ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239, 257 and 258

[FRL–6178–8]

RIN 2050–AD03

Subtitle D Regulated Facilities; State Permit Program Determination of Adequacy; State Implementation Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Resource Conservation and Recovery Act (RCRA) requires states to adopt and implement permit programs or other systems of prior approval to ensure that municipal solid waste landfills (MSWLFs) and non-municipal, non-hazardous waste disposal units that receive conditionally exempt small quantity generator (CESQG) hazardous waste comply with the federal revised criteria established for these disposal units. RCRA further directs the Environmental Protection Agency (EPA or the Agency) to determine whether state permit programs or other systems of prior approval are adequate to ensure compliance with the federal revised criteria. This final rule provides a flexible framework for modifications of approved programs, establishes procedures for withdrawal of approvals, and confirms the process for future program approvals so that standards that safeguard human health and the environment are maintained.

EFFECTIVE DATE: November 23, 1998.

ADDRESSES: Supporting materials for this rule are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–STIF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section of this document for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; 800–424–9346; TDD 800–553–7672 (hearing impaired); in the Washington, DC metropolitan area, the number is 703–412–9810; TDD 703–486–3323.

For more detailed information on specific aspects of this rulemaking, contact Karen Rudek, Office of Solid Waste (5306W), U.S. Environmental Protection Agency Headquarters, 401 M Street SW., Washington, DC 20460; 703–308–1682, rudek.karen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA's response to comments received on the proposed STIR is included in section IV., B., of the preamble to today's final rule. Follow these instructions to obtain electronic access:

World Wide Web: http://www.epa.gov/osw/
FTP: ftp.epa.gov
Login: anonymous
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Files are located in /pub/epaoswer

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I. Authority

The U.S. Environmental Protection Agency (EPA or the Agency) is promulgating these regulations under the authority of sections 2002(a)(1) and 4005(c) of the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), as amended by the Hazardous and Solid Waste Amendments of 1984.

Subtitle D of RCRA, at section 4005(c)(1)(B), requires each state to develop and implement a permit program or other system of prior approval to ensure that facilities that receive household hazardous waste or conditionally exempt small quantity generator (CESQG) hazardous waste are in compliance with the federal revised criteria promulgated under section 4010(c) of Subtitle D of RCRA. Section 4005(c)(1)(C) further directs EPA to determine whether state permit programs are adequate to ensure compliance with the revised federal criteria. Section 2002(a)(1) of RCRA authorizes EPA to promulgate regulations necessary to carry out its functions under the Act.

II. Regulated Entities

Regulated entities include state governments requesting full or partial approvals of permit programs or other systems of prior approval, or revisions to existing fully or partially approved programs.

III. Background

On October 9, 1991, EPA promulgated the ''Solid Waste Disposal Facility Criteria: Final Rule,'' which established 40 CFR part 258 (56 FR 50978). These criteria include location restrictions and standards for design, operation, ground-water monitoring, corrective action,

financial assurance, and closure and post-closure care for MSWLFs. On July 1, 1996, EPA amended 40 CFR part 257 by adding subpart B, ''Federal Disposal Standards for the Receipt of CESQG Wastes at Non-Municipal, Non-Hazardous Waste Disposal Units'' (61 FR 34252). The 40 CFR part 257, subpart B criteria include location restrictions, ground-water monitoring, and corrective action standards for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous wastes. The 40 CFR part 257, subpart B and 40 CFR part 258 criteria, henceforth referred to as the ''Subtitle D federal revised criteria,'' establish minimum federal standards that take into account the practical capability of owners and operators and ensure that both MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous wastes are designed and managed in a manner that is protective of human health and the environment. Every standard in the Subtitle D federal revised criteria is designed to be implemented by the owner or operator, with or without oversight or participation by a regulatory agency (e.g., an approved state permit program). States with approved programs may choose to permit the Subtitle D federal revised criteria exactly, or they may choose to allow owners and operators to use site-specific alternative approaches to meet the federal performance standards. The flexibility that an owner or operator may be allowed under an approved state program can provide a significant reduction in the burden associated with complying with the federal criteria.

Both the proposed State/Tribal Implementation Rule (STIR) (61 FR 2584, Jan. 26, 1996) and the promulgated 40 CFR part 257, subpart B, contain language pertaining to waste disposal in Indian Country as well as in states. Due to a recent decision by the U.S. Court of Appeals for the District of Columbia Circuit (*Backcountry Against Dumps* v. *EPA,* 100 F. 3d 147 (DC Cir. 1996)), tribes are viewed as municipalities rather than as states under RCRA and, therefore, the Agency cannot approve tribal landfill permitting programs. To reflect the court decision, references to tribes have been deleted from this final rule. Thus, although the proposed rule was titled STIR, we refer to today's final regulation as the State Implementation Rule (SIR).

A. Effect of SIR on State Programs

The regulation of solid waste management has historically been a state and local function. Under the final SIR, EPA intends that states will continue their lead role in implementing the federal revised MSWLF requirements. States with approved programs may choose to enforce the federal standards by requiring owners and operators of permitted facilities to implement the federal revised criteria exactly as written in 40 CFR part 257, subpart B and 40 CFR part 258, with no consideration given to an owner or operator's proposed implementation of alternative approaches to meet federal performance standards. States with approved programs also may choose, however, to take advantage of the significant flexibility incorporated into the 40 CFR part 257, subpart B and part 258 criteria by allowing owners and operators of permitted facilities to use alternative approaches to meet federal performance requirements.

To date, 40 states and one U.S. territory have obtained EPA's full approval of their MSWLF programs, and another six states have received partial program approval. This final rule is designed to minimize disruption of those approved programs while assuring that facilities comply with the Subtitle D federal revised criteria. The following is a brief summary of EPA's requirements for state authorities and the Agency's rights of review.

■ The Agency's goal is for states to apply for and receive permit program approval. To that end, this rule stipulates basic authorities, rather than prescriptive programmatic elements. Today's rule takes an approach which allows states flexibility in the structure of their individual permit programs or other systems of prior approval (henceforth collectively referred to as ''permit programs'') while assuring that the states have the necessary authorities and procedures, including staffing and technical capabilities, to allow them to take action as needed to enforce compliance with the Subtitle D federal revised criteria. Under the SIR, states may use their own design standards, performance standards, or a combination of the two to implement the basic elements required in the criteria.

■ EPA generally will defer to the state certifications of legal authority. If the Agency receives information indicating that a state's legal certification is inaccurate, however, EPA reserves the right to conduct its own review of the state's legal certification and authorities.

B. Subtitle D Federal Revised Criteria Permit Program Adequacy Determinations

For initial determinations of partial or full state program adequacy for 40 CFR part 258 regulated facilities, and for determinations of adequacy for revisions in already-approved state MSWLF permitting programs, EPA will follow the procedures contained in today's rule at 40 CFR 239.10.

To make adequacy determinations for non-municipal, non-hazardous waste permit programs in states with already-approved permit programs where the state disposal requirements meet or exceed the 40 CFR part 257, subpart B requirements, EPA believes it is appropriate to use a streamlined approval process. The Agency plans to publish streamlined adequacy determinations in the near future for states with programs that meet the criteria for streamlined approval. Currently, some states require that all hazardous waste disposal, including CESQG hazardous waste disposal, must occur only in hazardous waste disposal facilities that comply with the hazardous waste disposal requirements of RCRA Subtitle C. Other states require that CESQG hazardous wastes be managed in facilities that comply with the requirements of 40 CFR part 258. Many of these same states have EPA authorized Subtitle C permit programs and/or EPA approved MSWLF permit programs which, to meet EPA requirements for authorization or approval, must include all of the criteria enumerated in 40 CFR part 257, subpart B as well as additional criteria required by Subtitle C or part 258. Such states, therefore, have requirements for CESQG hazardous waste disposal that are equal to or more stringent than the federal requirements found in 40 CFR part 257, subpart B, since their permitted Subtitle C or MSWLF facilities must comply with design and operating criteria that include all of the 40 CFR part 257, subpart B criteria. Thus, in states where EPA has already authorized a Subtitle C permit program and/or approved a MSWLF permit program, and where the state requires CESQG hazardous waste disposal in permitted facilities, EPA need only verify, using documentation previously submitted by the state for its Subtitle C or MSWLF permit program approval application, that the state is already in compliance with the 40 CFR part 257, subpart B disposal criteria. In such cases, there is no need for the state to submit additional information for 40 CFR part 257, subpart B permit program approval.

C. Summary of Today's Final Rule

1. Rationale for Today's Final Rule

Significant flexibility for owners and operators in meeting the Subtitle D federal revised criteria is only available in approved states; therefore, the Agency has actively encouraged states to seek early approval of their permit programs. EPA used the draft STIR as guidance in interpreting the statutory authorities and requirements, in identifying the necessary components of an application, and in determining the adequacy of state MSWLF permit programs. Although, to date, EPA has fully or partially approved 47 state/territorial MSWLF permit programs and anticipates approval of programs in the remaining states in the near future, the Agency believes it remains necessary to promulgate this final rule to provide a framework for modifications of approved permit programs, to establish procedures for withdrawal of approvals, and to confirm the process for future program approvals.

Public comments on the proposed rule, and public hearings on the state permit programs that have been approved to date, have yielded few significant comments on the process used for approval. Thus, it is not the Agency's intent that states with already approved MSWLF permit programs reapply for approval upon promulgation of this final rule.

2. Approval Procedures for State Permit Programs

To secure an EPA determination of adequacy under RCRA section 4005(c), a state must submit an application for permit program approval to the appropriate EPA regional administrator for review. This final rule describes the program elements to be included in the state application and sets forth the criteria EPA will use to determine state program adequacy.

The Agency encourages states to develop and submit draft applications to the regions as a first step in the approval process. Preparing a draft application allows the state to perform a detailed review of its current program and identify areas that may not meet the Subtitle D federal revised criteria. Submitting a draft application also enables the Region to provide more effective guidance to the state early in the process.

Pursuant to 40 CFR 239.10, Table 1 presents the schedule and timelines for EPA in the SIR application approval process. Submission of an application for program approval does not ensure automatic approval should the Agency fail to meet the application review timeframe presented in Table 1.

TABLE 1.—SCHEDULE FOR SIR APPLICATION APPROVAL PROCESS

Milestones and associated tasks	Timeframe
1. EPA Receives Application: ■ Determine whether the application is administratively complete ..... ■ Prepare docket.	Timeframe: Within 30 days of receiving application.
2. EPA Reviews Application for Adequacy (After Administratively Complete): ■ Submit comments to state ■ Review state's response to comments ■ Determine adequacy of implementation support (e.g., permitting and enforcement authorities) ■ Determine adequacy of technical landfill provisions ■ Make tentative determination ■ Prepare tentative determination notice ■ Determine strategy for holding a public hearing ■ Obtain Regional Administrator's signature.	Timeframe: Within 180 days.
3. EPA Submits Notice for Publication in the **Federal Register**: ■ Specify the tentative determination reached ■ Allow at least a 30-day public comment period ■ Describe any areas of concern ■ Note availability of the application for public inspection ■ Indicate that a public hearing will be scheduled if warranted	
4. Public Comment Period.	
5. EPA Holds Public Hearing (If sufficient interest is expressed).	
6. EPA Prepares Final Determination Notice: ■ Address public comments ■ Prepare **Federal Register** preamble, including summary of comments received ■ Obtain Regional Administrator's signature	
7. Final Determination Published in the **Federal Register**.	

