



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-HQ-OAR-2019-0338; FRL-9998-62-OAR]

RIN 2060-AU52

Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014, and Have Not Been Modified or Reconstructed Since July 17, 2014

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: In this action, the U.S. Environmental Protection Agency (EPA) proposes a federal plan to implement the Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (2016 MSW Landfills EG) for existing MSW landfills located in states and Indian country where state plans or tribal plans are not in effect. This proposed MSW Landfills Federal Plan includes the same elements as required for a state plan: identification of legal authority and mechanisms for implementation; inventory of designated facilities; emissions inventory; emission limits; compliance schedules; a process for the EPA or state review of design plans for site-specific gas collection and control systems (GCCS); testing, monitoring, reporting and record keeping requirements; public hearing requirements; and progress reporting requirements. Additionally, this action summarizes implementation and delegation of authority of the MSW Landfills Federal Plan.

DATES: *Comments.* Comments must be received on or before **[insert date 45 days after date of publication in the Federal Register]**.

Public Hearing. We will hold a public hearing on [**insert date 15 days after date of publication in the Federal Register**] from 1:00 p.m. to 5:00 p.m. (Eastern Daylight Time) in Research Triangle Park, North Carolina as specified in the **ADDRESSES** section of this preamble. If no one contacts the EPA requesting to speak at the public hearing to be held concerning this action by [**insert date 5 days after date of publication in the Federal Register**], the public hearing will not take place. Information regarding whether or not a hearing will be held will be posted on the rule's website located at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards>. EPA does not intend to publish any future documents in the **Federal Register** regarding a public hearing on this proposed action and directs all inquiries regarding a hearing to the website and contact person. See **SUPPLEMENTARY INFORMATION** for information on registering and attending a public hearing.

ADDRESSES: Comments. You may send comments, identified by Docket ID No. EPA-HQ-OAR-2019-0338, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instructions for submitting comments.
- Email: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2019-0338 in the subject line of the message.
- Fax: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2019-0338.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2019-0338, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

- Hand/Courier Delivery: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m. – 4:30 p.m., Monday – Friday (except federal holidays).
- Public Hearing: A public hearing will be held at the U.S. EPA's North Carolina campus located at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711.

Instructions: All submission received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov/> including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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 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 action under Docket ID No. EPA-HQ-OAR-2019-0338. All documents in the docket are listed on 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, 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-2019-0338. 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 includes information claimed as CBI, you must submit a copy of the comments that does 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-2019-0338.

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
CDX	Central Data Exchange
CEDRI	Compliance and Emissions Data Reporting Interface
CFR	Code of Federal Regulations
CHIEF	Clearinghouse for Inventories and Emissions Factors
EG	Emission Guidelines
EPA	Environmental Protection Agency
ERT	Electronic Reporting Tool
GCCS	Gas Collection and Control System
LFG	Landfill Gas
LFGCost	Landfill Gas Energy Cost Model
m ³	Cubic Meter
Mg	Megagram
MSW	Municipal Solid Waste
NAICS	North American Industry Classification System
NESHAP	National Emission Standards for Hazardous Air Pollutants
NMOC	Nonmethane Organic Compounds
NSPS	New Source Performance Standards
NTTAA	National Technology Transfer and Advancement Act of 1995
OAQPS	Office of Air Quality Planning and Standards
OMB	Office of Management and Budget
ppm	Parts Per Million
PRA	Paperwork Reduction Act
RFA	Regulatory Flexible Act
RIN	Regulatory Information Number
SBAR	Small Business Advocacy Review
SEM	Surface Emissions Monitoring
TTN	Technology Transfer Network
UMRA	Unfunded Mandate Reform Act
U.S.C.	United States Code
VCS	Voluntary Consensus Standards

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

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- G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- I. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
- J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51
- K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. *Does this action apply to me?*

This proposed action addresses existing MSW landfills and associated solid waste management programs. For the purpose of this regulation, existing MSW landfills are those that accepted waste after November 8, 1987, and commenced construction on or before July 17, 2014. Table 1 of this preamble lists the associated regulated industrial source categories that are the subject of this action. Table 1 of this preamble 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 standards, once promulgated, will be directly applicable to the designated facilities.

Table 1. Regulated Entities

Source Category	Examples of potentially regulated entities	NAICS¹
Industry: Air and water resource and solid waste management	Solid waste landfills	924110
Industry: Refuse systems--solid waste landfills	Solid waste landfills	562212
State, local, and tribal government agencies	Administration of air and water resource and solid waste management programs	924110

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 this proposed action and key technical documents at this same website.

As provided by the Administrative Procedure Act (5 U.S.C. 553(b)(3)), the EPA has generally described the proposed changes to part 62 rather than setting out the specific changes. For the convenience of the reader, the EPA is also providing regulatory text as it would look with the proposed changes in redline in the docket rather than in this **Federal Register** document. See *Proposed Regulatory Text for MSW Landfills Federal Plan (40 CFR part 62, subpart OOO)*, in Docket ID No. EPA-HQ-OAR-2019-0338. Submit public comments using the same mechanisms described in the **DATES** and **ADDRESSES** sections of this preamble.

II. Background

A. What is the regulatory development background and legal authority for this action?

Under authority of the Clean Air Act (CAA), the EPA has promulgated several regulations that apply to MSW landfills. In 1996, under CAA section 111, the EPA promulgated the original standards of performance for new MSW landfills (*i.e.*, new source performance standards or NSPS) at 40 CFR part 60, subpart WWW, and EG for existing MSW landfills at 40 CFR part 60, subpart Cc (61 FR 9905; March 12, 1996). The NSPS and EG are based on the Administrator's determination that MSW landfills cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. In 1999, the EPA promulgated a federal plan under CAA section 111 to implement the 1996 EG for landfills located in states that did not have approved and effective state plans (40 CFR part 62, subpart GGG) (64 FR 60689, November 8, 1999). The federal plan was necessary to implement the 1996 EG for MSW landfills located in states and Indian country where state plans or tribal plans were not in effect. In 2003, the EPA promulgated national emission standards for hazardous air pollutants (NESHAP) under CAA section 112 to regulate hazardous air pollutant (HAP) emissions from MSW landfills (40 CFR part 63, subpart AAAA) (68 FR 2227, January 16, 2003). The 2003 NESHAP fulfills the requirements of CAA section 112(d), which requires the EPA to regulate HAP listed in CAA section 112(b) and helps implement the Urban Air Toxics Strategy under CAA section 112(k). To control emissions of HAP from area sources in urban areas, the EPA developed a strategy identifying 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. MSW landfills were listed on July 19, 1999, as an area source category to be regulated pursuant to CAA section 112(k) because 13 of the listed HAP are emitted from MSW landfills.

