



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2018-0695; FRL-9985-94-OAR]

RIN 2060-AU33

Adopting Subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) proposes to amend the 2016 Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (“MSW Landfills EG”). The requirements for state and federal plans implementing the MSW Landfills EG were adopted from 1975 regulations, referred to herein as the “old implementing regulations,” which are cross-referenced in the MSW Landfill EG. In a separate regulatory proposal published in the *Federal Register* in August 2018, the EPA proposed changes to modernize the old implementing regulations governing emission guidelines under a new subpart. This action proposes to update the cross-references to the old implementing regulations in the MSW Landfills EG to harmonize with the proposed new timing and completeness requirements for state and federal plans.

DATES: *Comments.* Comments must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Public hearing. If anyone contacts us requesting a public hearing on or before **[INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, we

will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent *Federal Register* document and posted at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards>. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2018-0695 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. See **SUPPLEMENTARY INFORMATION** for detail about how the EPA treats submitted comments. Regulations.gov is our preferred method of receiving comments. However, the following other submission methods are also accepted:

- *Email:* a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2018-0695 in the subject line of the message.
- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2018-0695.
- *Mail:* To ship or send mail via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2018-0695, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- *Hand/Courier Delivery:* Use the following Docket Center address if you are using express mail, commercial delivery, hand delivery, or courier: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Andrew Sheppard, Sector Policies and Programs Division (E143-03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4161; fax number: (919) 541-0516; and email address: *sheppard.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Virginia Hunt at (919) 541-0832 or by email at *hunt.virginia@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2018-0695. All documents in the docket are listed in Regulations.gov. Although listed, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in Regulations.gov or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue, NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2018-0695. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal

information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov> or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be

free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that include information claimed as CBI, you must submit a copy of the comments that do not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2018-0695.

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA	Clean Air Act
CBI	Confidential Business Information
CFR	Code of Federal Regulations
EG	Emission Guidelines
EPA	Environmental Protection Agency
MSW	Municipal Solid Waste

NAICS	North American Industry Classification System
NTTAA	National Technology Transfer and Advancement Act
OAQPS	Office of Air Quality Planning and Standards
OMB	Office of Management and Budget
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
SIP	State Implementation Plan
UMRA	Unfunded Mandates Reform Act
U.S.C.	United States Code

Organization of this Document. The information in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the source categories that may be affected by this proposal.

Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed amendment, once promulgated, will be applicable to the affected sources.

Table 1. Source Categories Affected by This Proposed Action

Source Category	NAICS Code ¹	Examples of Affected Sources
State, local, and tribal government agencies	924119	Administration of air and water resource and solid waste management programs

¹ North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards>. Following publication in the *Federal Register*, the EPA will post the *Federal Register* version of the proposal and key technical documents at this same website.

II. Background

On August 29, 2016, the EPA published a final rule titled “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills” (the “MSW Landfills EG”), under Clean Air Act (CAA) section 111(d) (81 FR 59276). Section 111(d) is the provision of the CAA that governs the establishment of performance standards for existing sources. The MSW Landfills EG, which was promulgated as a new subpart at 40 CFR part 60, subpart Cf, updated the control requirements and monitoring, reporting, and recordkeeping provisions for existing MSW landfill sources. The MSW Landfills EG incorporates by cross-reference or direct adoption certain requirements for state and federal plans as specified in 40 CFR part 60, subpart B. Subpart B at 40 CFR part 60 contains the historic regulations, initially promulgated in 1975 to implement CAA section 111(d), that established generally applicable procedural and substantive requirements for CAA section 111(d) regulations (the “old implementing regulations”). Under

the old implementing regulations at 40 CFR 60.23(a) as adopted by the MSW Landfills EG, state plans were due 9 months after the August 29, 2016, publication date of the MSW Landfills EG. Thus, states were required to submit their plans to the EPA by May 30, 2017. *See* 40 CFR 60.30f(b). Under the old implementing regulations as incorporated by the MSW Landfills EG, the EPA had 4 months to approve or disapprove a state plan after receipt of a plan or plan revision, 40 CFR 60.27(b), and 6 months to issue federal plans for states that failed to submit approved plans after the due date for state plans, 40 CFR 60.27(c)-(d).