3. Partial Approval Procedures for State Permit Programs

In view of the comprehensive nature of the Subtitle D federal revised criteria, it is likely that some state permit programs will meet the procedural and legal requirements of 40 CFR part 239, but not meet all of the technical requirements of 40 CFR part 257, subpart B or 40 CFR part 258, as promulgated under sections 1008 (a)(3), 4004(a) and 4010(c) of RCRA. Such programs will require statutory, regulatory, and/or guidance changes for full program approval. The potential for technical voids concerns the Agency, because it could produce delays in final adequacy determinations. These delays could place substantial burdens on owners and operators by postponing the availability of flexibility that may be afforded by states with approved programs.

To address this issue, 40 CFR 239.10 and 40 CFR 239.11 of the final SIR include procedures for full and partial state program approvals. With a partial approval, the state permitting agency can allow owners and operators to take advantage of flexibility for those portions of the state program that meet the federal requirements while the state makes necessary changes to the remaining portions of its program. If a state MSWLF program meets all but the federal ground-water monitoring criterion, for example, all portions of its program except ground-water monitoring would be approved. The

state could then allow owners and operators flexibility for approved criteria while having additional time to modify its program to bring it into compliance with federal ground-water monitoring requirements. For those criteria where the state program is not approved, the owner or operator must self-implement the federal criteria, thus ensuring that the solid waste facility is in compliance with the Subtitle D federal revised criteria. Section 239.11(d) of today's final rule provides that states with partially approved permit programs are approved to implement flexibility proposals from owners and operators only in those portions of the technical requirements that are included in the partial approval.

The partial approval process is not intended to create a two-step process by which a state first gains approval for those parts of its permit program that are currently adequate and then revises the remainder of the program. Applications for partial approval must include a schedule, agreed to by the state and by the appropriate regional administrator, for completing the changes to the laws, regulations, and/or guidance needed to comply with the remaining technical requirements. States whose programs require procedural, legal, or substantial technical changes are encouraged to complete all necessary program modifications before submitting an application for approval.

States that receive partial approval should submit an amended application meeting all requirements of 40 CFR part 239 and have that application approved within two years of the effective date of the final determination for partial program adequacy. States should be sensitive to this deadline and submit amended, complete applications well in advance of the deadline to allow regions ample time for public participation, to make tentative and final adequacy determinations, and to publish these determinations in the **Federal Register**.

To encourage states to pursue full program approval in a timely manner, EPA has limited the life span for partial approvals to two years. The Agency views the partial approval process as a temporary measure, but believes that states may require up to two years to make the changes to their laws, regulations, and/or guidance which may be needed for full program approval. The Agency believes, however, that it would be counterproductive to determine an entire program inadequate if a state has good cause to exceed the two-year timeframe. For this reason, the Agency will accommodate state program development by providing a mechanism to allow partial approval of programs to extend beyond two years if the state demonstrates good cause to the EPA region. In such cases, the Regional Administrator will publish the expiration date extension for the partial approval in the **Federal Register**.

4. Role of Guidance

While states must have the authority to issue, monitor compliance with, and enforce permits adequate to ensure compliance with the Subtitle D federal revised criteria, the specific requirements of the applicable Subtitle D federal revised criteria need not be contained in state laws or regulations. Guidance documents may be used to supplement state laws and regulations if the state demonstrates in its legal certification that the guidance will be used to develop enforceable permits or other mechanisms that will ensure compliance with the criteria. Guidance may be used only to supplement state laws and regulations; it cannot correct laws and regulations that are inconsistent with the guidance. If a state's laws or regulations require three inches of earthen material daily as a cover, for example, the state could not meet the daily cover requirement of 40 CFR 258.21 by issuing guidance that owners and operators apply six inches of earthen material at the end of each operating day.

The narrative description of the state program must explain how the state will use guidance to develop enforceable permits or other mechanisms of prior approval that ensure compliance with the Subtitle D federal revised criteria. Use of guidance gives the states added flexibility in meeting the requirements of 40 CFR part 239, yet maintains the requirement that states have the authority to ensure owner and operator compliance with the revised criteria. The flexibility afforded by the use of guidance should limit the need for states to restructure existing laws and regulations.

D. Differences From the Subtitle C Authorization Process

The approach for determining the adequacy of state permit programs under section 4005(c) of Subtitle D of RCRA differs from the approach taken for authorizing state hazardous waste programs under section 3006 of Subtitle C of RCRA. The differences in approach reflect differences in the statutory framework of each subtitle.

Under Subtitle C, prior to authorization of a state program, EPA has primary responsibility for permitting of hazardous waste facilities. Federal law, including the issuance and enforcement of permits, applies until EPA authorizes a state to operate the state program in lieu of the federal program. Subtitle C requires authorized state programs to be at least equivalent to and consistent with the federal program and other authorized state programs, and to have requirements that are no less stringent than the federal Subtitle C requirements. Once authorized, state programs operate in lieu of the federal program and, if federal enforcement of requirements is necessary, EPA must enforce the authorized state's requirements under Subtitle C, rather than the federal law that was superseded by the state requirements. EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003, although authorized states have primary enforcement responsibility. Citizens may also enforce the requirements of an authorized state hazardous waste program through citizen suits in federal court under RCRA section 7002.

In contrast, under Subtitle D, facility permitting is a state responsibility. EPA's role includes establishing technical design and operating criteria for facilities, determining the adequacy of state permitting programs, and enforcing compliance with the Subtitle D federal revised criteria only after determining that the state permitting program is inadequate. Subtitle D does not provide for state requirements to operate in lieu of the Subtitle D federal revised criteria. The Subtitle D federal revised criteria and state requirements operate concurrently, regardless of whether a state permit program is deemed adequate or inadequate.

E. Enforcement

1. EPA Enforcement

Approved states have primary responsibility for ensuring compliance with the Subtitle D federal revised criteria through the enforcement element of their programs. RCRA does not give EPA the authority to take enforcement actions in approved states or in states pending an adequacy determination; therefore, adequate state enforcement authorities are crucial to ensure compliance.

EPA retains enforcement and response authority, however, in a number of ways, including the following:

■ Under RCRA section 4005(c)(2)(A), the Agency has the authority to enforce the Subtitle D federal revised criteria only where it determines the state permit program to be inadequate.

■ Under RCRA section 7003 and section 106 of the Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA), EPA retains enforcement authority to address situations that may pose imminent and substantial endangerment to human health or the environment.

■ Under CERCLA section 104(a), EPA may take response actions in situations where there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance, pollutant, or contaminant into the environment.

Where a citizen brings a concern to EPA's attention, the Agency will respond in an appropriate manner on a case-by-case basis.

2. Citizen Enforcement

In light of recent federal court decisions in the case of *Ashoff* v. *City of Ukiah,* questions have been raised by members of the public as to the Agency's position on the ability of citizens to enforce requirements where EPA has approved a state permit program under Subtitle D of RCRA. The district court in the *Ashoff* case held that citizens cannot enforce the requirements of an approved state MSWLF permit program under RCRA Subtitle D and dismissed the citizen suit which the plaintiff had brought under RCRA. *Ashoff* v. *City of Ukiah* No. C–96–1302 VRW (N.D. Calif. Nov. 21, 1996). On appeal, the United States Court of Appeals for the Ninth Circuit affirmed the district court's dismissal of the RCRA citizen suit, but held that citizens could maintain actions under RCRA section 7002 to enforce those elements of an approved state Subtitle D permit program which had become effective pursuant to RCRA. *Ashoff* v. *City of Ukiah*, 130 F.3d 409, 411–412 (9th Cir. 1997). At the same time, the Court held that citizens could not bring RCRA citizen suit actions to enforce those elements of an EPA-approved Subtitle D state permit program that are more stringent than the federal MSWLF criteria. *Id.* at 412. While the district court opinion misconstrued a number of statements EPA has made in the **Federal Register**, the Ninth Circuit's opinion is essentially consistent with the Agency's position as set forth below.

a. Types of Subtitle D federal revised criteria. The Subtitle D federal revised criteria applicable to MSWLFs and non-municipal, non-hazardous disposal units that receive CESQG waste are of three general types. The first type establishes a single federal standard that all MSWLFs and non-municipal, nonhazardous disposal units that receive CESQG waste must meet and that leaves no discretion to the state or the owner or operator. An example of the first type of criterion can be found in 40 CFR 258.24(b) of the federal MSWLF revised criteria, which prohibits open burning of solid waste at MSWLFs, except for the infrequent burning of certain specifically-identified types of waste. The federal MSWLF revised criteria do not allow states to waive or alter this prohibition so that it would be a less stringent prohibition. Thus, owners and operators of MSWLFs in states with EPA-approved programs and those states whose programs have not yet been fully reviewed by the Agency must comply with this federal minimum open burning prohibition. States could choose, however, to make the prohibition more exacting by not permitting the infrequent open burning of the identified wastes. As discussed below, however, such a complete open burning prohibition adopted by the state would not be enforceable by citizens under RCRA sections 4005(a) and 7002(a)(1)(A).

A similar type of provision, which leaves no discretion to the state or the owner or operator, is contained in 40 CFR 257.8(a) of the revised criteria for non-municipal, non-hazardous waste disposal units. Owners or operators of waste disposal units that receive CESQG hazardous waste and are located in 100-year flood plain must demonstrate that the units will not restrict the flow of the 100-year flood, reduce the capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment. The owner or operator must notify the state director that the demonstration has been placed in the operating record of the unit. The state director cannot waive this demonstration requirement. If, by January 1, 1998, the owner or operator of an existing unit cannot make the flood plains demonstration, the unit must not accept CESQG waste for disposal (40 CFR 257.13). The demonstration requirement and the prohibition against the continued receipt of CESQG waste if the requirement is not met apply whether the unit is located in an approved state or not.

The second type of criterion establishes a federal standard, but allows an approved state to establish an alternative standard, compliance with which constitutes compliance with the relevant federal standard. The revised MSWLF criteria, for example, establish two alternative means of compliance with requirements for daily cover of landfills. Under 40 CFR 258.21, MSWLF owners or operators must either use six inches of earthen material as cover at the end of each operating day or use alternative materials of an alternative thickness that the director of an approved state has approved. The owner or operator must demonstrate that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. Other areas of the revised MSWLF criteria that provide approved states with the right to establish alternative standards include certain design, operating, location, ground-water monitoring, corrective action, closure and post-closure care, and financial assurance requirements. The revised criteria for non-municipal, non-hazardous waste disposal units that receive CESQG waste also provide that directors of approved states may establish alternative standards in a variety of circumstances. For example, see 40 CFR 257.21(h) and (I) (alternative ground-water monitoring systems for certain small CESQG waste disposal units in arid or remote locations); 40 CFR 257.22(b) (alternative use of a multi-unit ground-water monitoring system); and 40 CFR 257.24(a)(2) (alternative list of indicator parameters for which detection monitoring is required).