In 2016, the EPA reviewed and revised the MSW Landfills NSPS at 40 CFR part 60, subpart XXX, and the EG for existing MSW landfills at 40 CFR part 60, subpart Cf (81 FR 59276 and 59332, August 29, 2016). For the 2016 rulemaking, the EPA reviewed the NSPS and EG based on changes in the landfills industry since the rules were first promulgated in 1996, including changes to the size and number of existing landfills, industry practices, and gas control methods and technologies. Based on its review, the EPA made several revisions to further reduce emissions of landfill gas and its components. The major changes included reducing the emissions threshold at which an MSW landfill must install controls from 50 megagrams (Mg) per year of nonmethane organic compounds (NMOC) to 34 Mg per year NMOC. Additionally, the EPA developed a subcategory for closed landfills because closed landfills do not produce as much landfill gas (LFG) as an active landfill. Landfills in this subcategory remain subject to an NMOC emission threshold of 50 Mg per year for determining when controls must be installed or can be removed. The EPA is now proposing a federal plan for the 2016 MSW Landfills EG.

B. What is the purpose of this action?

On August 29, 2016, the EPA promulgated revisions to the 2016 MSW Landfills EG. The CAA regulations implementing EG require states with existing MSW landfills subject to the EG to submit to the EPA state plans to implement and enforce the EG. The state plans to implement the 2016 MSW Landfills EG were due on May 30, 2017. For states that did not submit an approvable plan by that deadline, CAA section 111 and 40 CFR 60.27(c) and (d) require the EPA to develop, implement, and enforce a federal plan for existing MSW landfills located in any state (*i.e.*, state, territory, or protectorate) or Indian country that does not have an approved state plan that implements the 2016 MSW Landfills EG. This action proposes an MSW Landfills Federal Plan to implement the 2016 MSW Landfills EG for those areas without an

approved state plan. For the purposes of this preamble and the proposed MSW Landfills Federal Plan, the word “state” means any of the 50 United States and the protectorates of the United States. The word “protectorate” means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

C. What is the status of state plan submittals?

The EPA has received eight plans to implement the 2016 MSW Landfills EG, which includes submittals from the following: Arizona (one plan covering Maricopa County, one covering Pinal County, and another covering the remainder of the state), California, Delaware, New Mexico (one plan covering Albuquerque–Bernalillo County and another covering the rest of the state), and West Virginia. The EPA has proposed action on these state plans, but the actions have not been finalized. See *e.g.*, 84 FR 32363 (July 8, 2019) (Arizona); 84 FR 32365 (July 8, 2019) (Pinal County, Arizona); 84 FR 31278 (July 1, 2019) (West Virginia); 84 FR 31279 (July 1, 2019) (Delaware); 84 FR 29138 (June 21, 2019) (New Mexico and Albuquerque–Bernalillo County); and 84 FR 36863 (July 30, 2019) (California). The plan from Maricopa County, Arizona, was withdrawn on July 3, 2019. The EPA is not aware of any tribes that have developed plans to implement the 2016 MSW Landfills EG or submitted negative declaration letters. The EPA is proposing this MSW Landfills Federal Plan to implement the 2016 MSW Landfills EG in states, territories, protectorates, and Indian country, that do not have an approved and effective state or tribal plan.

The MSW landfills covered by the state plans submitted to date would not be subject to the MSW Landfills Federal Plan once the state plan that includes those MSW landfills has been approved and becomes effective. However, MSW landfills located in those states would be subject to the federal plan (or portions of the federal plan) in the event that the state plan is

subsequently disapproved, in whole or in part. Table 2 of this preamble summarizes the status of state plans and negative declarations as of July 15, 2019.

Table 2. Status of State Plans

Status	States
I. EPA-Approved State Plans	None
II. Negative Declaration Submitted to the EPA	None
III. Final State Plans Submitted to the EPA	Arizona (one plan covering Pinal County, and another covering the remainder of the state), California, Delaware, New Mexico (one plan covering Albuquerque and Bernalillo County and another covering the rest of the state), and West Virginia
IV. EPA Has Not Received a Final State Plan or Negative Declaration	Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, Wisconsin, Wyoming

As the EPA Regional offices approve implementation plans, they will also, in the same action, amend the appropriate subpart of 40 CFR part 62 to codify their approvals. MSW landfill owners or operators can also contact the EPA Regional office for the state in which their MSW landfill is located to determine whether there is an approved and effective state plan in place.

Table 3 of this preamble lists the addresses for the EPA Regional offices and the states and Indian countries that they cover.

Table 3. EPA Regional Offices

Region	Address	States and Territories
Region I	5 Post Office Square—Suite 100, Boston, MA 02109-3912	Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont
Region II	290 Broadway, New York, NY 10007-1866	New York, New Jersey, Puerto Rico, Virgin Islands
Region III	Air Protection Division, Mail Code 3AP00, 1650 Arch Street, Philadelphia, PA 19103-1129	Virginia, Delaware, District of Columbia, Maryland, Pennsylvania, West Virginia
Region IV	61 Forsyth Street, SW, Atlanta, GA 30303-3104	Florida, Georgia, North Carolina, Alabama, Kentucky, Mississippi, South Carolina, Tennessee
Region V	Mail Code A-17J, 77 West Jackson Blvd., Chicago, IL 60604-3590	Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio
Region VI	1st International Building, 1201 Elm St., Dallas, TX 75270	Arkansas, Louisiana, New Mexico, Oklahoma, Texas
Region VII	Air and Waste Management Division 11201 Renner Boulevard, Lenexa, Kansas 66219	Iowa, Kansas, Missouri, Nebraska
Region VIII	Director, Air Program, Office of Partnerships and Regulatory Assistance, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, CO 80202-1129	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Region IX	75 Hawthorne Street, San Francisco, CA 94105	Arizona, California, Hawaii, Nevada, American Samoa, Guam, Northern Mariana Islands
Region X	1200 6th Avenue, Suite 155, Seattle, WA 98101	Washington, Alaska, Idaho, Oregon

III. What are the designated facilities?*A. What is a designated MSW landfill?*

The designated facility for this MSW Landfills Federal Plan is each MSW landfill that (1) commenced construction, reconstruction, or modification prior to July 17, 2014, and has not been modified or reconstructed since then, and (2) has accepted waste since November 8, 1987, or has capacity for future waste deposition.