On August 31, 2018, as part of the proposed Affordable Clean Energy (ACE) rule (a CAA section 111(d)-rule addressing greenhouse gas emissions from fossil-fuel-fired electric generating units), the EPA proposed revisions to the old implementing regulations for all CAA section 111(d) emission guidelines (83 FR 44746). Specifically, the proposed ACE rule included a new regulation at 40 CFR part 60, subpart Ba (“proposed new implementing regulations”) that would, among other things, change the timing requirements for the submission of state plans, the EPA’s review of state plans, and the issuance of federal plans to more closely align the procedures to that provided under CAA section 110 as specified in CAA section 111(d)(1).¹ In addition, the proposed new implementing regulations would include new completeness criteria also modeled after those that apply to state implementation plans (SIPs) submitted under CAA section 110 (83 FR 44803-44807).

III. What actions are we proposing?

¹ CAA section 111(d) provides: “The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance.”

In the proposed ACE rule, the EPA proposed to apply the 40 CFR part 60, subpart Ba timing requirements to all “ongoing” emission guidelines already published under CAA section 111(d) (83 FR 44769). However, the EPA recognizes that, without further action, the promulgation of the proposed new implementing regulations would not be sufficient to change the timing requirements for the MSW Landfills EG, even though it is an ongoing CAA section 111(d) action. This is because the MSW Landfills EG includes a cross-reference to the old implementing regulations, as well as a specific deadline for the submission of state plans that was based on the timing requirements in the old implementing regulations. The EPA is proposing to amend the cross-references and deadline in the MSW Landfills EG to align with the proposed timing requirements in 40 CFR part 60, subpart Ba.² The EPA notes that, because this proposal is predicated on the proposed timing requirements in 40 CFR part 60, subpart Ba, the EPA will have to finalize the relevant sections of 40 CFR part 60, subpart Ba that pertain to this rule either prior to or concurrently with finalizing this rule.

Specifically, the EPA is proposing to amend the MSW Landfills EG regulatory text in 40 CFR part 60, subpart Cf to adjust the state plan due date from May 30, 2017, to August 29, 2019,

² 40 CFR part 60, subpart Cf would continue to cross-reference 40 CFR part 60, subpart B, except that it would now cross-reference 40 CFR part 60, subpart Ba with respect to the implementing regulation’s timing requirements. Accordingly, the requirements of 40 CFR 60.23 (Adoption and submittal of State plans; public hearings) and 40 CFR 60.27 (Actions by the Administrator) would be replaced by the requirements proposed in 40 CFR 60.23a and 40 CFR 60.27a, respectively. However, the proposed text in 40 CFR 60.23a(a)(1) and 60.27a(e)(1) refer to a notice of availability of a final guideline document that was published under 40 CFR 60.22a(a). Because the MSW Landfills EG were published under 40 CFR 60.22(a), for purposes of this amendment, the proposed requirements of 40 CFR 60.23a(a)(1) and 40 CFR 60.27a(e)(1) will refer to the final guideline document that was published under 40 CFR 60.22(a). Additionally, the provisions of 40 CFR 60.27a(e)(2) that specify when the EPA may apply less stringent emission standards or longer compliance schedules will continue to reference 40 CFR 60.24(f) instead of 40 CFR 60.24a(f).

which aligns with the proposed new timing requirements in 40 CFR part 60, subpart Ba.³ For state plans submitted to the EPA prior to promulgation of these amendments, the EPA is taking comment on whether to amend the MSW Landfills EG regulatory text in 40 CFR part 60, subpart Cf to require those states to resubmit their plans in accordance with the provisions of the proposed new implementing regulations. This would ensure consistent treatment of all states and state plans, avoid confusion regarding deadlines, and allow the EPA to undertake a completeness review for state plans already submitted to the EPA. Alternatively, the EPA solicits comment on whether the Agency should not require the resubmission of state plans submitted prior to promulgation of these amendments, and, if not, whether the EPA should still evaluate the already-submitted plans for compliance with the proposed new completeness criteria.