Where an approved state implements an alternative standard specifically provided for by the Subtitle D federal revised criteria, compliance with that approved state alternative standard constitutes compliance with the relevant federal criterion. The following **Federal Register** citations reference state alternative standards: 61 FR 2584, 2593, ''EPA expects the owner or operator who complies with the requirements of an approved state's or tribe's permit program will be found by federal courts to have complied with the requirements in the Subtitle D federal revised criteria;'' and 56 FR 50978, 50995, ''EPA expects that owners or operators in approved states who use the state standard will be found by federal courts to have complied with the design requirements of part 258.'' An owner or operator must comply, as appropriate, with either the Subtitle D federal revised criteria or the alternative approved state standard provided for in the revised criteria; failure to comply with the federal standard or the alternative approved state standard, as appropriate, constitutes open dumping. For more information, see 40 CFR 257.1(a)(1) and (2); and 40 CFR 258.1(g) and (h).

A third type of federal criterion gives the owner or operator discretion to implement fully the federal standard based on site-specific information. This type of criterion contemplates instances

where site-specific definition must be given to make the federal criterion meaningful. EPA promulgated the revised criteria so that owners and operators could implement the standards on their own if states chose not to adopt permit programs (61 FR 2584, 2595, Jan. 26, 1996 and 56 FR 50978, 50992–50993, Oct. 9, 1991). The Subtitle D federal revised criteria thus establish some performance standards that an owner or operator must meet by considering a number of identified site-specific factors. If ground-water contamination at a MSWLF or a CESQG waste disposal unit requires clean up, for example, the Subtitle D federal revised criteria provide that the owner or operator must select both the cleanup remedy and the schedule for implementing it (40 CFR 257.27(a)–(d); and 40 CFR 258.57(a)–(d)). Once the owner or operator considers the necessary factors and selects the remedy and the schedule, the revised criteria require the owner or operator to comply with that plan (40 CFR 257.28(a)(1) and (2); and 40 CFR 258.58(a)(1) and (2)). These choices made by the owner or operator are specifically required by the revised criteria. As such, they are incorporated into the Subtitle D federal revised criteria (which include open dumping criteria) and become effective pursuant to RCRA.

In practice, a state often stands in the shoes of an owner or operator and exercises the discretion reserved by the Subtitle D federal revised criteria to set a cleanup remedy and schedule. A state may establish such standards via a permit or other mechanism, for example, as part of the state's Subtitle D program. Where a state selects a remedy and schedule using the factors provided for in the revised criteria (*e.g.*, 40 CFR 257.27(a)–(d); and 40 CFR 258.57(a)–(d)), and stands in the owner's or operator's shoes to make the decision reserved by the Subtitle D federal revised criteria, the state's cleanup plan and schedule are incorporated into the federal criteria and become effective pursuant to RCRA.

b. Citizen enforcement under RCRA Sections 4005 and 7002. RCRA authorizes citizens to enforce Subtitle D requirements pursuant to two separate provisions of the Act. First, RCRA section 7002(a)(1)(A) authorizes any person to commence a civil action against ''any person* * *alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this Act'' (42 U.S.C. 6972(a)(1)(A)). Second, RCRA section 4005(a) states that once EPA promulgates criteria under section 1008(a)(3) of RCRA, any practice which constitutes open dumping (as defined by those criteria) is prohibited (42 U.S.C. 6945(a)). Importantly, this section also provides that the open dumping prohibition ''shall be enforceable under section 7002 of this title against persons engaged in the act of open dumping.'' *Id.* The three types of Subtitle D federal revised criteria discussed above are enforceable by federal citizen suit under RCRA because they become the criteria for the open dumping prohibition in section 4005(a) and, thus, they become requirements and a prohibition which has become effective pursuant to RCRA for purposes of section 7002(a)(1)(A).

Section 4005(a) of RCRA prohibits ''any solid waste management practice which constitutes the open dumping of solid waste or hazardous waste'' (42 U.S.C. 6945(a)). RCRA defines an ''open dump'' as ''any facility or site where solid waste is disposed'' that does not meet criteria promulgated under RCRA section 4004 (42 U.S.C. 6903(14)). RCRA section 4004(a) directs the Administrator to promulgate criteria for determining ''which facilities shall be classified as sanitary landfills and which shall be classified as open dumps'' (42 U.S.C. 6944(a)). Similarly, RCRA section 1008 requires the Administrator to publish guidelines that ''provide minimum criteria to be used by the states to define those solid waste management practices which constitute the open dumping'' prohibited by RCRA Subtitle D (42 U.S.C. 6907(a)(3)). In 1984, Congress further directed EPA to promulgate revised open dumping criteria ''for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators'' (*i.e.*, CESQG wastes) (42 U.S.C. 6949a(c)).

EPA promulgated the revised criteria for MSWLFs and for non-municipal, non-hazardous waste disposal units receiving CESQG waste under the authority of RCRA sections 1008(a)(3), 2002(a)(1), 4004(a), and 4010(c) (56 FR 50978, 50979 and 61 FR 34252, 34253 and 34269). Any violation of either the 40 CFR part 257 or 40 CFR part 258 criteria constitutes ''open dumping,'' under the plain language both of RCRA, 42 U.S.C. 6903(14), and of the regulations, 40 CFR 257.1(a)(1) and (a)(2) (facilities and practices failing to satisfy the criteria in part 257 are considered open dumps and constitute open dumping, respectively); 40 CFR 257.2 (definition of ''open dump''); and 40 CFR 258.1(h) (''Municipal solid waste landfill units failing to satisfy these criteria constitute open dumps, which are prohibited under section 4005 of RCRA.'').

Because RCRA prohibits open dumping, any violation of these criteria is illegal as a matter of federal law (42 U.S.C 6945(a)). Nothing in RCRA suggests that the federal open dumping prohibition is diminished by EPA's determination, under RCRA section 4005(c)(1)(C), that a state Subtitle D permit program is adequate. On the contrary, ''the Subtitle D federal revised criteria are applicable to all Subtitle D regulated facilities, regardless of whether EPA has approved the state/tribal permit program'' (61 FR 2584, 2593, Jan. 26, 1996 (preamble to proposed STIR rule)). Because Congress has specifically authorized citizens to enforce the open dumping prohibition under RCRA section 4005(a), citizens may certainly enforce the first type of ''open dumping'' criteria which are contained in the Subtitle D federal revised criteria in either an approved or unapproved state.

State alternative standards that are part of the Subtitle D federal revised criteria also define open dumping, the prohibition of which is enforceable under RCRA sections 4005(a) and 7002. This conclusion follows inescapably from the following reasoning (based on the plain language of RCRA and EPA's implementing regulations): (1) citizens may enforce the open dumping prohibition under RCRA section 4005(a); (2) state alternative standards specifically allowed by the revised criteria are a part of those criteria, and, thus, define (in part) ''open dumping,'' *see, e.g.*, 40 CFR 257.1(a)(1) and (a)(2); 40 CFR 258.1(g) and (h); therefore, (3) citizens may enforce compliance with these approved state alternative standards through the open dumping prohibition of RCRA section 4005(a) and the citizen suit provision of RCRA section 7002(a)(1)(A).

The same reasoning applies to citizen suit enforcement in federal courts of those requirements of a state permit program that are within the scope of discretion afforded by the revised criteria (*i.e.*, the third type of criterion where the state steps into the shoes of the owner or operator to make certain site-specific decisions). The Subtitle D federal revised criteria, for example, afford the owner or operator significant discretion to select a corrective action remedy and schedule (40 CFR 257.27(a)–(d) and 40 CFR 258.57(a)–(d)). If the state issues a standard that exercises that discretion on behalf of the owner or operator, that state standard becomes part of the federal open dumping criteria.

RCRA's principal citizen suit provision, section 7002, authorizes ''any person'' to file suit against any other person ''alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to [RCRA]'' (42 U.S.C. 6972(a)(1)(A)). Those approved state alternative standards expressly provided for by EPA's revised criteria do ''become effective pursuant to'' RCRA because EPA's approval of the state program gave that alternative state standard legal effect. The revised criteria only allow state alternatives in approved states; therefore, the alternative compliance options that states may implement under the Subtitle D federal revised criteria are of no effect under RCRA unless and until EPA approves the state program under RCRA section 4005(c).

Similarly, citizens also may enforce under RCRA section 7002 the requirements of a state program where those requirements are within the scope of discretion afforded by the Subtitle D federal revised criteria. The revised criteria contemplate instances, for example, where site-specific definition must be given to make the federal criteria meaningful, such as where an owner or operator must select a schedule for cleanup of contaminated ground water. See 40 CFR 257.27(d)(1–8) and 40 CFR 258.57(d)(1–8). Once such a schedule is selected, it implements the discretion reserved by the federal criterion, and, thus, is effective pursuant to RCRA, within the meaning of section 7002(a)(1)(A). Where the state stands in the shoes of an owner or operator in exercising the discretion reserved by the revised criteria, then the state standard would similarly become enforceable by federal citizen suit.[1]

c. State permit program provisions which are not federally enforceable. EPA believes, however, that elements of a state permit program which are not specifically provided for in the revised criteria as alternative standards or which are not within the scope of discretion afforded by the Subtitle D federal revised criteria have no effect pursuant to federal law, and, therefore, are not enforceable in federal court under RCRA sections 4005(a) or 7002(a)(1)(A). The MSWLF revised criteria, for example, require owners or operators of MSWLFs to ensure that the concentration of methane (an explosive gas) does not exceed 25 percent of the lower explosive limit for methane in facility structures, and that the methane concentration does not exceed the lower explosive limit for methane at the facility property boundary (40 CFR 258.23(a)). This provision, which guards against potentially catastrophic explosions and/or fires at MSWLFs (56 FR at 51051–52), neither leaves room for an approved state to set a more specific standard nor provides the owner or operator with the discretion to determine how some general standard should be articulated based on site-specific factors. Thus, if a state establishes a more stringent requirement for controlling explosive gases, that different state standard would not fill in an area of discretion reserved by the Subtitle D federal revised criteria, would not become effective pursuant to RCRA, and would not be enforceable in federal court by RCRA citizen suit. Similarly, state standards that regulate activities beyond the scope of the revised criteria—*e.g.*, regulating wastes not regulated by the federal standards—would not be effective pursuant to RCRA.

State adoption of such a different MSWLF requirement, however, does not preclude citizen enforcement under RCRA section 7002 of the Subtitle D federal revised criteria. Even in a state which requires that methane gas concentrations not exceed 10 percent of the lower explosive limit in facility structures, for example, a citizen could still enforce the less stringent federal minimum requirement of not exceeding 25 percent of the lower explosive limit in facility structures.