This MSW Landfills Federal Plan will apply to existing MSW landfills located in: (1) any state or portion of Indian country for which a state or tribal plan that implements the 2016 MSW

Landfills EG has not become effective in whole or in part; (2) any state or portion of Indian country for which the state or tribe submitted a negative declaration; (3) any state or portion of Indian country with an effective state or tribal plan that subsequently is vacated in whole or in part; or (4) any state or portion of Indian country with an effective plan that subsequently revises any component of the plan (e.g., the underlying legal authority or enforceable mechanism) such that the state or tribal plan no longer meets the requirements of the 2016 MSW Landfill EG. An MSW landfill that meets any of these criteria is covered by the MSW Landfills Federal Plan until a state or tribal plan to implement and enforce the 2016 MSW Landfills EG is approved according to the requirements in 40 CFR part 60, subpart B, and becomes effective. If a state or tribal plan is approved in part, portions of the federal plan will apply to the designated MSW landfills in lieu of the disapproved portions of the plan until the state or tribe addresses the deficiencies in the plan and the revised plan is approved by the EPA.

If an existing MSW landfill subject to the federal plan increases its permitted volume design capacity through vertical or horizontal expansion (i.e., is modified) on or after July 17, 2014, it would be subject to the MSW Landfills NSPS (40 CFR part 60, subpart XXX) (see 81 FR 59332, August 29, 2016) and would no longer be subject to the federal plan. An existing MSW landfill that makes operational changes without increasing the horizontal or vertical dimensions of the landfill would continue to be subject to the federal or state plan that implements the 2016 MSW Landfills EG, rather than the NSPS.

B. How do I determine if my MSW landfill is covered by an approved and effective state plan?

An approved state or tribal plan is a plan that the EPA has reviewed and approved in whole or in part based on the requirements in 40 CFR part 60, subpart B, to implement and enforce the 2016 MSW Landfills EG. Throughout this preamble, references to approved state

plans apply to both whole state plans and portions of state plans. The state plan becomes effective on the date specified in the notice published in the **Federal Register** announcing the EPA's approval. The effective date of this action will be 30 days after the final federal plan is published in the **Federal Register**.

The 2016 MSW Landfills Federal Plan will not apply to landfills appropriately covered by an approved and effective state or tribal plan. If a state or tribal plan becomes effective before promulgation of the federal plan, the promulgated MSW Landfills Federal Plan will not apply to landfills appropriately covered by that plan. Promulgation of this MSW Landfills Federal Plan does not preclude a state or tribe from submitting a plan later. If a state or tribe submits a plan after promulgation of the MSW Landfills Federal Plan, the EPA will review and approve or disapprove the plan. Upon the effective date of the approved state or tribal plan, the federal plan will no longer apply. States and tribes are, therefore, encouraged to continue their efforts to develop and submit state and tribal plans to the EPA for approval.

MSW landfill owners or operators can contact the EPA Regional office for the state or Indian country in which their MSW landfill is located to determine whether there is an approved and effective state plan in place. Table 3 of this preamble lists the addresses of the EPA Regional offices and the states and Indian countries that they cover.

IV. Elements of the MSW Landfills Federal Plan

Section 111(d) of the CAA, as amended, 42 U.S.C. 7411(d), requires states to develop and implement state plans for MSW landfills to implement and enforce the 2016 MSW Landfills EG. This proposed federal plan will establish standards in the absence of an approved and effective state plan. Because this proposed federal plan will establish standards in the absence of an approved and effective state plan, this action includes the same elements as a state plan: (1)

identification of legal authority and mechanisms for implementation; (2) inventory of designated facilities; (3) inventory of emissions; (4) emission limits; (5) compliance schedules; (6) process for the EPA or state review of site-specific design plans for GCCS; (7) testing, monitoring, reporting, and recordkeeping requirements; (8) public hearing requirements; and (9) progress reporting requirements. This section of the preamble explains the proposed federal plan elements. Additionally, Table 4 of this preamble identifies each element and indicates where it is located or codified.

Table 4. Location of MSW Landfills Federal Plan Elements

Element of the MSW Landfills Federal Plan	Where Located or Codified
a. Identification of legal authority and mechanisms for implementation	Section 111(d)(2) of the CAA and section IV.A of this preamble
b. Inventory of designated facilities	EPA-HQ-OAR-2019-0338
c. Inventory of emissions	EPA-HQ-OAR-2019-0338
d. Emission limits	40 CFR 62.714 of proposed subpart OOO
e. Compliance schedules	40 CFR 62.712 of proposed subpart OOO
f. Process for review and approval of site-specific design plans for GCCS	Section IV.F of this preamble
g. Testing, monitoring, reporting, and recordkeeping requirements	40 CFR 62.718, 62.722, 62.724, and 62.726 of proposed subpart OOO and section IV.G of this preamble
h. Public hearing requirements	Section IV.H of this preamble
i. Progress reports	Section IV.I of this preamble

A. Legal Authority and Enforcement Mechanism

Section 111(d) of the CAA directs the EPA to develop a federal plan for states that do not submit approvable state plans. Section 111 of the CAA provides the EPA with the authority to implement and enforce the federal plan in cases where the state fails to submit a fully satisfactory state plan.

B. Inventory of Designated MSW Landfills

The docket for this action includes an inventory of the MSW landfills that may potentially be covered by this proposed federal plan in the absence of approved state or tribal plans. There are an estimated 1,913 landfills potentially covered by this proposed federal plan. These landfills exist in all 50 states and the U.S. territories of Puerto Rico and the Virgin Islands. Additionally, one tribal entity, the Salt River Pima Maricopa Indian Community, would be covered by this proposed federal plan. The EPA developed the inventory of landfills by identifying existing landfills that are expected to be covered by the federal plan as of July 15, 2019, using the databases developed for the 2016 MSW Landfills EG and NSPS. For a discussion of the sources, their locations, and information used to develop the source list, see the memorandum, *Developing a Federal Plan Source and Emission Inventory*, which is available in the docket for this action. Any MSW landfill that meets the applicability criteria in this action will be subject to the federal plan, regardless of whether it is listed in the inventory in Docket ID No. EPA-HQ-OAR-2019-0338. The EPA requests that states or owners or operators identify additional sources for inclusion on the list during the comment period for this action.

C. Inventory of Emissions

The EPA estimated the emissions from the inventory of existing MSW landfills that are expected to be covered by the federal plan as of July 15, 2019. Pollutant emissions are expressed in Mg NMOC per year in calendar year 2019. Table 5 of this preamble summarizes the results of the inventory. Although the EPA has proposed to approve some state plans in whole or in part, to date none of the actions on the proposed state plans have been finalized. Therefore, the inventory includes all existing MSW landfills in the U.S. that meet the applicable criteria. The inventory will be updated before promulgation of the federal plan to exclude sources and emissions that are located in states for which an approved state plan is subsequently promulgated.

