32 and 124.33. This language includes both the limitation of the sections' applicability to ''all applications seeking RCRA permits for hazardous waste management units over which EPA has permit issuance authority'' and the definition of the phrase ''hazardous waste management units over which EPA has permit issuance authority.'' Obviously, the reference to EPA would be inappropriate in a State rule. Moreover, even if the State changed the language to refer to the State environmental agency, the provision would be unnecessary because authorized States process RCRA permit applications and administer RCRA permits only at facilities with units over which they have permit issuance authority. Accordingly, EPA recommends that States not include in their regulations limiting language similar to that in today's final rulemaking.

[2] EPA is not including similar limiting language, like the language in §§ 124.31, 124.32, and 124.33, in the other provisions of today's rule. With respect to § 270.14, the requirement to submit the summary of the pre-application meeting with the Part B permit application expressly references § 124.31. Accordingly, where the regulations do not require a meeting, it is clear that the applicant does not need to provide a meeting summary. With respect to the information repository requirement of § 270.30(m), EPA will follow the general principles applicable to the inclusion of the § 270.30 ''boilerplate'' provisions in HSWA portions of RCRA permits (*see, e.g., In re General Motors Corp.*, RCRA Appeal Nos. 90–24, 90–25, at 23 (EAB Nov. 6, 1992)). Finally, §§ 270.62 and 270.66 apply only where EPA has permit issuance authority over incinerators and BIFs, respectively, so there is no need to limit the applicability of the specific requirements added to these sections today.

B. Schedules and Requirements for Authorization

40 CFR 271.21(e) requires States with final authorization to modify their programs to reflect federal program changes and submit the modifications to EPA for approval. The deadlines for State modifications are set out in § 271.21(e)(2) and depend upon the date of promulgation of final rules by EPA. Thus, because EPA has promulgated today's rule before June 30, 1996, States must modify their programs, if necessary, to adopt this rule before July 1, 1997 (or July 1, 1998 if a State statutory change is needed). States then must submit these program modifications to EPA according to the schedules in § 271.21(e)(4). Once EPA approves the modifications, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs may already have requirements similar to those we are proposing today. EPA has not assessed these State regulations against the final federal regulations to determine whether they meet the tests for authorization. Thus, similar provisions of State law are not authorized to operate in lieu of today's RCRA requirements until the State submits them to EPA, who then evaluates them against the final EPA regulations. Of course, States may continue to administer and enforce their existing standards in the meantime.

In developing today's final rule, EPA considered impacts on existing State programs. The public participation requirements may be viewed as performance objectives the Agency wants States to meet in their own authorized programs. It is not EPA's intent to restrict States from conducting similar activities that accomplish the same objectives. Therefore, EPA intends to be flexible in reviewing State program submissions and evaluating them against the requirements for authorization.

VI. Permits Improvement Team

In July 1994, EPA created a group of EPA, State, Tribal and local government officials (Permits Improvement Team) to examine and propose improvements to EPA's permit programs. As part of its efforts, the Permits Improvement Team is examining ways to streamline the permitting process, exploring possible alternatives to individual permits, and evaluating ways to enhance public involvement in the permitting process. The Team plans to develop recommendations in each of these areas, discuss them with stakeholders, and submit them to Agency management for consideration.

The public participation requirements that EPA is promulgating in today's rule are appropriate for the RCRA permitting program as it currently exists. If, however, the nature of the RCRA permitting program changes as a result of the Permits Improvement Team's efforts, then the Agency may amend these procedures, or develop additional procedures. For example, the Team is considering recommending several alternatives to individual permits, such as establishing general permits for RCRA non-commercial storage and treatment units. The process of issuing general permits is very different from the current RCRA permitting process; thus, different approaches for involving the public may be appropriate.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the regulatory action.

The Order defines ''significant regulatory action'' as one that is likely to result in a rule 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 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.

The Agency has determined that this rule is not a significant rule under Executive Order 12866. Pursuant to the terms of Executive Order 12866, this section of the preamble summarizes the potential economic impacts of the RCRA Expanded Public Participation rule.

Based upon the economic impact analysis for today's rule, the Agency's best estimate is that the expanded public participation requirements would result in an incremental national annual cost of $180,000 to $500,000.

A complete discussion of the economic impact analysis is available in the regulatory docket for today's rule in a report entitled ''Economic Impact Analysis for the RCRA Expanded Public Participation Rule.''