As explained in the proposed ACE rule, CAA section 111(d)(1) directs the EPA to promulgate regulations establishing a procedure “similar to” that under CAA section 110 (governing the development, submission, and EPA review of SIPs to address National Ambient Air Quality Standards) for states to submit plans to the EPA that establish standards of performance for existing sources (*see* 83 FR 44771). The old implementing regulations at 40 CFR part 60, subpart B were promulgated in 1975 (*see* 40 FR 53346) and have not been significantly revised since their original promulgation. Notably, the implementing regulations do not reflect CAA section 111(d) in its current form as amended by Congress in 1977, and do not reflect CAA section 110 in its current form as amended by Congress in 1990. As discussed more fully in the ACE proposal, the EPA has determined that certain portions of the implementing

³ The EPA notes that the proposed regulatory text for 40 CFR 60.27a in the proposed ACE rule has a typographical error. The proposed requirements in 40 CFR 60.27a(g)(2)(vi) and (vii) reference 40 CFR 60.23 instead of the proposed requirements in 40 CFR 60.23a. *See* 83 FR 44807. Assuming 40 CFR 60.27(g)(2) is finalized, the error will be corrected in the final rule.

regulations do not appropriately align with the direction in CAA section 111(d) that the EPA's regulations be "similar" to the provisions under CAA section 110.⁴ Due to the amount of work, effort, and time required for developing state plans, the EPA has determined that extending the submission date of state plans from 9 months to 3 years is appropriate. Because states have considerable flexibility in implementing CAA section 111(d), this change would allow states more time to interact and work with the EPA in the development of state plans and minimize the chance of unexpected issues arising that could slow down eventual approval of state plans (83 FR 44769-44771).

Separate and apart from the interaction between the text of CAA section 111(d) and the 1990 amendments to CAA section 110, the EPA's experience also has shown that states need more time to submit a plan than provided for in the old implementing regulations at 40 CFR part 60, subpart B. When the EPA proposed the MSW Landfills EG, some commenters objected to the 9-month period to submit a state plan as not being achievable for a number of reasons, such as the amount of time needed for rule development, public outreach, public notice, and to hold a public hearing for rule adoption. Commenters recommended allowing states varying amounts of time, from 12 to 24 months, to submit a state plan. (See <https://www.epa.gov/stationary-sources->

⁴ The EPA acknowledges that the procedural and substantive requirements established by Congress for the SIP process under CAA section 110 are considerably more detailed than the corresponding requirements established by Congress for the state existing-source performance standards plans under CAA section 111(d). Accordingly, the EPA does not interpret the Congressional direction under CAA section 111(d) to promulgate regulations establishing a state-plan procedure "similar to" that under CAA section 110 as requiring the EPA to establish an *identical* scheme for the two provisions. Rather, the EPA interprets the "similar to" direction as requiring it to carefully consider the major structural features of CAA section 110 and, where appropriate, adopt similar provisions in its regulations implementing CAA section 111(d). For the reasons proposed in the ACE rule, the EPA has determined that the timeline promulgated in the old implementing regulations (as incorporated by the MSW Landfills EG) is inappropriately short and that a timeline more in harmony with CAA section 110, as amended in 1990, is more appropriate.

air-pollution/responses-public-comments-epas-standards-performance-municipal, at pages 30-33.) In response, the EPA declined to extend the deadline because we thought at that time that a majority of the states would be able to submit a plan within the prescribed 9-month period and because, “[f]or states that do not submit a state plan, the CAA gives the EPA express authority to implement a federal plan.” (*Id.* at page 30-31.) On further consideration, the EPA has determined that its response to comments requesting a longer period of time to submit state plans was inadequate. The Congressional intent underlying CAA section 111(d) is clear, and is strengthened by the reference to CAA section 110: implementation of CAA section 111(d) is intended to be primarily a state-driven process, and the existence of federal backstop authority is not a sufficient reason to decline to provide a longer period of time for states to develop and submit their plans. The EPA further notes that almost all of the states, rather than just a minority, did not submit a state plan within the prescribed 9-month period by May 30, 2017.⁵

In addition, as explained in the proposed ACE rule, CAA section 111(d)(2)(A) authorizes the EPA to prescribe a plan for a state “in cases where the State fails to submit a satisfactory plan.” The EPA, therefore, is charged with determining whether state plans developed and submitted under CAA section 111(d)(1) are “satisfactory.” The EPA reiterates the position in the proposed ACE rule that, given the flexibilities that CAA section 111(d) and emission guidelines generally accord to states, and the EPA’s prior experience on reviewing and acting on SIPs under CAA section 110, it is appropriate to extend the period for the EPA’s review and approval or disapproval of plans from the 4-month period provided in 40 CFR part 60, subpart B, to the 12-month period (after a determination of completeness, either affirmatively by the EPA or by