The EPA estimated emissions from MSW landfills by first estimating the LFG generation rates of landfills identified in the source inventory, using a first-order decay equation. The decay equation uses default values from *Compilation of Air Pollutant Emission Factors (AP-42)* for the methane generation potential (L_0), the methane generation rate (k), and the NMOC concentration.¹ Next, the EPA estimated when the MSW landfills in the source inventory would control emissions under the previous regulatory level (NMOC emissions of 50 Mg per year). To determine the timing of these controls, the EPA modeled emissions using Tier 1 default values from 40 CFR part 60, subpart WWW for the L_0 and k , but applied the NMOC concentration in AP-42 for determining when MSW landfills would meet the regulatory NMOC emissions threshold. The Tier 1 default values in subpart WWW for L_0 and k are conservatively high for the purpose of estimating actual emissions; therefore, they are used only for estimating uncontrolled emissions to determine when MSW landfills could exceed the threshold and be

¹ U.S. EPA, AP-42, Fifth Edition, *Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources*. 1995. <http://www.epa.gov/ttnchie1/ap42/>.

required to install a GCCS. The EPA also factored in lag times to account for the initial 30-month time period between when the MSW landfill exceeds the emission rate threshold until the MSW landfill must install and operate controls, and the periodic expansion of the GCCS into new areas of waste placement (5 years for active areas and 2 years for areas that are closed or at final grade). After determining the timing of controls required by the regulation, the actual amount of collected gas was estimated using AP-42 defaults for L₀, k, and NMOC, and an assumed collection efficiency of 85 percent and an assumed destruction efficiency of 98 percent. The remaining emissions, after considering controls, represent the modeled NMOC emissions based on LFG generation and AP-42 default parameters minus the emission reductions. See the memorandum, *Developing a Federal Plan Source and Emission Inventory*, which is available in the docket for this action, for the complete emissions inventory, including detailed emissions from MSW landfills in each state, and details on the calculations used to determine those emissions. These estimates are based solely on the modeled emissions remaining after considering controls required by 40 CFR part 60, subparts WWW and Cc, and do not include any additional emissions reductions from voluntary actions, such as early installation of the GCCS.

Table 5. Summary of Estimated NMOC Emissions from Existing MSW Landfills Expected to be Covered by the Federal Plan

Region/State	2019 NMOC Emissions (Mg per year)
Region 1	
Connecticut	118
Maine	85
Massachusetts	429
New Hampshire	77
Rhode Island	47
Vermont	47
Region 2	
New Jersey	387
New York	970

Puerto Rico	230
Virgin Islands	14
Region 3	
Delaware	44
Maryland	462
Pennsylvania	1,313
Virginia	916
West Virginia	199
Region 4	
Alabama	437
Florida	1,157
Georgia	1,035
Kentucky	574
Mississippi	213
North Carolina	993
South Carolina	430
Tennessee	860
Region 5	
Illinois	1,361
Indiana	837
Michigan	1,219
Minnesota	263
Ohio	1,251
Wisconsin	547
Region 6	
Arkansas	346
Louisiana	563
New Mexico	201
Oklahoma	324
Texas	2,045
Region 7	
Iowa	380
Kansas	354
Missouri	485
Nebraska	265
Region 8	
Colorado	742
Montana	86
North Dakota	51

South Dakota	78
Utah	287
Wyoming	48
Region 9	
Arizona	597
California	3,018
Hawaii	111
Nevada	38
Region 10	
Alaska	94
Idaho	138
Oregon	376
Washington	404

D. Emission Limits and Operating Limits

This proposed federal plan contains emission limits that correspond to the 2016 MSW Landfills EG, which are summarized in section V.C of this preamble. In accordance with 40 CFR 60.27(e), this action does not propose to revise the final limits. Instead, it proposes to implement the emission limits as promulgated in the 2016 MSW Landfills EG for existing sources in states that do not have an approved state plan.

E. Compliance Schedule

According to 40 CFR 60.24(e)(1), increments of progress are required for any compliance schedule that is longer than 12 months. The proposed federal plan would require owners or operators of existing MSW landfills with design capacities equal to or greater than 2.5 million Mg and 2.5 million cubic meters (m³) to install GCCS within 30 months of reaching or exceeding 34 Mg per year NMOC. This proposed federal plan would require owners or operators of existing closed MSW landfills—those that have submitted a closure report as specified in 40 CFR 62.724(f) with design capacities equal to or greater than 2.5 million Mg and 2.5 million m³—to install GCCS within 30 months of reaching or exceeding 50 Mg per year NMOC. This

proposed federal plan includes increments of progress, which are the primary mechanisms for ensuring progress toward final compliance with the emission guidelines. Each increment of progress has a specified date for achievement described in section V.B of this preamble.

F. Process for Review and Approval of Site-Specific Design Plans

The 2016 MSW Landfills EG requires plans to include a process for review and approval of site-specific design plans for required GCCS (see 40 CFR 60.38f(d)). As previously discussed, if the existing MSW landfill has (1) a design capacity equal to or greater than 2.5 million Mg and 2.5 million m³ and (2) NMOC emissions equal to or exceeding 34 Mg per year (50 Mg per year for the closed landfill subcategory), the landfill owner or operator must submit the cover page containing the engineer's seal of the site-specific design plan. The EPA Regional office will make a decision within 90 days about whether the entire plan should be submitted for review. In cases where the state or tribe has been delegated authority to implement this aspect of the federal plan, the state or tribe would review the design plans. See section VI of this preamble for a discussion of federal plan delegation.

When the EPA opts to review the entire plan, the EPA intends to review design plans as expeditiously as possible to allow sufficient time after approval of the plans for the landfills to install controls prior to the compliance date. The EPA will initially review the design plans for completeness and the source will be notified if any items are missing. The EPA will then review the plans for acceptability, and, once that review is completed, the EPA will notify the source and the state or tribe in writing of the acceptability of the plan. If the plan is not acceptable, the source will be given an appropriate amount of time to make the necessary changes. However, the date by which a GCCS must be completed and in compliance remains unchanged, *i.e.*, 30 months

after the emission rate report first shows NMOC emissions greater than or equal to 34 Mg per year (50 Mg per year for the closed landfill subcategory).

G. Testing, Monitoring, Recordkeeping, and Reporting Requirements

The proposed federal plan includes testing, monitoring, recordkeeping, and reporting requirements, as described in sections V.D and E of this preamble. These proposed requirements correspond with the 2016 MSW Landfills EG. Testing, monitoring, recordkeeping, and reporting requirements will assure initial and ongoing compliance.