RCRA does not authorize citizen enforcement in federal court of such divergent state requirements for several reasons. The federal open dumping criteria do not incorporate either state standards beyond those provided for in the Subtitle D federal revised criteria or those state standards which fall outside the scope of the discretion afforded by those revised criteria. While RCRA section 7002(a)(1)(A) permits citizen enforcement of requirements that ''become effective pursuant to'' RCRA, nothing in RCRA Subtitle D or its implementing regulations gives additional state requirements—beyond those allowed by the revised criteria—any legal effect. In evaluating state permit programs under RCRA Subtitle D, EPA is making only a determination as to whether the state program will ensure that MSWLFs and waste disposal units receiving CESQG waste comply with the minimum federal criteria (42 U.S.C. 6945(c)(1)(B) and (C)). The statutory language of RCRA Subtitle D clearly contemplates that while states may develop their own permit programs, compliance with the Subtitle D federal revised criteria was to be the primary goal of those state programs.

Significantly, unlike the state authorization provisions in RCRA Subtitle C, Subtitle D state permit programs do not operate ''in lieu'' of the federal MSWLF program. *Cf.* 42 U.S.C. 6926(b). This has two consequences. First, the Subtitle D federal revised criteria remain in effect in approved states, as explained by EPA in the STIR proposed rule (61 FR 2593, Jan. 26, 1996). Second, except for the alternative standards issued by an approved state Subtitle D permit program, which are specifically provided for in the revised criteria (the second type of criterion discussed), EPA's adequacy determination under RCRA Subtitle D does not make the state program ''effective pursuant to'' RCRA under RCRA section 7002(a)(1)(A).

Moreover, RCRA section 3009 specifically allows states to impose hazardous waste requirements under Subtitle C that are more stringent than the federal requirements (42 U.S.C. 6929). In contrast, RCRA Subtitle D contains no statutory language specifically retaining a state's authority to impose more stringent requirements than those EPA has promulgated under RCRA sections 1008, 2002, 4004, and 4010. While the Agency believes that states are free to establish more stringent requirements for facilities receiving hazardous household waste and CESQG waste, such requirements are not federally enforceable under Subtitle D's statutory scheme (unlike the more stringent provisions of an EPA-authorized state hazardous waste program).

Thus, divergent state Subtitle D standards, which fall outside the scope of requirements provided in the revised criteria or which are more stringent than the revised criteria are not ''effective pursuant to'' RCRA and, therefore, not enforceable by citizen suit in federal court. The state's decision to impose a different requirement, including a more stringent requirement, is solely a matter of state law and policy. Allowing citizen suits in federal court to enforce the federal minimum standards, but not to enforce purely state standards not contemplated by the revised criteria,

[1] Such a state standard is enforceable by citizens without regard to whether the state has a permit program that has been approved as ''adequate'' by EPA under RCRA section 4005(c)(1)(C). 42 U.S.C. 6945(c)(1)(C). This is so because when the state exercises the discretion afforded to the owner or operator to define a site-specific federal requirement under the revised criteria, that state choice becomes incorporated into the federal definition prohibiting open dumping and, thus, is effective pursuant to RCRA. This situation is distinguishable from the second type of criteria discussed above, i.e., the alternative standards of an approved state, where the approval of the state's permit program is necessary before the alternative standard becomes incorporated into the federal open dumping criteria.

respects Congress's intent for a limited federal role under RCRA Subtitle D (as compared to RCRA Subtitle C). See 42 U.S.C. 6901(a)(4) (collection and disposal of solid wastes should continue to be primarily the function of state, regional, and local agencies).[2]

d. Citizen enforcement of EPA-authorized state hazardous waste programs. EPA's longstanding view is that citizens can enforce the elements of an authorized state hazardous waste program under RCRA Subtitle C by bringing an action under RCRA section 7002. *See* 49 FR 48300, 48304 (Dec. 12, 1984) (''it is the EPA's position that the citizen suit provision of RCRA is available to all citizens whether or not a state is authorized.''). The Agency's position that authorized state hazardous waste programs are enforceable by citizens is supported by the statutory structure of RCRA Subtitle C.

In adopting hazardous waste programs, states must ensure that their programs are at least equivalent to the federal program, although state programs can be more stringent. 42 U.S.C. sections 6926(b) and 6929. Once the (potentially more stringent) state program is authorized by EPA, that program operates ''in lieu of'' the federal program. 42 U.S.C. 6926(b). Moreover, RCRA specifically envisions that EPA will enforce the requirements of an authorized state hazardous waste program by authorizing EPA to take enforcement action against violations which occur in a state with an authorized Subtitle C program. 42 U.S.C. 6928(a)(2); *see U.S.* v. *Bethlehem Steel Corp.*, 829 F.Supp. 10123, 1045 (N.D. Ind. 1993) (''United States has concurrent authority to enforce those portions of the RCRA hazardous waste management program that EPA has authorized a state to enforce.''), *aff'd,* 38 F.3d 862 (7th Cir. 1994). In such circumstances, EPA authorization of the state program gives that state program legal effect under federal law—*i.e.,* the state program ''becomes effective pursuant to RCRA.'' The state program thus is citizen enforceable under the plain language of RCRA section 7002.

Given that Subtitle C specifically allows states to develop more stringent requirements for hazardous waste and provides that such state requirements operate in lieu of federal requirements, EPA believes that citizens can enforce requirements of an authorized state hazardous waste program which are more stringent than the federal requirements. However, those requirements of an authorized state hazardous waste program which are broader in scope than those in the federal hazardous waste program are not federally-authorized and are not enforceable by citizens in federal courts. *See* 40 CFR 271.1(I)(1) and (2)(states are authorized to adopt more stringent standards but standards which have a greater scope of coverage than the federal requirements do not become part of the federally-authorized program).

IV. Summary of Comments and EPA Response

A. Overview

More than twenty entities submitted comments in response to the proposed STIR. Commenters represented various interests, including state agencies, tribal governments, a waste management company, and a nonaffiliated individual. Because the D.C. Circuit Court's decision in *Backcountry Against Dumps* v. *EPA* precludes approval by EPA of tribal programs under RCRA Subtitle D, the Agency is not responding to comments that relate solely to Indian Country and has deleted the mechanism for approving tribal programs from today's final SIR.

Additionally, the Agency has carefully considered all other comments during development of today's final rule. Apart from the deletion of references to tribal permit programs, the final SIR contains only minor changes from the proposed rule. Commenters clearly did not favor imposing additional requirements or incorporating major changes to the proposed rule. This section presents a summary of the major comments on the proposed STIR.

B. General Comments and Agency Response

1. Already Approved Programs

Comment: Several commenters expressed concern that today's rule would include changes from the proposed STIR that would necessitate major revisions to already approved programs. These commenters requested assurance that the final rule would not require reapproval of already approved permit programs.

Response: Except for the modifications discussed in Section V of this preamble, today's rule is unchanged from the draft proposed STIR that states used as guidance in developing their Subtitle D permit programs. The Agency provided opportunities for public comments and public hearings on the state MSWLF permit programs that have been approved to date and received few significant comments on the criteria used as a basis for approval. Since this final rule establishes essentially the same approval procedures and standards used in approving those states, states with approved permit programs need not reapply for approval. Language clearly stating that previously approved Subtitle D state permit programs will not require resubmission of an application for approval to meet the requirements of today's final rule has been added to § 239.2(a)(2). New applications for such already-approved states will only be necessary when state permit programs are modified as described in § 239.12. It remains necessary, however, to promulgate today's rule to provide a framework for modifications of approved permit programs, to establish procedures for withdrawal of approvals, and to finalize the process for future program approvals, including approvals for programs that allow for CESQG waste disposal at non-municipal, non-hazardous waste disposal units.

2. Adequacy Determinations

Comment: Several commenters expressed concern that the regulations as proposed do not provide adequate review of state programs to determine if they are sufficient to enforce the prohibition on open dumping and meet the Subtitle D federal revised criteria. These commenters believed that the proposed rule should require EPA to review the level of staffing and the technical capabilities of state programs as a component of the adequacy determination.

Response: Due to the site-specific nature of ensuring compliance with the Subtitle D federal revised criteria, the Agency is not requiring specific resources and/or staffing for approved programs. Today's rule requires that approved state programs have adequate authorities and procedures to allow them to take action as needed to ensure compliance with the requirements, including staffing and technical capabilities. It does not prescribe specific permitting procedures or enforcement and compliance monitoring activity levels or tasks. Different states will have different resource requirements. State strategies for ensuring compliance must allow the states flexibility in determining the best allocation of resources. State program applications must include a discussion of the resources that the state has available to carry out its program and,

[2] Because of the unique structure and language of RCRA Subtitle D, EPA's position on whether state requirements contained within an EPA-approved RCRA Subtitle D permit or other prior approval program are enforceable by citizens does not have any bearing on issues related to citizen suit enforcement of state programs under other environmental statutes, such as the Clean Water Act and the Clean Air Act.

in certain cases (*e.g.*, where state resources clearly are insufficient), resource information provided by the state may be used to make a determination of inadequacy.

3. State Self-Certification

Comment: Several commenters suggested that EPA include state self-certification provisions in the final rule to reduce the burden on states and EPA. Commenters suggested that such provisions would allow states to make their own determinations for permit program approvals and modifications.

Response: RCRA section 4005(c)(1)(C) directs EPA to determine whether state permit programs are adequate to ensure compliance with the Subtitle D federal revised criteria. EPA does not believe allowing self-certification without an independent EPA determination fulfills its obligations under RCRA section 4005(c)(1)(C), which requires the Agency, rather than the state, to make the final determination of adequacy for state Subtitle D permit programs. EPA recognizes the potential benefits of flexibility to MSWLF owners and operators in states with approved programs, and will make every effort to complete its adequacy determinations in accordance with the timeframe cited in section III. C. 2., Table 1, of this preamble.

As indicated previously, EPA has developed a streamlined process that simplifies the adequacy determination process for certain state permit programs or other systems of prior approval that address requirements for non-hazardous, non-municipal waste disposal units that receive CESQG hazardous waste. In many states, disposal units receiving CESQG hazardous waste are already subject to standards contained in a state MSWLF permit program that EPA has approved or in a state hazardous waste permit program that EPA has authorized (61 FR 34252, 34264, July 1, 1996). In such cases, as discussed previously in this preamble, the Agency believes that a streamlined review process is appropriate. EPA expects that such a process will significantly reduce burdens on states.

4. Criminal Penalty Authority

Comment: Several commenters expressed the belief that states should not be required to have criminal penalty authority for permit violations because, while not all states have criminal penalty authority, many have strong civil enforcement authority.

Response: The Agency agrees with the commenters. Although EPA asked for comment on the issue of criminal penalty authority for permit violations (61 FR 2584, 2597, Jan. 26, 1996), the Agency did not propose that states must have such authority as a prerequisite for program approval. Effective enforcement programs include an appropriate means to deter violations and, when violations occur, to take action to bring violators into compliance. Although several environmental statutes other than RCRA contain language requiring states to have criminal penalty authority, the Agency believes that effective administrative and civil enforcement programs can ensure compliance under RCRA Subtitle D. The decision to establish criminal enforcement penalty provisions for Subtitle D criteria has been and will continue to be at the discretion of individual states.

5. Judicial Review

Comment: Two commenters expressed their view that strong public participation can only be ensured by allowing judicial review of state agency permit decisions.

Response: RCRA Subtitle D does not require judicial review of the requirements for approval of state permit programs, nor does it mandate states to require judicial review of individual permit decisions. Further, not all states have judicial review provisions for permitting decisions. Providing a requirement for judicial review would require a change in statutory authority and is beyond the scope of today's rulemaking.