⁵ At the present, only California, Arizona, and New Mexico have submitted a state plan to the EPA.

operation of law) provided in the proposed new implementing regulations. This timeline would provide adequate time for the EPA to review plans and follow notice-and-comment rulemaking procedures to ensure an opportunity for public comment on the EPA's proposed action on a state plan (see 83 FR 44771). Because the EPA is proposing to apply the completeness criteria that are included in the proposed new implementing regulations to state plans submitted to implement the MSW Landfills EG, it is important that the EPA have the opportunity to undertake a completeness review for all state plans.⁶ Therefore, the EPA is taking comment on whether the states that have already submitted state plans to implement the MSW Landfills EG should resubmit their plans in accordance with the proposed requirements in 40 CFR part 60, subpart Ba.

Finally, for this proposed action, the EPA is reiterating the rationale in the proposed ACE rule for extending the timing from 6 months to 2 years for the EPA to promulgate a federal plan for states that fail to submit an approvable state plan in response to the MSW Landfills EG. This 2-year timeline is consistent with the federal implementation plan deadline under CAA section 110(c) (see 83 FR 44771) and would be beneficial to the EPA. Whenever the EPA promulgates a federal plan, it must follow the rulemaking requirements in CAA 307(d). This involves a number of potentially time-consuming steps, including coordination with many offices, developing a comprehensive record, and considering comments submitted on a proposed plan. In addition, when states fail to submit a plan as required under the MSW Landfills EG, we typically

⁶ The ACE proposal states: "In the case of SIPs under CAA section 110(k)(1), EPA promulgated completeness criteria in 1990 at Appendix V to 40 CFR part 51 (55 FR 5830; February 16, 1990). EPA proposes to adopt criteria similar to the criteria set out at section 2.0 of Appendix V for determining the completeness of submissions under CAA section 111(d). EPA notes that the addition of completeness criteria in the framework regulations does not alter any of the submission requirements states already have under any applicable emission guideline." 83 FR 44746, 44772.

promulgate a single federal plan that applies to a number of states. Unlike a federal plan developed for a single state, the federal plan developed here may be more complex and time-intensive since it must be tailored to meet the needs of many states.

In summary, under this proposed rule, which would adopt the timing requirements in proposed 40 CFR part 60, subpart Ba, states would have until August 29, 2019, to submit their state plans (3 years from the effective date of the MSW Landfills EG). After a state has submitted its plan, the EPA would have 6 months to determine if the plan is complete. If the EPA does not make a determination of completeness within that period of time, the state plan would be deemed complete by operation of law, and the EPA would have 12 additional months to approve or disapprove the state plan. If the EPA determines that the plan is complete, the EPA would have 12 months from the date of that determination to approve or disapprove the state plan. If the EPA determines that the plan is incomplete, the EPA would have 2 years to promulgate a federal plan. Similarly, if the EPA disapproves a state plan (even one that met the completeness requirements), the EPA would have 2 years to promulgate a federal plan. However, a state would always be able to submit a revised state plan that corrects the deficiencies, and, depending on the timing, the EPA could either approve that plan before promulgating a federal plan or, if a federal plan had already been promulgated, approve it and withdraw the federal plan.

Although the costs and benefits of harmonizing the timing requirements of state plans cannot be quantified due to inherent uncertainties, the EPA believes that they will be minimal and requests comment on this. Some facilities may have an incentive to install landfill gas collection systems. Landfill gas can be recovered and used as an energy source, either offsetting existing energy costs or providing a source of revenue. This offers financial advantages for some facilities to install landfill gas collection systems early in the development of the project (*i.e.*,

prior to the regulatory requirement date resulting from a state or federal plan implementing the MSW Landfills EG). If facilities have already installed controls, then shifting the date by which states must submit plans may not have any impact on the actual collection and control of landfill gas. On the other hand, some sources may choose to wait until requirements are enacted prior to installing controls. While this would not impact the cost of installing controls, it could impact the amount of landfill gas captured over the life of the project and increase the net cost.