H. Requirement for Public Hearing

According to 40 CFR 60.27(f), the EPA must provide the opportunity for a public hearing prior to promulgation of a federal plan. For this MSW Landfills Federal Plan, the EPA will offer the opportunity for a public hearing in Research Triangle Park, North Carolina, as specified in the **ADDRESSES** and **DATES** sections of this preamble.

V. Summary of Proposed MSW Landfills Federal Plan Requirements

A. What are the proposed applicability requirements?

The proposed federal plan applicability criteria (40 CFR 62.711) reflect the 2016 MSW Landfills EG (40 CFR 60.31f). The designated facility for this MSW Landfills Federal Plan is described in section III.A of this preamble.

B. What are the proposed compliance schedules?

Owners or operators of MSW landfills subject to the federal plan will be required to submit a design capacity report within 90 days after the effective date of the federal plan (40 CFR 62.724(a)). If the design capacity indicates a capacity equal to or greater than 2.5 million Mg and 2.5 million m³ of solid waste a landfill can accept, an annual NMOC emission rate report

must also be submitted within 90 days after the effective date of the federal plan and then every 12 months until the landfill installs a GCCS (40 CFR 62.724(c)).

If the first NMOC emission rate report shows emissions less than 34 Mg per year NMOC (50 Mg per year for the closed landfill subcategory), then the owner or operator must recalculate NMOC emissions annually and submit annual NMOC emission rate reports unless the MSW landfill is closed. (See 40 CFR 62.718 for conditions under which 5-year reports rather than annual reports may be submitted.) If an emission rate report shows that NMOC emissions equal or exceed 34 Mg per year, the owner or operator must begin following enforceable increments of progress to install a GCCS within 30 months of reaching or exceeding 34 Mg per year NMOC (40 CFR 62.712). Therefore, the generic schedule for the increments of progress starts with the date of the first annual emission rate report that shows NMOC emissions equal or exceed 34 Mg per year (50 Mg per year for the closed landfill subcategory) (40 CFR 62.712(c)). Alternatively, a landfill may follow Tier 4 as discussed later in this section (40 CFR 62.718(a)(6)). For the closed landfill subcategory, if an emission rate report shows that NMOC emissions equal or exceed 50 Mg per year, the owner or operator must begin following enforceable increments of progress to install a GCCS within 30 months of reaching or exceeding 50 Mg per year NMOC.

This proposed MSW Landfills Federal Plan includes the five increments of progress and provides flexibility to establish the increment dates (40 CFR 62.712). The proposed MSW Landfills Federal Plan contains a generic compliance schedule (Table 1 to 40 CFR part 62, subpart OOO) that applies to designated MSW landfills unless the EPA approves an alternative schedule according to the criteria in 40 CFR 60.27(e)(2).

The five mandatory increments of progress are as follows:

1. Submit final control plan (design plan)—1 year after the first annual emission rate report showing NMOC emissions ≥ 34 Mg per year (≥ 50 Mg per year for the closed landfill subcategory).

2. Award contracts for control systems or orders for purchase of components—20 months after the first annual emission rate report showing NMOC emissions ≥ 34 Mg per year (≥ 50 Mg per year for the closed landfill subcategory).

3. Begin on-site construction or installation of the GCCS—24 months after the first annual emission rate report showing NMOC emissions ≥ 34 Mg per year (≥ 50 Mg per year for the closed landfill subcategory).

4. Complete on-site construction or installation of the GCCS—30 months after the first annual emission rate report showing NMOC emissions ≥ 34 Mg per year (≥ 50 Mg per year for the closed landfill subcategory).

5. Achieve final compliance—30 months after the first annual emission rate report showing NMOC emissions ≥ 34 Mg per year (≥ 50 Mg per year for the closed landfill subcategory). Note that the initial performance test to demonstrate compliance must be conducted within 180 days after the date the landfill is required to achieve final compliance.

The date for the first, fourth, and fifth increments is established in the 2016 MSW Landfill EG. According to 40 CFR 60.27(e)(1), federal plan compliance times may be no less stringent than those established in the EG.

The EPA selected the proposed dates for the middle two increments (awarding contract and initiating on-site construction) to allow a reasonable period of time for MSW landfills to complete these activities. These increments of progress are required by 40 CFR 60.24, but dates are not specified in the 2016 MSW Landfills EG. The EPA established these dates to match the

dates included in the previous federal plan for MSW landfills (40 CFR part 62, subpart GGG) because the two plans require the same increments of progress to achieve compliance. The proposed date for awarding contracts is 20 months after the first annual NMOC emission rate report showing NMOC emissions greater than or equal to 34 Mg per year (50 Mg per year for the closed landfill subcategory), which is 8 months after the proposed date that the design plan is due. This 8-month time frame would allow adequate time for the regulatory agency to review and approve the design plan and for the MSW landfill owner or operator to solicit bids based on the design plan and award the contract(s).

The proposed date for initiating on-site construction is 24 months after the first annual emission report showing NMOC emissions greater than or equal to 34 Mg per year (50 Mg per year for the closed landfill subcategory) is due (4 months after contract award). This 4-month period would allow time for the contractor to mobilize and obtain materials necessary to begin construction. A later date would not be practical because the date for completing on-site construction and final compliance is 30 months after the first annual emission rate report showing NMOC emissions greater than or equal to 34 Mg per year (50 Mg per year for the closed landfill subcategory). If construction is not initiated by 24 months after the first annual emission rate report showing NMOC emissions greater than or equal to 34 Mg per year (50 Mg per year for the closed landfill subcategory), it is unlikely that the construction could be completed by the final compliance date. Some MSW landfills may want to initiate on-site construction earlier to assure that they can meet the final compliance date. The fourth increment, completion of on-site construction, would need to be completed by the final compliance date (increment 5) in order for the landfill to achieve compliance.

Owners and operators employing Tier 4 would follow the generic compliance schedule for Tier 4 landfills in Table 1 to 40 CFR part 62, subpart OOO. Increment 1 is triggered by the first measured concentration of methane of 500 parts per million (ppm) or greater, rather than the initial NMOC emission rate report showing NMOC emissions 34 Mg per year or greater. Landfills employing Tier 4 would continue to submit an annual NMOC emission rate report (40 CFR 62.724(c)). Timing of increments 2 through 5 for Tier 4 landfills are based on the *most recent* NMOC emission rate report showing NMOC emissions 34 Mg per year or greater.

For all landfills, the EPA recognizes that flexibility may be needed for increment 2 (award contract) and increment 3 (begin construction) given facility-specific GCCS considerations and constraints. Therefore, the EPA will accept facility-specific compliance schedules from MSW landfill owners or operators, as allowed under 40 CFR 60.27(e)(2).