Under RCRA section 7004(b), EPA is to encourage public participation. The public participation provisions in section 7004(b) and in this rule are designed to ensure that the public is informed of decisions affecting solid waste management in their community. This rule requires approved states to have public participation procedures for permit issuance and post-permit action and to provide for public intervention in civil enforcement proceedings. EPA believes these requirements encourage public participation as prescribed under RCRA section 7004(b).

In addition, under RCRA section 7002(a), citizens may file actions in federal court to enforce the Subtitle D federal revised criteria for MSWLFs and non-municipal, non-hazardous disposal units that receive CESQG hazardous waste. Further, as discussed earlier, EPA believes that citizens may also file actions under RCRA section 7002(a) to enforce (1) alternative state standards specifically provided for in the Subtitle D federal revised criteria and (2) state standards that exercise the discretion which the revised criteria provide to the owner or operator, *e.g.*, selection of a corrective action remedy and schedule.

6. Public Notification

Comment: A commenter stated that the rule should be modified to provide public notice in the **Federal Register** whenever the Agency has information that may potentially lead to withdrawal of a previous adequacy determination for a state program. The commenter suggested that 40 CFR 239.12 and 40 CFR 239.13 be modified to assure adequate public notice, including notice to the regulated community, of information that could threaten the approved status of a state program.

Response: EPA agrees with the commenter that public notice and participation in evaluating a state's permit program is important. Existing regulations found in 40 CFR part 256 do require states to solicit public reaction and recommendations by allowing for public input when state legislation or regulations are being considered. 40 CFR 256.62. Thus, if regulations underlying a state's approved permit program are being revised because of the Agency's re-evaluation of that program, the state may hold a public hearing in accordance with the state administrative procedure act. 40 CFR 256.2(a). In addition, states are free to use their own public involvement provisions to solicit public comments and involvement when a question arises as to the continued adequacy of an approved program which does not involve a change to state legislation or regulations.

Furthermore, to provide for a greater level of public input concerning the withdrawal of an approved state program, EPA has decided to extend the time for public comment of a Regional Administrator's tentative withdrawal determination and on revised and amended applications from 30 days to 60 days. These revisions to the proposed rule can be found in §§ 239.12(g)(1) and 239.13(g).

In conclusion, with these revisions, the Agency believes that the public notification and participation procedures delineated in 40 CFR 239.12, ''Modifications of State Programs,'' and 40 CFR 239.13, ''Criteria and Procedures for Withdrawal of Determination of Adequacy,'' in this final rule will provide sufficient public involvement in the determination process. EPA believes that these modified procedures for public involvement are protective of public interest, human health, and the environment, and, at the same time, discourage unwarranted claims against adequate programs.

7. Conflicts of Interest

Comment: One commenter was concerned about the potential conflict of interest involved when local government entities issue landfill permits to themselves. The commenter suggested that the final rule should include a provision to preclude local government agencies from issuing and enforcing permits where they own or operate the facility.

Response: Because the effort required to manage and regulate municipal solid waste and non-municipal, non-hazardous solid waste dictates that the actual day-to-day work take place at both state and local levels, the final rule allows local agencies an implementation role where lead state agencies demonstrate, in the application for permit program approval, that the local agencies will ensure compliance and will operate under statewide authorities. As it did in the preamble to the proposed rule (61 FR 2594, Jan. 26, 1996), the Agency continues to encourage states to work closely with local implementing agencies and provide oversight so that problems, such as local conflicts of interest, are prevented. Under § 239.4, the narrative description of state permit programs must include a delineation of the jurisdiction and responsibilities of all implementing agencies and a description of the procedures for coordinating responsibilities among those agencies. EPA does not believe it necessary to preclude a local implementing agency from issuing and enforcing permits when there is state compliance oversight.

8. Permit Program Modifications

Comment: One commenter noted that, as proposed, 40 CFR 239.12(d), which addresses notification requirements for states, could be interpreted to require approved states to notify EPA of all permit program modifications. The commenter recommended revising the language to identify those program modifications that require notification.

Response: The Agency agrees that the program modifications for which notification would be required under § 239.12(d) are only those delineated elsewhere in § 239.12. Section 239.12(d) now reads: ''states must notify the appropriate Regional Administrator of all permit program modifications *required in paragraphs (b) and (c) of this section* within a time-frame agreed upon by the State Director and the Regional Administrator.''

9. Partial Withdrawal of State Permit Programs

Comment: One commenter stated that because the rule would provide that a state's permit program could be partially approved, the rule should also provide that EPA could withdraw approval for only certain portions or elements of a state's permit program, e.g. issuance of a partial withdrawal determination.

Response: The Agency agrees with this comment and believes that in certain cases it may be appropriate to withdraw approval of only certain elements of a state's approved permit program rather than to withdraw an adequacy determination for an entire program. EPA has included language in § 239.13 which clarifies that EPA could, if appropriate, withdraw approval for only certain portions or elements of a state's permit program.

V. Changes to Final Rule

A. Revised Wording in 40 CFR 239.2(a)(2)

Several commenters requested assurance that promulgation of the final SIR would not require major revisions to, or reapproval of, already approved state permit programs. 40 CFR 239.2(a)(2) contains clear language stating EPA's belief that today's rule does not contain changes from the proposed STIR that would require such revisions or reapprovals for fully approved programs or for approved elements of partially approved programs.

B. Revised Wording in 40 CFR 239.12(d)

As noted in section IV, Response 8, because of potential confusion involving the proposed wording of 40 CFR 239.12(d), the Agency has revised the wording in today's final rule to clarify the intent of that section. In the proposed STIR, § 239.12(d) could have been interpreted to require approved states to notify EPA of all permit program modifications. The Agency has modified § 239.12(d) to now read: ''states must notify the appropriate Regional Administrator of all permit program modifications *required in paragraphs (b) and (c) of this section* within a time-frame agreed by the State Director and the Regional Administrator.'' This change should clarify the reference in § 239.12(d).

C. Revised Wording in 40 CFR 239.13

One commenter requested that the Agency allow issuance of a partial withdrawal of a determination of adequacy for only certain portions or elements of a state's permit program. EPA has modified § 239.13 to allow for such partial withdrawals.

D. Increase in Public Comment Period for Revisions and Withdrawals

To ensure that the public has adequate time to provide input on an Agency re-evaluation of already approved state permit program, EPA is extending the time for public comment on tentative withdrawal determinations (40 CFR 239.12(g)(1)) and on revised and amended applications (40 CFR 239.13(g)) from 30 to 60 days.

E. Deletion of References to Tribes

On October 29, 1996, the United States Court of Appeals for the DC Circuit (in *Backcountry Against Dumps* v. *EPA*, 100 F. 3d 147 (D.C. Cir. 1996)) rejected EPA's argument that section 4005(c)(1)(C) of RCRA, which requires EPA to review and determine the adequacy of state permitting programs or other systems of prior approval, authorized the Agency to review and approve tribal programs. Because the Court ruled that EPA cannot approve tribal MSWLF permitting programs under RCRA, owners and operators in Indian Country cannot, through tribal program approval, take advantage of the flexibility in implementing the Subtitle D federal revised criteria that is available in states with approved permit programs. To reflect the court decision, references to tribes have been deleted from this final rule, and definitions for state and state director have been revised. With regard to providing flexibility to MSWLF owners and operators in Indian Country, the Court noted that EPA need not wait for Congress to revise section 4005(c)(1)(C) of RCRA. Without suggesting any disagreement, the Court indicated that all parties to the case (EPA, the Campo Band, and Backcountry Against Dumps) ''agreed that the Campo Band could seek EPA approval for a site-specific regulation which would satisfy both RCRA and the tribe's desire for flexibility in designing and monitoring a landfill on its reservation'' (*Backcountry Against Dumps* v. *EPA*, 100 F.3d at 150). To meet its goal of providing warranted flexibility quickly and efficiently to owners and operators in Indian country, including tribal government owners and operators, the Agency proactively issued site-specific rulemaking guidance consistent with the Court's suggestion. Owners or operators wishing to request such rules should consult the document entitled ''Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country'' (EPA 530–R–97–016). The document is available through the

RCRA Hotline (see For Further Information Contact above).

F. Approval Standards for State CESQG Permit Programs

In accordance with RCRA section 4010(c), EPA has promulgated revised criteria for both facilities receiving hazardous household waste (40 CFR part 258) and facilities that receive CESQG hazardous waste (40 CFR part 257, subpart B). Under RCRA section 4005(c)(1)(B), states are required to adopt and implement permit programs or other systems of prior approval (here, collectively termed ''permit programs) for both sets of revised criteria.

In January 1996, when EPA proposed the STIR rule (61 FR 2584), the Agency had already promulgated the MSWLF revised criteria (56 FR 50978, Oct. 9, 1991), but was still developing the standards for non-municipal, non-hazardous disposal units that receive CESQG hazardous waste. Thus, although EPA has since promulgated the CESQG revised criteria (61 FR 34252, July 1, 1996), the proposed STIR focused mainly on criteria for evaluating state MSWLF permit programs. It has always been EPA's intent, however, that the approval, modification, and withdrawal standards to be established in the STIR (now SIR) would also apply to state programs for disposal units receiving CESQG hazardous waste. This is evidenced by the proposed rule language itself and a number of statements EPA has made in **Federal Register** notices related to both this rulemaking and the CESQG revised criteria.

First, EPA proposed that the provisions of the SIR rule would be applicable to all state permit programs that RCRA section 4005(c)(1)(B) requires states to adopt and implement (61 FR 2584, 2601, Jan. 26, 1996 (proposed § 239.1)). As discussed above, such permit programs include state programs for disposal units receiving CESQG hazardous waste.

Second, EPA proposed that states seeking an adequacy determination would need to submit an application that identified the scope of the program for which the state is seeking approval, i.e., which class of ''Subtitle D regulated facilities'' are covered by the application (61 FR 2584, 2602 (proposed § 239.3)). The Agency proposed to define ''Subtitle D regulated facilities'' to mean all ''solid waste disposal facilities subject to the revised criteria promulgated by EPA under RCRA section 4010(c)'' (61 FR 2584, 2602 (proposed § 239.2)). Such facilities include disposal units that receive CESQG hazardous waste.