Cost Analysis. Today's rule includes several requirements that would result in direct costs to facilities submitting initial permit applications or submitting permit renewal applications that propose a significant change for facility operations (see § 124.31). The analysis estimates the costs to all affected facilities of (1) preparing a public notice announcing the intention to hold a public meeting; (2) disseminating the public notice in a local newspaper, over a broadcast medium, and by posting a sign; and (3) holding a public meeting and preparing a meeting summary.

In addition, the rule gives the Director the discretion to require a facility to set up an information repository, based on the level of public interest or other factors. This requirement can apply anywhere in the permitting process or at any time during the active life of a facility.

The total cost per facility of the above requirements is approximately $5,000 to $14,000. Over the next ten years, EPA estimates that between 300 to 450 facilities will incur these costs. The resulting total national annual cost, assuming a discount rate of 7% is estimated to be between $180,000 to $500,000 per year.

Summary of Benefits. The RCRA permitting program was developed to protect human health and the environment from the risks posed by the treatment, storage, and disposal of hazardous waste. By improving and clarifying the permitting process, today's rule produces environmental benefits that result from a more efficient permitting process. The following is an explanation of how each of the provisions of today's rule provides benefits.

The main benefit of the expanded public participation requirements of today's rule is to provide earlier opportunities for public involvement and expand public access to information throughout the permitting process and the operational lives of facilities. EPA believes that these requirements will give applicants and permitting agencies a better opportunity to address public concerns in making decisions about the facility and in subsequent permitting activities.

Providing the public with an expanded role in the permit process, by promoting community participation and

input throughout the permitting process, will also help foster continued community involvement after facilities become permitted.

In addition, expanding public involvement opportunities could, in some cases, streamline the permitting process, since the public will raise issues, and the applicant can address the issues, at an earlier stage in the process. Currently, the public is not formally involved in the permitting process until the draft permit stage, which occurs after the permitting agency and the permit applicant have discussed crucial parts of the part B permit application. The Agency anticipates that the earlier participation provided in this rule will address the public concern that major permit decisions may be made before the public has the opportunity to get involved in the process. This earlier involvement may well reduce costs associated with delays, litigation, and other products of disputes.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the RFA requires agencies to perform an initial screening analysis to determine whether small entities will be adversely affected by the regulation. If the analysis identifies affected small entities, then the agency must consider regulatory alternatives to mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and governmental jurisdictions subject to regulation.''

In developing today's rule for expanding public involvement in the RCRA permitting process, EPA was sensitive to the needs and concerns of small businesses. The provisions set forth the minimum requirements necessary to fulfill the public involvement objectives in this rule. Additional examples of activities that facilities may choose to conduct are provided in the preamble for the proposed rule (59 FR 28680) and will be included in a future guidance document, rather than in this rule. EPA's intent is to provide flexibility for a facility to determine, in view of the facility-specific circumstances, the appropriate level of public involvement activities. In addition, EPA recognizes that, in some situations, an information repository could become resource-intensive for a facility or for the local community. EPA has addressed this concern by clarifying, in the final rule, that the information repository is not mandatory for all facilities. The rule makes clear our intent that the Director reserve the use of the information repository option only for the limited number of facilities that raise high levels of public interest or whose communities have a special need for more access to information.

EPA conducted a small entity impact screening analysis for the proposed rule and determined that there were no small entities significantly impacted (see 59 FR 28680–28711, Section VI.C.). Because the public participation requirements have not increased since the proposal, EPA has determined that the final rule also does not significantly impact small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0149.

This collection of information is estimated to have a public reporting burden averaging 89.60 hours per response, and to require 34.60 hours per recordkeeper annually. This total includes time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

Display of OMB Control Numbers. EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the UMRA), P.L. 104–4, EPA generally must prepare a written statement, including a cost-benefit analysis, for 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. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them about compliance with the regulatory requirements.

For the reasons explained in Section VI.A. above, EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Rather, EPA projects the total annual costs imposed by today's rule to be less than $500,000. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated above, the total costs of the rule are very low. These minimal costs will be incurred by owners and operators of hazardous waste treatment, storage and disposal facilities, which are principally private entities, and federal government agencies. Accordingly, this rule does not impose any requirements that might significantly or uniquely affect small governments.

E. Enhancing the Intergovernmental Partnership

Executive Order 12875. Executive Order 12875 on enhancing the intergovernmental partnership charges federal agencies with establishing meaningful consultation and collaboration with State and local governments on matters that affect them. In most cases, State governments are the level of government that regulates hazardous waste.