The MSW landfill owner or operator would submit alternative dates for increments 2 and 3 and a justification to the EPA at the time the final control plan is due (40 CFR 62.724(p)). If the MSW landfill owner or operator is submitting the alternative dates for these increments, the owner or operator should also send a copy to the appropriate state or tribe. The EPA is allowing alternative dates for increments 2 and 3 to provide flexibility to MSW landfill owners or operators. However, owners or operators using alternate dates for increments 2 and 3 must continue to meet the required dates for increments 1, 4, and 5. The EPA would review the schedule and coordinate with the owner or operator.

C. What emissions and operating limits is the EPA proposing to incorporate into the federal plan?

The EPA is proposing that an MSW landfill subject to the federal plan must install and operate a GCCS that meets specified emissions and operating limits (40 CFR 62.714 and 40 CFR

62.716), if the NMOC emissions rate is 34 Mg per year or more (50 Mg per year or more for the closed landfill subcategory). The standards would require owners or operators to operate the GCCS at a negative pressure at each wellhead (except during certain specified conditions), operate the interior wellhead at a temperature less than 55 degrees Celsius (131 degrees Fahrenheit), and operate the collection system so that the methane concentration is less than 500 ppm above background at the surface of the landfill (40 CFR 62.716(b) – (d)). The owner or operator of a landfill must control the collected gas by routing it to either: (1) a non-enclosed flare designed and operated according to the requirements of 40 CFR 60.18, (2) an enclosed control device achieving 98-percent NMOC reduction or an outlet concentration of 20 ppm NMOC by volume or less, or (3) a gas treatment system that processes the collected gas for subsequent sale or beneficial use (40 CFR 62.714(c)).

The proposed requirements of the federal plan are the same as the requirements of the 2016 MSW Landfills EG as published on August 29, 2016 (81 FR 59276). However, this proposed federal plan applies a technical correction to the compliance provisions section and the corresponding reporting requirement in the reporting section. Those corrections appear in this proposed federal plan at 40 CFR 62.720(a)(3)(ii) and 40 CFR 62.724(h)(7) and would ensure that the owner or operator conducts a corrective action analysis, develops an implementation schedule, and reports corrective action(s) to address not only positive pressure, but also elevated temperature.

D. What are the proposed performance testing and monitoring requirements?

1. NMOC Emissions Rate

The EPA proposes that, to determine if a GCCS is required, the owner or operator must determine NMOC emissions using one or both of the two emission rate equations in the rule and

one of four optional methods to determine the model inputs (referred to as tier methods in the rule) (40 CFR 62.718(a)). Tier 1 uses default assumptions for methane generation rate and NMOC concentration in the emissions model (40 CFR 62.718(a)(2)). Tier 2 requires testing to determine a site-specific NMOC concentration. Tier 3 requires testing to determine a site-specific NMOC concentration and methane generation rate (40 CFR 62.718(a)(4)). Any MSW landfill that exceeds the NMOC emissions threshold using Tier 2 or 3 would install a GCCS, unless the owner or operator chooses to use Tier 4 (40 CFR 62.718(a)(6)).

Tier 4 is based on surface emissions monitoring (SEM) to demonstrate that surface emissions are low (40 CFR 62.718(a)(6)). An owner or operator can use Tier 4 only if the MSW landfill owner or operator can demonstrate that NMOC emissions are greater than or equal to 34 Mg per year but less than 50 Mg per year using Tier 1 or Tier 2. An MSW landfill employing Tier 4 that can demonstrate that surface emissions are below 500 ppm for four consecutive quarters would not trigger the requirement to install a GCCS even if Tier 1, 2, or 3 calculations indicate that the 34 Mg per year threshold has been exceeded. However, once SEM demonstrates emissions exceeding 500 ppm (40 CFR 62.718(a)(6)(v)), the MSW landfill would be required to install a GCCS according to the schedule in section V.B. of this preamble and Table 1 to subpart OOO of part 62.

2. Gas Collection System Monitoring

The EPA proposes that the landfill gas collection system must be equipped with a sampling or access port and the owner or operator must periodically monitor gauge pressure in the gas collection header, monitor nitrogen or oxygen content in the landfill gas, and monitor temperature of the landfill gas (40 CFR 62.722(a)).

3. Flare Monitoring

The EPA proposes that, if a flare is used, the owner or operator must monitor the flare using a heat sensing device that indicates presence of a flame and a device that records flow to the flare and any bypass lines (40 CFR 62.722(c)).

4. Control Device Testing and Monitoring.

The EPA proposes that, if an enclosed control device is used, the owner or operator must conduct an initial performance test (40 CFR 62.714(c)). The owner or operator must then operate the device as required by the manufacturer's specifications, install a temperature monitoring device, and install a device that records flow to the control device and any bypass lines (40 CFR 62.722(b)). A temperature monitoring device is not required for boilers or process heaters with a design heat capacity of 44 megawatts or greater (40 CFR 62.722(b)(1)).

E. What are the proposed recordkeeping and reporting requirements?

The EPA proposes that owners and operators must retain records of all required monitor readings (40 CFR 62.726). Owners or operators must submit certain required performance test reports, NMOC emission rate reports, and annual reports documenting compliance and any deviations from the operating standards in the federal plan (40 CFR 62.724). All required reports must be submitted through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI) (40 CFR 62.724(j)). Owners or operators are allowed to maintain electronic copies of the records in lieu of hardcopies to satisfy federal recordkeeping requirements.

The requirement to submit performance test data electronically to the EPA would apply only to those performance tests conducted using test methods that are supported by the Electronic Reporting Tool (ERT). A listing of the pollutants and test methods supported by the ERT is available at: https://www3.epa.gov/ttn/chief/ert/ert_info.html. When the EPA adds new

methods to the ERT, a notice will be sent out through the Clearinghouse for Inventories and Emissions Factors (CHIEF) Listserv (<https://www.epa.gov/airemissions-inventories/emissionsinventory-listservs>) and a notice of availability will be added to the ERT website. You are encouraged to check the ERT website regularly for up-to-date information on methods supported by the ERT.

VI. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under section 111(d) of the CAA, the EPA is required to adopt EG that are applicable to existing MSW landfills. These EG are implemented when the EPA approves a state or tribal plan or adopts a federal plan that implements and enforces the EG. As discussed above, this action would regulate existing MSW landfills in states or Indian country that do not have approved plans in effect to implement the EG.