Third, although the STIR proposal indicated that the CESQG rulemaking may address ''as appropriate'' the requirements for EPA approval of non-municipal, non-hazardous state permit programs (61 FR 2584, 2585), the Agency also has indicated in the CESQG rulemaking notices that the standards to be established in the SIR rule would be generally applicable to the Agency's evaluation of state permit programs for disposal units that accept CESQG hazardous waste. In proposing the revised criteria for non-municipal, non-hazardous waste disposal units, for example, EPA stated that ''the process that the Agency will use in evaluating the adequacy of state programs will be set forth in a separate rulemaking, the State/Tribal Permit Program Determination of Adequacy'' (60 FR 30964, 30979, June 12, 1995). EPA also stated in the proposed CESQG rule that the process for evaluating state CESQG programs would be the same as that process used for evaluating state MSWLF permitting programs and that states would need to meet the procedural and administrative requirements identified in the STIR rulemaking. *Id.*

Finally, in that same Federal Register notice, EPA indicated that in determining the adequacy of state programs established to permit disposal units receiving CESQG hazardous waste, the Agency intended to evaluate the state's program for its comparability to the Subtitle D federal revised criteria for location, ground-water monitoring, and corrective action standards to be promulgated for those waste disposal units receiving CESQG hazardous waste. (See 60 FR 30979, June 12, 1995, ''* * * for the purpose of determining adequacy and granting approval of state CESQG programs, only the proposed technical amendments to 40 CFR 257.5 through 257.30 will be evaluated.'') Thus, to clarify this intent, EPA has added provisions to 40 CFR 239.6 that set forth the requirements for state permit programs pertaining to non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste.

These provisions (40 CFR 239.6(f)) require that states have the authority to impose standards for waste disposal units receiving CESQG hazardous waste. These standards are comparable to those found in the Subtitle D federal revised criteria (40 CFR part 257, subpart B). States must also ensure that new and existing waste disposal units receiving CESQG hazardous waste have permits that incorporate conditions to ensure compliance with the Subtitle D federal revised criteria in 40 CFR part 257, subpart B. The other requirements for public participation, compliance monitoring, and enforcement contained in the SIR rule must also be satisfied to obtain EPA approval of a state CESQG permit program.

G. Process for Approval of State CESQG Permit Programs

EPA proposed not to use a streamlined process to review revised applications for approval of state permit programs that relate to additional classifications of Subtitle D regulated facilities (61 FR 2584, 2599). Such additional classifications would include non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste. However, in promulgating the revised criteria for such CESQG hazardous waste disposal units (40 CFR part 257, subpart B), EPA indicated it was re-evaluating the use of a streamlined process, and that a final decision would be reached when the Agency issued the final STIR (now SIR) rule (61 FR 34252, 34264, July 1, 1996).

EPA has discussed this issue with states and has decided to utilize a streamlined process for review of state CESQG permit programs in certain circumstances. As indicated above, for example, the Agency intends to use a streamlined review process to make adequacy determinations for state CESQG permit programs where EPA has previously reviewed a state permitting program, determined that it meets statutory requirements, and thus authorized the program under RCRA Subtitle C or approved it under Subtitle D (40 CFR part 258), if the state requires that CESQG hazardous waste be disposed of in permitted facilities meeting Subtitle C requirements or the MSWLF criteria. In such cases, EPA believes the state is already meeting the 40 CFR part 257, subpart B CESQG hazardous waste disposal requirements because the location restrictions, ground-water monitoring, and corrective action standards required by 40 CFR part 257, subpart B are a subset of the requirements for authorized RCRA Subtitle C permit programs or approved Subtitle D MSWLF programs. Because these programs have been approved by EPA, there is no need for the Agency to conduct an additional review for the part 257, subpart B program. Further, EPA believes that, because the requirements of an authorized Subtitle C program or an approved MSWLF program are clearly equal to or more stringent than those contained in the Subtitle D federal revised criteria for CESQG hazardous waste disposal units, a more streamlined approval process is appropriate. Streamlined adequacy determinations will be published in the

near future for states with programs that meet the criteria for streamlined approval.

VI. Regulatory Assessments

A. Executive Order 12866: Assessment of Potential Costs and Benefits

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether any proposed or final regulatory action is ''significant,'' and therefore, subject to OMB review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(a) 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;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) 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 Office of Management and Budget (OMB) has notified EPA that it considers this a ''significant regulatory action.'' EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Requirements for state permit programs as outlined in this rule will not add substantial costs beyond those already imposed under the Subtitle D federal revised criteria. Regardless of this regulation, RCRA section 4005(c)(1)(B) requires all states to develop and implement permit programs to ensure compliance with the Subtitle D federal revised criteria. EPA believes that the final SIR does not impose a major increase in costs over and above any costs that RCRA section 4005(c)(1)(B) already imposes on states. The use of the streamlined process for state CESQG permit program approval when the Agency has previously deemed a state permitting program to meet all statutory requirements and if the state requires CESQG disposal in a permitted facility, further minimizes any additional costs likely to be incurred by the states.

B. Regulatory Flexibility Act

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

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

The Agency has determined that today's final rule will not have a significant economic impact on a substantial number of small entities, since the rule has direct effects only on state agencies. Therefore, no RFA has been prepared. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative, if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a federal mandate (under the regulatory provisions of Title II of the UMRA) that may result in expenditures of $100 million or more for state and local governments in the aggregate, or for the private sector in any one year. EPA estimates that it costs a state approximately $15,000 to develop and submit to EPA an application for approval of a state MSWLF permit program. For a state preparing an application for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste permit program, EPA estimates that it costs approximately $7,000. The lower estimated cost for CESQG program applications reflects the fact that CESQG requirements are a subset of the MSWLF criteria. Since the number of criteria that must be addressed by the application is fewer, time and resources needed to complete the application are decreased. EPA expects that a state applying for the streamlined approval process will incur no cost, since the required information will have been submitted to EPA by the state for previous program approval requests, and should already be in the Agency's files.

EPA's approval of state programs has a deregulatory effect on the private sector. Once a state permit program or other system of prior approval for MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste is determined to be ''adequate'' under RCRA section 4005(c)(1)(C), the flexibility the state may exercise tends to reduce, not increase, compliance costs for the private sector.

EPA has determined that the final SIR will not significantly or uniquely affect small governments (UMRA section 203). The Agency recognizes that small

governments may own and/or operate solid waste disposal facilities, including MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste, that will be subject to the requirements of an approved state permit program under this rule. However, small governments that own and/or operate MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste are already subject to the requirements in the Subtitle D federal revised criteria. Once EPA approves state permit programs under the SIR, these same small governments may own and operate their MSWLFs or non-municipal, non-hazardous waste disposal units that accept CESQG hazardous waste with increased levels of flexibility and generally lower compliance costs.

D. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1608.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. EPA (2137), 401 M Street SW., Washington, DC 20460, or by email at farmer.sandy@epamail.epa.gov., or by calling (202) 260–2740.

The need for this collection of information from the states derives from section 4005(c) of RCRA. This section requires the EPA Administrator to review state permit programs to determine if they are adequate to ensure that MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste comply with the federal requirements established for these disposal units. To carry out this mandate and make a determination, EPA must collect information from states in the form of an application for permit program approval. The universe of respondents involved in this information collection will be limited to those states seeking approval of their permit programs. The information that states will submit is public information; no problems of confidentiality or sensitive questions arise.

EPA is preparing to publish a streamlined approval process for state CESQG permit programs when the state already has an Agency-authorized Subtitle C or an Agency-approved MSWLF permit program and the state requires that CESQG hazardous waste disposal occur only in a permitted facility that meets the requirements of Subtitle C or the MSWLF criteria. The Agency believes the use of a streamlined approval process is appropriate in such cases because the hazardous waste regulations and the MSWLF criteria include disposal requirements that are equal to or more stringent than the requirements of 40 CFR part 257, subpart B. Additionally, in all cases where a state program is eligible for streamlined approval, the Agency has already authorized the Subtitle C permitting program or approved the MSWLF permitting program in that state, as appropriate. EPA expects that 23 states will be processed under the streamlined approval process. For these states, there is no burden, because EPA expects to use information contained in existing Agency files to conduct the review. The Agency estimates that 32 states and territories will be approved under the SIR review process for their CESQG waste disposal requirements.

To date, EPA has fully or partially approved 47 state/territorial MSWLF permit programs using the draft STIR as guidance. EPA has received 3 new, first time MSWLF permit program applications from states/territories and expects 3 states/territories to modify pending applications. Therefore, EPA estimates 38 states/territories will be subject to information collection requests in the form of an application for permit program approval.

The projected burden estimate for the submittal of a schedule or an application by the projected 38 states/territories within a 3-year timeframe is 9,900 hours, or about 3,300 hours per year for the three year period. Given these parameters, the final cost estimate for the states is $294,000 over three years. The projected three year burden for the Agency to review 38 new or revised state applications and to provide streamlined review of 23 state CESQG hazardous waste disposal requirements is 10,300 hours and $309,000. The total burden for states and EPA over a three year period is 20,200 hours and $603,000. This cost estimate reflects costs for reviewing instructions, searching existing data sources, gathering and maintaining needed data, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; to adjust the existing ways to comply with any previously-applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Comments are requested By November 23, 1998. Include the ICR number in any correspondence.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (*see* 62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866.

F. National Technology Transfer and Advancement Act

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

otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 12898: Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of the State Implementation final rule on low-income populations and minority populations and concluded that today's final rule will potentially advance environmental justice causes. The state permit program approval process set forth in today's final rule allows all potentially affected segments of the population to participate in public hearings and/or to provide comment on health and environmental concerns that may arise pursuant to a proposed Agency action under the rule. In addition, the rule's civil suit provision provides citizens with various mechanisms to help ensure compliance with 40 CFR part 257, subpart B or 40 CFR part 258 criteria.

H. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

In developing this rule, EPA consulted with various states and state organizations to enable them to provide meaningful and timely input in the development of this rule. EPA worked closely with state governments in the development of the final SIR. EPA distributed drafts of the proposed rule to 14 states for their review and comments and provided copies of the draft proposed STIR to the Association of State and Territorial Solid Waste Management Officials, which distributed it to all of its state and territorial members. EPA also conducted a pilot program where the Agency worked with the states of California, Connecticut, Virginia, and Wisconsin to develop their applications for program approval using the draft STIR as guidance.

EPA provided notice to small governments of the requirements of the Subtitle D federal revised criteria and the SIR; obtained meaningful and timely input from them; and informed, educated, and advised small governments on how to comply with the requirements of the SIR and the Subtitle D federal revised criteria. Through notice, EPA sought input from small governments during the rulemaking process. However, today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact on these communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 23, 1998.

List of Subjects

40 CFR Part 239

Environmental protection, Adequacy, Administrative practice and procedure, Municipal solid waste landfills, Non-hazardous solid waste, Non-municipal solid waste, State permit program approval.

40 CFR Part 257

Environmental protection, Reporting and recordkeeping requirements, Waste disposal.

40 CFR Part 258

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

Dated: October 15, 1998.

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 set forth below:

PART 239—REQUIREMENTS FOR STATE PERMIT PROGRAM

1. Part 239 is added to read as follows:

PART 239—REQUIREMENTS FOR STATE PERMIT PROGRAM DETERMINATION OF ADEQUACY

Subpart A—General

Sec.
239.1 Purpose.
239.2 Scope and definitions.

Subpart B—State Program Application

239.3 Components of program application.
239.4 Narrative description of state permit program.
239.5 State legal certification.

Subpart C—Requirements for Adequate Permit Programs 239.6 Permitting requirements.

239.7 Requirements for compliance monitoring authority.
239.8 Requirements for enforcement authority.
239.9 Intervention in civil enforcement proceedings.

Subpart D—Adequacy Determination Procedures

239.10 Criteria and procedures for making adequacy determinations.
239.11 Approval procedures for partial approval.
239.12 Modifications of state programs.
239.13 Criteria and procedures for withdrawal of determination of adequacy.