EPA has consulted with State officials to develop today's rule. EPA invited several States, representing various parts of the country, to participate in this rulemaking process. These States reviewed and provided feedback on the draft proposal over a period of eight months, and the draft final rule over a period of five months. In addition, these States participated in monthly workgroup meetings via conference call. Their participation and immediate feedback in the workgroup process added considerable value to the rulemaking effort.

EPA contacted additional States in an effort to receive their specific feedback on general permitting and public involvement techniques. EPA solicited State input during a session of the 3rd Annual RCRA Public Involvement National Conference, in which sixteen State representatives participated. The State participants provided numerous helpful suggestions and ideas. In addition, the Agency utilized existing State groups, such as the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), to solicit input on the proposed rule at various stages in the development process. State personnel at the Commissioner level provided input to EPA at bi-monthly meetings of the EPA-State Task Force on Hazardous Waste Management. Through early involvement in the process, State representatives made valuable contributions to the development of today's rule. EPA also received comments from several States following publication of the proposed rule. Many of the States' concerns are addressed by the final rule.

The Relationship of Today's Rule with Indian Policy. Currently, EPA has the responsibility for ensuring the implementation and enforcement of the Subtitle C hazardous waste regulatory program on Indian lands. This responsibility includes the issuance of hazardous waste permits. However, consistent with EPA's Indian Policy of 1984, the Agency will look directly to, and work with, Tribal governments in determining the best way to implement the public involvement requirements in Indian country. This Indian policy recognizes the sovereignty of federally-recognized Tribes and commits EPA to a government-to-government relationship with the Tribes.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 124

Administrative practice and procedure, Hazardous Waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Waste treatment and disposal.

Dated: October 18, 1995.

Carol M. Browner,

Administrator.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB Control No.
* * * * *	
PART 124—PROCEDURES FOR DECISIONMAKING	
124.31	2050–0149
124.32	2050–0149
124.33	2050–0149
PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM	
270.62	2050–0149
270.66	2050–0149
* * * * *	

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Subpart B is amended by adding text to read as follows:

Subpart B—Specific Procedures Applicable to RCRA Permits

Sec.
124.31 Pre-application public notice and meeting.
124.32 Public notice requirements at the application stage.
124.33 Information repository.

Subpart B—Specific Procedure Applicable to RCRA Permits

§ 124.31 Pre-application public meeting and notice.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a ''significant change'' is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary

opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b).

(d) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

(1) The applicant shall provide public notice in all of the following forms:

(i) *A newspaper advertisement.* The applicant shall publish a notice, fulfilling the requirements in paragraph (d)(2) of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Director shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(ii) *A visible and accessible sign.* The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (d)(2) of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(iii) *A broadcast media announcement.* The applicant shall broadcast a notice, fulfilling the requirements in paragraph (d)(2) of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Director.

(iv) *A notice to the permitting agency.* The applicant shall send a copy of the newspaper notice to the permitting agency and to the appropriate units of State and local government, in accordance with § 124.10(c)(1)(x).

(2) The notices required under paragraph (d)(1) of this section must include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(v) The name, address, and telephone number of a contact person for the applicant.

§ 124.32 Public notice requirements at the application stage.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Director shall provide public notice as set forth in § 124.10(c)(1)(ix), and notice to appropriate units of State and local government as set forth in § 124.10(c)(1)(x), that a part B permit application has been submitted to the Agency and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) The location where copies of the permit application and any supporting documents can be viewed and copied;

(v) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

(vi) The date that the application was submitted.

(c) Concurrent with the notice required under § 124.32(b) of this subpart, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

§ 124.33 Information repository.

(a) *Applicability.* The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units over which EPA has permit issuance authority. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(b) The Director may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director shall notify the facility that it must establish and maintain an information repository. (See 40 CFR 270.30(m) for similar provisions relating to the information repository during the life of a permit).

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established. The Director shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Director finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Director shall specify a more appropriate site.

(e) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and

updating the repository with appropriate information throughout a time period specified by the Director. The Director may close the repository at his or her discretion, based on the factors in paragraph (b) of this section.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.2 is amended by revising the definition for ''Facility mailing list'' to read as follows:

§ 270.2 Definitions.

* * * * *

Facility mailing list means the mailing list for a facility maintained by EPA in accordance with 40 CFR 124.10(c)(1)(ix).