Congress has determined that the primary responsibility for air pollution prevention and control rests with state, tribal and local agencies. See CAA section 101(a)(3). Consistent with that overall determination, Congress established CAA section 111(d) with the intent that state, tribal and local agencies take the primary responsibility for ensuring that the standards of performance and other requirements in the EG are achieved. Also, Congress explicitly required that the EPA establish procedures that are like those under CAA section 110 for state implementation plans. Although Congress required the EPA to propose and promulgate a federal plan for states and tribes that fail to submit approvable state plans on time, states may submit plans after promulgation of this federal plan. The EPA strongly encourages states and tribes that are unable to submit approvable plans to request delegation of the federal plan so that they can

have primary responsibility for implementing the 2016 MSW Landfills EG, consistent with the intent of Congress.

The preferred outcome under the statute and the regulations results when the state, tribal, and local agencies implement an EPA-approved state or tribal plan because state, tribal, and local agencies not only have the responsibility to implement the 2016 MSW Landfills EG, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. In cases where states are unable to develop and submit approvable state or tribal plans, it is still preferable for the state, tribal and local agencies to be the implementing agency. For these reasons, the EPA will do all that it can to expedite delegation of the federal plan to state, tribal, and local agencies, whenever possible, in cases where states or tribes are unable to develop and submit approvable state or tribal plans. The EPA will also continue to review and approve state or tribal plans after promulgation of this federal plan.

B. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to state, tribal, and local agencies: (1) the EPA's approval of a state plan after the federal plan is in effect; and (2) if a state does not submit or obtain approval of its own plan, the EPA's delegation to a state, tribe, or local agency is transferred with the authority to implement certain portions of this federal plan to the extent appropriate and if allowed by state law. Both options are described in more detail below.

1. Federal Plan Becomes Effective Prior To Approval of a State Plan

After MSW landfills in a state become subject to the federal plan, the state or tribal agency may still adopt and submit a state or tribal plan to the EPA. If the EPA determines that the state or tribal plan meets the requirements of the 2016 MSW Landfills EG, the EPA will

approve the state or tribal plan. If the EPA determines that the plan does not meet the requirements of the 2016 MSW Landfills EG, the EPA will approve the portions of the plan that are consistent with the 2016 MSW Landfills EG. If a state or tribal plan is approved in part, portions of the federal plan will apply to the designated MSW landfills in lieu of the disapproved portions of the state or tribal plan until the state or tribe addresses the deficiencies in the state or tribal plan and the revised plan is approved by the EPA. Prior to any disapproval, the EPA will work with states and tribes in an attempt to reconcile areas of the plan that remain inconsistent with the EG.

Upon the effective date of a state or tribal plan, the federal plan will no longer apply to MSW landfills covered by such a plan. The state, tribe, territory, or local agency would implement and enforce the state plan in lieu of the federal plan. When an EPA Regional office approves a state or tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State, Tribe, Territory, or Local Agency Taking Delegation of the Federal Plan

The EPA, in its discretion, may delegate to state, tribe, territorial, or local agencies the authority to implement this proposed federal plan. As discussed above, the EPA has concluded that it is advantageous and the best use of resources for states, tribes, territories, or local agencies to agree to undertake, on the EPA's behalf, administrative and substantive roles in implementing the federal plan to the extent appropriate and where authorized by federal, state, tribal, territorial, or local law. If a state, tribe, territory, or local agency requests delegation, the EPA will generally delegate the entire federal plan to the state, tribe, territory, or local agency. These functions include administration and oversight of compliance, reporting and recordkeeping requirements, MSW landfill inspections, and preparation of draft notices of violation, but will not include any

authorities retained by the EPA. Agencies that have taken delegation, as well as the EPA, will have responsibility for bringing enforcement actions against sources violating federal plan provisions.

C. Implementing Authority

The EPA Regional Administrators have been delegated the authority for implementing the MSW Landfills Federal Plan. All reports required by the federal plan should be submitted to the appropriate Regional Administrator. Table 3 of this preamble lists the addresses for the EPA Regional offices and the states they cover.

D. Delegation of the Federal Plan and Retained Authorities

If a state, tribe, territory, or local agency intends to take delegation of the federal plan, the state, tribe, territory, or local agency should submit a written request for delegation of authority to the appropriate EPA regional office. The state, tribe, territory, or local agency should explain how it meets the criteria for delegation. See *Good Practices Manual for Delegation of NSPS and NESHAP* (U.S. EPA, February 1983). The letter requesting delegation of authority to implement the federal plan should: (1) demonstrate that the state, tribe, territory, or local agency has adequate resources, as well as the legal authority to administer and enforce the program; (2) include an inventory of designated MSW landfills, which includes those that have ceased operation, but have not been dismantled or rendered inoperable, and an inventory of the designated units' air emissions and a provision for progress reports to the EPA; (3) certify that a public hearing was held on the state, tribe, territory, or local agency delegation request; and (4) include a memorandum of agreement between the state, tribe, territory, or local agency and the EPA that sets forth the terms and conditions of the delegation, the effective date of the agreement, and the mechanism to transfer authority. Upon signature of the agreement, the

appropriate EPA regional office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a state, tribe, territory, or local agency, the EPA will implement the federal plan. Also, if a state, tribe, territory, or local agency fails to properly implement a delegated portion of the federal plan, the EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the state, tribe, territory, or local agency even when the agency has received delegation of the federal plan. In all cases where the federal plan is delegated, the EPA will retain and will not transfer authority to a state, tribe, or local agency to approve the following items promulgated in 40 CFR 62.710(b): (1) approval of alternative methods to determine the site-specific NMOC concentration or a site-specific methane generation rate constant (k); (2) alternative emission standards; (3) major alternatives to test methods (Major alternatives to test methods or to monitoring are modifications made to a federally enforceable test method or to a federal monitoring requirement. These changes would involve the use of unproven technology or procedures or an entirely new method, which is sometimes necessary when the required test method or monitoring requirement is unsuitable.); and (4) waivers of recordkeeping.

Any MSW landfill owners or operators who wish to petition the agency for an alternative requirement to those in 40 CFR 62.710(b) should submit a request to the appropriate Regional Administrator with a copy sent to the appropriate state.

VII. Title V Operating Permits

Existing landfills with design capacities less than 2.5 million Mg or 2.5 million m³ are not required to have a title V operating permit, unless they are a major source or are subject to title V (part 70 or part 71) for some other reason (*e.g.*, subject to a CAA section 112 NESHAP or

to another CAA section 111 NSPS). All existing MSW landfills with design capacities equal to or greater than 2.5 million Mg and 2.5 million m³ must have a title V operating permit. Existing MSW landfills that are not currently subject to title V permitting because their design capacity is less than 2.5 million Mg or 2.5 million m³ may trigger the requirement to apply for a title V permit in the future if the landfill's design capacity increases to equal or exceed 2.5 million Mg and 2.5 million m³. Such sources, newly subject to the requirement to obtain a title V permit for operating the MSW landfill at or above the 2.5 million Mg or 2.5 million m³ capacity, become subject to the title V program 90 days after the effective date of this federal plan, even if the design capacity report is submitted prior to that date. This date that triggers title V applicability is consistent with the published EG. The requirements of a federal plan are applicable requirements for title V sources covered by a federal plan. Additional information for filing a timely title V application should be obtained at the permitting authority. See 40 CFR 70.5(a)(1)(i) or 71.5(a)(1)(i).