Authority: 42 U.S.C. 6912, 6945.

Subpart A—General

§ 239.1 Purpose.

This part specifies the requirements that state permit programs must meet to be determined adequate by the EPA under section 4005(c)(1)(C) of the Resource Conservation and Recovery Act (RCRA or the Act) and the procedures EPA will follow in determining the adequacy of state Subtitle D permit programs or other systems of prior approval and conditions required to be adopted and implemented by states under RCRA section 4005(c)(1)(B).

§ 239.2 Scope and definitions.

(a) Scope. (1) Nothing in this part precludes a state from adopting or enforcing requirements that are more stringent or more extensive than those required under this part or from operating a permit program or other system of prior approval and conditions with more stringent requirements or a broader scope of coverage than that required under this part.

(2) All states which develop and implement a Subtitle D permit program must submit an application for an adequacy determination for purposes of this part. Except as provided in § 239.12, state Subtitle D permit programs which received full approval prior to November 23, 1998 need not submit new applications for approval under this part. Similarly, except as provided in § 239.12, states that received partial approval of their Subtitle D permit programs prior to November 23, 1998 need not reapply under this part for approval for those program elements EPA has already determined to be adequate.

(3) If EPA determines that a state Subtitle D permit program is inadequate, EPA will have the authority to enforce the Subtitle D federal revised criteria on the RCRA section 4010(c) regulated facilities under the state's jurisdiction.

(b) Definitions. (1) For purposes of this part:

Administrator means the Administrator of the U.S. Environmental Protection Agency or any authorized representative.

Approved permit program or *approved program* means a state Subtitle D permit program or other system of prior approval and conditions required under section 4005(c)(1)(B) of RCRA that has been determined to be adequate by EPA under this part.

Approved state means a state whose Subtitle D permit program or other system of prior approval and conditions required under section 4005(c)(1)(B) of RCRA has been determined to be adequate by EPA under this part.

Guidance means policy memorandum, an application for approval under this Part, or other technical or policy documents that supplement state laws and regulations. These documents provide direction with regard to how state agencies should interpret their permit program requirements and must be consistent with state laws and regulations.

Implementing agency means the state and/or local agency(ies) responsible for carrying out an approved state permit program.

Lead state agency means the state agency which has the legal authority and oversight responsibilities to implement the permit program or other system of prior approval and conditions to ensure that facilities regulated under section 4010(c) of Subtitle D of RCRA comply with the requirements of the approved state permit program and/or has been designated as lead agency.

Permit or *prior approval and conditions* means any authorization, license, or equivalent control document issued under the authority of the state regulating the location, design, operation, ground-water monitoring, closure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

Permit documents means permit applications, draft and final permits, or other documents that include applicable design and management conditions in accordance with the Subtitle D federal revised criteria, found at 40 CFR part 257, subpart B and 40 CFR part 258, and the technical and administrative information used to explain the basis of permit conditions.

Regional Administrator means any one of the ten Regional Administrators of the U.S. Environmental Protection Agency or any authorized representative.

State Director means the chief administrative officer of the lead state agency responsible for implementing the state permit program for Subtitle D regulated facilities.

State program or *permit program* means all the authorities, activities, and procedures that comprise the state's system of prior approval and conditions for regulating the location, design, operation, ground-water monitoring, closure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

Subtitle D regulated facilities means all solid waste disposal facilities subject to the revised criteria promulgated by EPA under the authority of RCRA Section 4010(c).

(c) The definitions in 40 CFR part 257, subpart B and 40 CFR part 258 apply to all subparts of this part.

Subpart B—State Program Application

§ 239.3 Components of program application.

Any state that seeks a determination of adequacy under this part must submit an application to the Regional Administrator in the appropriate EPA

Region. The application must identify the scope of the program for which the state is seeking approval (i.e., which class of Subtitle D regulated facilities are covered by the application). The application also must demonstrate that the state's authorities and procedures are adequate to ensure compliance with the relevant Subtitle D federal revised criteria and that its permit program is uniformly applicable to all the relevant Subtitle D regulated facilities within the state's jurisdiction. The application must contain the following parts:

(a) A transmittal letter, signed by the State Director, requesting program approval. If more than one state agency has implementation responsibilities, the transmittal letter must designate a lead agency and be jointly signed by all state agencies with implementation responsibilities or by the State Governor;

(b) A narrative description of the state permit program in accordance with § 239.4;

(c) A legal certification in accordance with § 239.5;

(d) Copies of all applicable state statutes, regulations, and guidance.

§ 239.4 Narrative description of state permit program.

The description of a state's program must include:

(a) An explanation of the jurisdiction and responsibilities of all state agencies and local agencies implementing the permit program and description of the coordination and communication responsibilities of the lead state agency to facilitate communications between EPA and the state if more than one state agency has implementation responsibilities;

(b) An explanation of how the state will ensure that existing and new facilities are permitted or otherwise approved and in compliance with the relevant Subtitle D federal revised criteria;

(c) A demonstration that the state meets the requirements in §§ 239.6, 239.7, 239.8, and 239.9;

(d) The number of facilities within the state's jurisdiction that received waste on or after the following dates:

(1) For municipal solid waste landfill units, October 9, 1991.

(2) For non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste, January 1, 1998.

(e) A discussion of staff resources available to carry out and enforce the relevant state permit program.

(f) A description of the state's public participation procedures as specified in § 239.6(a) through (c).

§ 239.5 State legal certification.

(a) A state must submit a written certification from the state Attorney General that the laws, regulations, and any applicable guidance cited in the application are enacted at the time the certification is signed and are fully effective when the state permit program is approved. This certification may be signed by the independent legal counsel for the state rather than the Attorney General, provided that such counsel has full authority to independently represent the lead state agency in court on all matters pertaining to the state program.

(b) If guidance is to be used to supplement statutes and regulations, the state legal certification must discuss that the state has the authority to use guidance to develop enforceable permits which will ensure compliance with relevant standards issued pursuant to RCRA section 4010(c) and that the guidance was duly issued in accordance with state law.

(c) If any laws, regulations, or guidance are not enacted or fully effective when the legal certification is signed, the certification should specify what portion(s) of laws, regulations, or guidance are not yet enacted or fully effective and when they are expected to be enacted or fully effective.

The Agency may make a tentative determination of adequacy using this legal certification. The state must submit a revised legal certification meeting the requirements of paragraph (a) of this section and, if appropriate, paragraph (b) of this section along with all the applicable fully enacted and effective statutes, regulations, or guidance, prior to the Agency making a final determination of adequacy. If the statutes, regulations or guidance originally submitted under § 239.3(d) and certified to under this section are modified in a significant way, the Regional Administrator will publish a new tentative determination to ensure adequate public participation.

Subpart C—Requirements for Adequate Permit Programs

§ 239.6 Permitting requirements.

(a) State law must require that:

(1) Documents for permit determinations are made available for public review and comment; and

(2) Final determinations on permit applications are made known to the public.

(b) The state shall have procedures that ensure that public comments on permit determinations are considered.

(c) The state must fully describe its public participation procedures for permit issuance and post-permit actions in the narrative description required under § 239.4 and include a copy of these procedures in its permit program application.

(d) The state shall have the authority to collect all information necessary to issue permits that are adequate to ensure compliance with the relevant 40 CFR part 257, subpart B or 40 CFR part 258 federal revised criteria.

(e) For municipal solid waste landfill units, state law must require that:

(1) Prior to construction and operation, all new municipal solid waste landfill units shall have a permit incorporating the conditions identified in paragraph (e)(3) of this section;

(2) All existing municipal solid waste landfill units shall have a permit incorporating the conditions identified in paragraph (e)(3) of this section by the deadlines identified in 40 CFR 258.1;

(3) The state shall have the authority to impose requirements for municipal solid waste landfill units adequate to ensure compliance with 40 CFR part 258. These requirements shall include:

(i) General standards which achieve compliance with 40 CFR part 258, subpart A;

(ii) Location restrictions for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart B;

(iii) Operating criteria for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart C;

(iv) Design criteria for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart D;

(v) Ground-water monitoring and corrective action standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart E;

(vi) Closure and post-closure care standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart F; and

(vii) Financial assurance standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart G.

(f) For non-municipal, non-hazardous waste disposal units that receive CESQG waste, state law must require that:

(1) Prior to construction and operation, all new non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste shall have a permit incorporating the conditions identified in paragraph (f)(3) of this section;

(2) All existing non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste shall

have a permit incorporating the conditions identified in paragraph (f)(3) of this section by the deadlines identified in 40 CFR 257.5;

(3) The state shall have the authority to impose requirements for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste adequate to ensure compliance with 40 CFR part 257, subpart B. These requirements shall include:

(i) General standards which achieve compliance with 40 CFR part 257, subpart B (§ 257.5);

(ii) Location restrictions for non-municipal, non-hazardous waste disposal units which achieve compliance with 40 CFR 257.7 through 257.13;

(iii) Ground-water monitoring and corrective action standards for non-municipal, non-hazardous waste disposal units which achieve compliance with 40 CFR 257.21 through 257.28; and,

(iv) Recordkeeping for non-municipal, non-hazardous waste disposal units which achieves compliance with 40 CFR 257.30.

§ 239.7 Requirements for compliance monitoring authority.

(a) The state must have the authority to:

(1) Obtain any and all information necessary, including records and reports, from an owner or operator of a Subtitle D regulated facility, to determine whether the owner or operator is in compliance with the state requirements;

(2) Conduct monitoring or testing to ensure that owners and operators are in compliance with the state requirements; and

(3) Enter any site or premise subject to the permit program or in which records relevant to the operation of Subtitle D regulated facilities or activities are kept.

(b) A state must demonstrate that its compliance monitoring program provides for inspections adequate to determine compliance with the approved state permit program.

(c) A state must demonstrate that its compliance monitoring program provides mechanisms or processes to:

(1) Verify the accuracy of information submitted by owners or operators of Subtitle D regulated facilities;

(2) Verify the adequacy of methods (including sampling) used by owners or operators in developing that information;

(3) Produce evidence admissible in an enforcement proceeding; and

(4) Receive and ensure proper consideration of information submitted by the public.

§ 239.8 Requirements for enforcement authority.

Any state seeking approval must have the authority to impose the following remedies for violation of state program requirements:

(a) To restrain immediately and effectively any person by administrative or court order or by suit in a court of competent jurisdiction from engaging in any activity which may endanger or cause damage to human health or the environment.

(b) To sue in a court of competent jurisdiction to enjoin any threatened or continuing activity which violates any statute, regulation, order, or permit which is part of or issued pursuant to the state program.

(c) To sue in a court of competent jurisdiction to recover civil penalties for violations of a statute or regulation which is part of the state program or of an order or permit which is issued pursuant to the state program.

§ 239.9 Intervention in civil enforcement proceedings.