* * * * *

3. Section 270.14 is amended by adding paragraph (b)(22) to read as follows:

§ 270.14 Contents of part B: General requirements.

* * * * *

(b) * * *

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under § 124.31(c).

4. Section 270.30 is amended by adding paragraph (m) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(m) *Information repository.* The Director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 CFR 124.33(b). The information repository will be governed by the provisions in 40 CFR 124.33(c) through (f).

5. Section 270.61(b)(5) introductory text is amended by removing the reference § 124.11(b) and adding in its place § 124.10(b).

* * * * *

6. In § 270.62, paragraphs (b)(6) through (10) are redesignated as paragraphs (b)(7) through (11), and new paragraph (b)(6) is added as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *

(6) The Director must send a notice to all persons on the facility mailing list as set forth in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as set forth in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice must contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the permitting agency's contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

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7. Paragraph (d) of § 270.62 is revised as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(d) For the purpose of determining feasibility of compliance with the performance standards of § 264.343 of this chapter and of determining adequate operating conditions under § 264.345 of this chapter, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with § 270.19(b) and paragraphs (b)(2) through (b)(5) and (b)(7) through (b)(10) of this section or, instead, submit other information as specified in § 270.19(c). The Director must announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of paragraph (b)(6) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under § 270.19(a) are exempt from compliance with 40 CFR 264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in paragraph (b)(7) of this section, with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the Director to establish a later date for submission of the part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the Director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

8. In § 270.66, paragraphs (d) (3) through (5) are redesignated as paragraphs (d) (4) through (6), and new paragraph (d)(3) is added to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(d) * * *

(3) The Director must send a notice to all persons on the facility mailing list as set forth in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as set forth in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice must contain:

(A) The name and telephone number of applicant's contact person;

(B) The name and telephone number of the permitting agency contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

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9. Paragraph (g) of § 270.66 is revised as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(g) *Interim status boilers and industrial furnaces.* For the purpose of determining feasibility of compliance with the performance standards of § 266.104 through 266.107 of this chapter and of determining adequate operating conditions under § 266.103 of this chapter, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of § 266.103 of this chapter must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in § 270.22(a)(6). The Director must announce his or her intention to approve of the trial burn plan in accordance with the timing and distribution requirements of paragraph (d)(3) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in paragraph (f) of this section with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the Director to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the Director.

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40 CFR Part 52

[SC–029–1–7177a; FRL–5316–5]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the South Carolina State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the South Carolina State Implementation Plan (SIP) to incorporate new permitting regulations and to allow the State of South Carolina to issue Federally enforceable state construction and operating permits (FESCOP). On July 12, 1995, the State of South Carolina through the Department of Health and Environmental Control (DHEC) submitted a SIP revision which updates the procedural rules governing the issuance of air permits in South Carolina and fulfills the requirements necessary for a state FESCOP program to become Federally enforceable. In order to extend the Federal enforceability of South Carolina's FESCOP program to hazardous air pollutants (HAPs), EPA is also approving South Carolina's FESCOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that South Carolina may issue Federally enforceable construction and operating permits for HAPs.

DATES: This final rule will be effective February 11, 1996, unless adverse or critical comments are received by January 10, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Scott Miller at the EPA Regional office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is (404) 347–3555 extension 4153. Reference file SC029.

SUPPLEMENTARY INFORMATION: On July 12, 1995, the State of South Carolina through the DHEC submitted a SIP revision designed to allow South Carolina to issue FESCOP which conform to EPA requirements for Federal enforceability as specified in a Federal Register notice, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules.'' (See 54 FR 22274, June 28, 1989). This voluntary SIP revision allows EPA and citizens under the Act to enforce terms and conditions of state-issued minor source construction and operating permits. Construction and operating permits that are issued under the State's minor source construction and operating permit program that is approved into the State SIP and under section 112(l) will provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable construction and operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements. EPA notes that the State will continue to issue construction and operating permits that are not intended to be Federally enforceable under regulations found at South Carolina Air Pollution Control Regulation (SCAPCR) 61–62.1 Section II.A and Section II.B.

In the aforementioned June 28, 1989, Federal Register document, EPA listed five criteria necessary to make a state agency's minor source construction and operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the State's minor source construction and operating permit program.

The first criterion for a State's construction and operating permit program to become Federally enforceable is EPA's approval of the permit program into the SIP. On July 12, 1995, the State of South Carolina submitted through the DHEC a SIP revision designed to meet the five criteria for Federal enforceability. This action will approve these regulations