For states, the costs of complying with the new timing requirements, which include the new completeness criteria, are likely minimal.⁷ The proposed completeness criteria in 40 CFR part 60, subpart Ba are based on the criteria in 40 CFR part 51, appendix V that states already follow when developing SIPs under CAA section 110. Given that the majority of state planning occurs under CAA section 110, it is likely that many states simply comply with the completeness criteria in 40 CFR part 51, appendix V when developing their CAA section 111(d) state plans, while any states that do not would need to make only minimal adjustments to apply their CAA section 110 SIP process in the context of CAA section 111(d) state planning.

In summary, the purpose of this proposal is to amend the MSW Landfills EG to align the timing requirements in the EG, which were adopted from the old implementing regulations, with the timing and completeness checklist requirements in the proposed new implementing regulations at 40 CFR part 60, subpart Ba (*see* 83 FR 44803 *et seq.*). The EPA is taking comment on amending the cross-references in the MSW Landfills EG to refer to the timing and

⁷ Sources owned or operated by federal, state, local, and tribal government entities will not be significantly affected by this action because it does not address substantive underlying control requirements. It merely addresses the date by which states must submit plans.

completeness requirements in the proposed new implementing regulations, requiring states that have already submitted state plans to resubmit their plans and impacts of this proposal.⁸

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not expected to be subject to Executive Order 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0720. Because the burden to prepare and submit a state plan have been fully incorporated into the 2016 MSW Landfills EG, and this action does not change any of the requirements associated with the stringency of the rule, there are no changes to the previously estimated information collection burden.

⁸ The current proposal is separate and distinct from the ongoing reconsideration proceeding related to the MSW Landfills EG, which is scheduled to be proposed in spring 2019. (See https://www.epa.gov/sites/production/files/2017-05/documents/signed_-_letter_-_municipal_solid_waste_landfills.pdf.)

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action proposes a technical amendment to the MSW Landfills EG promulgated in 2016, which was determined not to impose any requirements on small entities due to the fact that emission guidelines established under CAA section 111(d) do not impose any requirements on regulated entities and, thus, will not have a significant economic impact upon a substantial number of small entities. See 81 FR 59309-9310 for additional discussion. We have, therefore, concluded that this action similarly will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments.

The action implements mandate(s) specifically and explicitly set forth in 40 CFR part 60, subpart Ba without the exercise of any policy discretion by the EPA.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. The MSW Landfills EG recognized that one tribe had three landfills that may potentially be subject to the emission guidelines, but noted that these landfills have already met requirements under the previous new source performance standards/emission guidelines framework as promulgated in

1996 (*see* 81 FR 59311). However, this action does not have a substantial direct effect on that tribe since it is merely a procedural change amending timing requirements for states to submit plans to the EPA and for the EPA to promulgate a federal plan. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This regulatory action is a procedural change and does not have any impact on human health or the environment. Thus, it will not disproportionately affect children.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this action is not likely to have any adverse energy effects because it is a procedural change and does not have any impact on energy supply, distribution, or use.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This

regulatory action is a procedural change and the EPA does not anticipate that it will have any material impact on human health or the environment.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedures, Emission guidelines, Landfills, Reporting and recordkeeping requirements, State plan.

Dated: October 23, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend part 60 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 60--STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

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

Subpart Cf—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

2. Section 60.30f is amended by revising paragraphs (a) and (b) to read as follows:

§60.30f Scope and delegated authorities.

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(a) If you are the Administrator of an air quality program in a state or United States protectorate with one or more existing municipal solid waste landfills that commenced

construction, modification, or reconstruction on or before July 17, 2014, you must submit a state plan to the U.S. Environmental Protection Agency (EPA) that implements the Emission Guidelines contained in this subpart. The requirements for state and federal plans are specified in 40 CFR part 60, subpart B with the exception that §§60.23 and 60.27 will not apply. The following requirements apply instead:

(1) Notwithstanding the provisions of §60.20a(a) in 40 CFR part 60, subpart Ba, the requirements of §§60.23a and 60.27a will apply for state and federal plans, except that the requirements of §60.23a(a)(1) will apply to a notice of availability of a final guideline document that was published under §60.22(a); and

(2) The requirements of §60.27a(e)(1) will refer to a final guideline document that was published under §60.22(a) and the requirements of §60.27a(e)(2) will refer to §60.24(f).

(b) You must submit a state plan to the EPA by August 29, 2019.

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