Any state seeking approval must provide for intervention in the state civil enforcement process by providing either:

(a) Authority that allows intervention, as a right, in any civil action to obtain remedies specified in § 239.8 by any citizen having an interest that is or may be adversely affected; or,

(b) Assurance by the appropriate state agency that:

(1) It will provide notice and opportunity for public involvement in all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment); and,

(2) It will investigate and provide responses to citizen complaints about violations; and,

(3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

Subpart D—Adequacy Determination Procedures

§ 239.10 Criteria and procedures for making adequacy determinations.

(a) The State Director seeking an adequacy determination must submit to the appropriate Regional Administrator an application in accordance with § 239.3.

(b) Within 30 days of receipt of a state program application, the Regional Administrator will review the application and notify the state whether its application is administratively complete in accordance with the application components required in § 239.3. The 180-day review period for final determination of adequacy, described in paragraph (d) of this section, begins when the Regional Administrator deems a state application to be administratively complete.

(c) After receipt and review of a complete application, the Regional Administrator will make a tentative determination on the adequacy of the state program. The Regional Administrator shall publish the tentative determination on the adequacy of the state program in the **Federal Register**. Notice of the tentative determination must:

(1) Specify the Regional Administrator's tentative determination;

(2) Afford the public at least 30 days after the notice to comment on the state application and the Regional Administrator's tentative determination;

(3) Include a specific statement of the areas of concern, if the Regional Administrator indicates the state program may not be adequate;

(4) Note the availability for inspection by the public of the state permit program application; and

(5) Indicate that a public hearing will be held by EPA if sufficient public interest is expressed during the comment period. The Regional Administrator may determine when such a hearing is necessary to clarify issues involved in the tentative adequacy determination. If held, the public hearing will be scheduled at least 45 days from public notice of such hearing. The public comment period may be continued after the hearing at the discretion of the Regional Administrator.

(d) Within 180 days of determining that a state program application is administratively complete, the Regional Administrator will make a final determination of adequacy after review and consideration of all public comments, unless the Regional Administrator, after consultation with the State Director, agrees to extend the review period. The Regional Administrator will give notice of the final determination in the **Federal Register**. The document must include a statement of the reasons for the determination and a response to significant comments received.

(e) For all states that do not submit an application, the Administrator or Regional Administrator may issue a final determination of inadequacy in the **Federal Register** declaring those state

permit programs inadequate to ensure compliance with the relevant Subtitle D federal revised criteria. Such states may apply later for a determination of adequacy.

§ 239.11 Approval procedures for partial approval.

(a) EPA may partially approve state permit programs that do not meet all of the requirements in § 239.6(e)(3) (i.e., do not incorporate all of the relevant Subtitle D federal revised criteria). Such permit programs may be partially approved if:

(1) The appropriate Regional Administrator determines that the state's permit program largely meets the technical requirements of § 239.6 and meets all other requirements of this part;

(2) Changes to a specific part(s) of the state permit program are required in order for the state program to fully meet the requirements of § 239.6; and

(3) Provisions not included in the partially approved portions of the state permit program are clearly identifiable and separable subsets of the relevant Subtitle D federal revised criteria.

(b) A state applying for partial approval must include in its application a schedule to revise the necessary laws, regulations, and/or guidance to obtain full approval within two years of final approval of the partial permit program. The Regional Administrator and the State Director must agree to the schedule.

(c) The application for partial approval must fully meet the requirements of subparts B and C of this part.

(d) States with partially approved permit programs are only approved for those relevant provisions of the Subtitle D criteria included in the partial approval.

(e) Any partial approval adequacy determination made by the Regional Administrator pursuant to this section and § 239.10 shall expire two years from the effective date of the final partial program adequacy determination unless the Regional Administrator grants an extension. States seeking an extension must submit a request to the appropriate Regional Administrator, must provide good cause for missing the deadline, and must supply a new schedule to revise necessary laws, regulations, and/or guidance to obtain full approval. The appropriate Regional Administrator will decide if there is good cause and if the new schedule is realistic. If the Regional Administrator extends the expiration date, the Region will publish a document in the **Federal Register** along with the new expiration date. A state with partial approval shall submit an amended application meeting all of the requirements of this part and have that application approved by the two-year deadline or the amended date set by the Regional Administrator.

(f) The Regional Administrator will follow the adequacy determination procedures in § 239.10 for all initial applications for partial program approval and follow the adequacy determination procedures in § 239.12(f) for any amendments for approval for unapproved sections of the relevant Subtitle D federal revised criteria.

§ 239.12 Modifications of state programs.

(a) Approved state permit programs may be modified for various reasons, such as changes in federal or state statutory or regulatory authority.

(b) If the federal statutory or regulatory authorities that have significant implications for state permit programs change, approved states may be required to revise their permit programs. These changes may necessitate submission of a revised application. Such a change at the federal level and resultant state requirements would be made known to the states either in a **Federal Register** document containing the change or through the appropriate EPA Regional Office.

(c) States that modify their programs must notify the Regional Administrator of the modifications. Program modifications include changes in state statutory or regulatory authority or relevant guidance or shifting of responsibility for the state program within the lead agency or to a new or different state agency or agencies. Changes to the state's permit program, as described in its application which may result in the program becoming inadequate, must be reported to the Regional Administrator. In addition, changes to a state's basic statutory or regulatory authority or guidance which were not part of the state's initial application, but may have a significant impact on the adequacy of the state's permit program, also must be reported to the Regional Administrator.

(d) States must notify the appropriate Regional Administrator of all permit program modifications required in paragraphs (b) and (c) of this section within a time-frame agreed to by the State Director and the Regional Administrator.

(e) The Regional Administrator will review the modifications and determine whether the State Director must submit a revised application. If a revised application is necessary, the Regional Administrator will inform the State Director in writing that a revised application is necessary, specifying the required revisions and establishing a schedule for submission of the revised application.

(f) For all revised municipal solid waste landfill permit program applications, and for all amended applications in the case of partially approved programs, the state must submit to the appropriate Regional Administrator an amended application that addresses those portions of its program that have changed or are being amended. For such revised programs, as well as for those from states seeking EPA approval of permit programs for state regulation of non-municipal, non-hazardous waste disposal units which receive conditionally exempt small quantity generator hazardous waste, the Regional Administrator will make an adequacy determination using the criteria found in § 239.10.

(g) For revised applications that do not incorporate permit programs for additional classifications of Subtitle D regulated facilities and for all amended applications in the case of partially approved programs, the appropriate Regional Administrator shall provide for public participation using the procedures outlined in § 239.10 or, at the Regional Administrator's discretion, using the following procedures.

(1) The Regional Administrator will publish an adequacy determination in the **Federal Register** summarizing the Agency's decision and the portion(s) of the state permit program affected and providing an opportunity to comment for a period of at least 60 days.

(2) The adequacy determination will become effective 60 days following publication, if no adverse comments are received. If EPA receives comments opposing its adequacy determination, the Regional Administrator will review these comments and publish another **Federal Register** document responding to public comments and either affirming or revising the initial decision.

§ 239.13 Criteria and procedures for withdrawal of determination of adequacy.

(a) The Regional Administrator may initiate withdrawal of all or part of a determination of state program adequacy when the Regional Administrator has reason to believe that:

(1) All or a part of a state program is no longer adequate, or

(2) The state no longer has adequate authority to administer and enforce all or part of an approved program in accordance with this part.

(b) Upon receipt of substantive information sufficient to indicate that all or a part of a state program may no longer be adequate, the Regional

Administrator shall inform the state in writing of the information.

(c) If, within 45 days of the state's receipt of the information in paragraph (b) of this section, the state demonstrates to the satisfaction of the Regional Administrator that the state program is adequate (i.e., in compliance with this part), the Regional Administrator shall take no further action toward withdrawal of determination of adequacy and shall so notify the state and any person(s) who submitted information regarding the adequacy of the state's program and authorities.

(d) If the State Director does not demonstrate the state's compliance with this part to the satisfaction of the Regional Administrator, the Regional Administrator shall list the deficiencies in the program and negotiate with the state a reasonable time for the state to complete such action to correct deficiencies as the Regional Administrator determines necessary. If these negotiations reach an impasse, the Regional Administrator shall establish a time period within which the state must correct any program deficiencies and inform the State Director of the time period in writing.

(e) Within the schedule negotiated by the Regional Administrator and the State Director, or set by the Regional Administrator, the state shall take appropriate action to correct deficiencies and shall file with the Regional Administrator a statement certified by the State Director describing the steps taken to correct the deficiencies.

(f) If the state takes appropriate action to correct deficiencies, the Regional Administrator shall take no further action toward withdrawal of determination of adequacy and shall so notify the state and any person(s) who submitted information regarding the adequacy of the state's permit program. If the state has not demonstrated its compliance with this part to the satisfaction of the Regional Administrator, the Regional Administrator shall inform the State Director and may initiate withdrawal of all or part of the determination of state program adequacy.

(g) The Regional Administrator shall initiate withdrawal of determination of adequacy by publishing the tentative withdrawal of determination of adequacy of the state program in the **Federal Register**. Notice of the tentative determination must:

(1) Afford the public at least 60 days after the notice to comment on the Regional Administrator's tentative determination;

(2) Include a specific statement of the Regional Administrator's areas of concern and reason to believe the state program may no longer be adequate; and

(3) Indicate that a public hearing will be held by EPA if sufficient public interest is expressed during the comment period or when the Regional Administrator determines that such a hearing might clarify issues involved in the tentative adequacy determination. If held, the public hearing will be scheduled at least 45 days from notice of such hearing. The public comment period may be continued after the hearing at the discretion of the Regional Administrator.

(h) If the Regional Administrator finds, after the public hearing (if any) and review and consideration of all public comments, that the state is in compliance with this part, the withdrawal proceedings shall be terminated and the decision shall be published in the **Federal Register**. The document must include a statement of the reasons for this determination and a response to significant comments received. If the Regional Administrator finds that the state program is not in compliance with this Part by the date prescribed by the Regional Administrator or any extension approved by the Regional Administrator, a final notice of inadequacy shall be published in the **Federal Register** declaring the state permit program inadequate to ensure compliance with the relevant Subtitle D federal revised criteria. The document will include a statement of the reasons for this determination and response to significant comments received.

(i) States may seek a determination of adequacy at any time after a determination of inadequacy.

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

2–3. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a) and 6949(c); 33 U.S.C. 1345(d) and (e).

4. Section 257.5 is amended by revising the definitions for *State* and *State Director* to read as follows:

§ 257.5 Disposal standards for owners/operators of non-municipal, non-hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

* * * * *

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Director means the chief administrative officer of the lead state agency responsible for implementing the state permit program for 40 CFR part 257, subpart B and 40 CFR part 258 regulated facilities.

* * * * *

PART 258—SOLID WASTE DISPOSAL CRITERIA

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

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

6. Section 258.2 is amended by revising the definitions for ''Director of an Approved State'' and ''State Director'' to read as follows:

§ 258.2 Definitions.

* * * * *

Director of an Approved State means the chief administrative officer of a state agency responsible for implementing the state permit program that is deemed to be adequate by EPA under regulations published pursuant to sections 2002 and 4005 of RCRA.

* * * * *

State Director means the chief administrative officer of the lead state agency responsible for implementing the state permit program for 40 CFR part 257, subpart B and 40 CFR part 258 regulated facilities.

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