An MSW landfill that is closed and is no longer subject to title V as a result of this federal plan, once finalized, may remain subject to title V permitting requirements for another reason or reasons. See 40 CFR 62.711(e) and 40 CFR 70.3 or 71.3. In such circumstances, the landfill would be required to continue operating in compliance with a title V permit.

VIII. 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 not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

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

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. This action simply proposes the MSW Landfills Federal Plan to implement the 2016 MSW Landfills EG for those states that do not have a state plan implementing the EG. OMB has previously reviewed the information collection activities contained in the 2016 MSW Landfills EG and has assigned OMB control number 2060-0720.

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. The small entities subject to the requirements of this action are small MSW landfills. The Agency has determined that up to 15 small entities, representing approximately 13 percent of the total number of small entities subject to the proposal, may experience an impact of greater than 3 percent of sales or revenues. A summary of this analysis is available in the memorandum, *Small Entity Screening Assessment for Proposed Federal Plan for Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills*, which is available in the docket for this action. More details of the general

economic analysis of the EG, which this action implements, are available in the docket for the 2016 MSW Landfills EG (Docket ID Item No. EPA-HQ-OAR-2014-0451-0225).

Although not required by the RFA to convene a Small Business Advocacy Review (SBAR) Panel because the EPA has now determined that this proposal would not have a significant economic impact on a substantial number of small entities, there was substantial interest in the revision of the EG among small entities. Thus, during development of the 2016 MSW Landfills EG, the EPA conducted stakeholder outreach as detailed in sections XI.C and XI.E of the preamble to the proposed Standards of Performance for MSW Landfills (79 FR 41828–41829; July 17, 2014) and in sections VIII.C and VIII.E of the preamble to the 2016 MSW Landfills EG (81 FR 59309-59310; August 29, 2016). The EPA convened an SBAR Panel in 2013 for the MSW Landfills NSPS and EG rulemakings. The EPA originally planned a review of the EG and NSPS in one action, but the actions were subsequently divided into separate rulemakings. The SBAR Panel evaluated the assembled materials and small entity comments on issues related to the rule's potential effects and significant alternative regulatory approaches. A copy of the *Summary of Small Entity Outreach* is available in the docket for the 2016 MSW Landfills EG (Docket ID Item No. EPA-HQ-OAR-2014-0451-0012). While formulating the provisions of the EG, the EPA considered the input provided over the course of the stakeholder outreach as well as the input provided in the many public comments and incorporated many of the suggestions in the 2016 MSW Landfills EG.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538. This action implements mandates specifically and explicitly set forth in 40 CFR 60.27 without the exercise of any policy discretion by the EPA.

We note, however, that the EG may affect small governments because small governments operate landfills (80 FR 52146, August 27, 2015). This action implements the promulgated EG. In developing the final 2016 MSW Landfills EG, the EPA consulted with small governments pursuant to a plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. The EPA also held meetings as discussed in section VIII.F of this preamble.

F. Executive Order 13132: Federalism

The EPA has concluded that this action may have federalism implications, because the rule imposes substantial direct compliance costs on state or local governments, and the federal government will not provide the funds necessary to pay those costs. The EPA provided the following federalism summary impact statement for the 2016 MSW Landfills EG. The EPA consulted with state and local officials early in the process of developing the 2016 MSW Landfills EG to permit them to have meaningful and timely input into its development. In developing the regulatory options reflected in the proposed and final 2016 MSW Landfills EG, the EPA consulted with eight national organizations representing state and local elected officials. Additionally, the Environmental Council of the States, the National Association of Clean Air Agencies, and the Association of State and Territorial Solid Waste Management Officials participated in preproposal briefings. Finally, in addition to these associations, over 140 officials representing state and local governments across the nation participated in at least one of three preproposal briefings in the fall of 2013 (September 10, 2013, November 7, 2013, and November 14, 2013), which is summarized in the docket for the 2016 MSW Landfills EG (Docket ID Item No. EPA-HQ-OAR-2014-0451-0013). The EPA received comments from over 40 entities

representing state and local governments. The EPA conducted an additional Federalism outreach meeting on April 15, 2015.

The principal intergovernmental concerns raised during the preproposal consultations, as well as during the proposed rule's public comment period, include: (1) implementation concerns associated with shortening of GCCS installation and/or expansion timeframes; (2) concerns regarding significant lowering of the design capacity or emission thresholds; (3) the need for clarifications associated with wellhead operating parameters; and (4) the need for consistent, clear, and rigorous surface monitoring requirements. In response to these comments and based upon the available data, the EPA decided not to adjust the design capacity or significantly lower the emission threshold. The EPA also decided not to adjust the time allotted for installation of the GCCS or expansion of the wellfield. In the proposed MSW Landfills EG (80 FR 52121, August 27, 2015), the EPA highlighted specific concerns raised by commenters, which included state agencies as well as landfill owners and operators, about the interaction between shortened lag times and design plan approvals, costs, and safety concerns associated with reduced lag times, and the need for flexibility for lag time adjustments. The EPA adjusted wellhead operating parameters to limit corrective action requirements to negative pressure and temperature. The EPA also acknowledged concerns about wellhead operating parameters in 80 FR 52121 (August 27, 2015) and considered public comments in favor of and against retention of the parameters.

A complete list of the comments from state and local governments was provided to OMB and was placed in the docket for the 2016 MSW Landfills EG (Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rules Standards of Performance for Municipal Solid Waste Landfills and Review of Emissions Guidelines for Municipal Solid Waste Landfills, Docket ID Item No. EPA-HQ-OAR-2014-0451-0139). In addition, the detailed

response to comments from these entities is contained in the EPA's Response to Comments document for the 2016 MSW Landfills EG (Docket ID Item No. EPA-HQ-OAR-2014-0451-0229). As required by section 8(a) of Executive Order 13132, the EPA included a certification from its Federalism official stating that the EPA had met the Executive Order's requirements in a meaningful and timely manner when it sent the draft of the 2016 MSW Landfills EG to OMB for review pursuant to Executive Order 12866. A copy of the certification is included in the record for the 2016 MSW Landfills EG (Outreach under Executive Order 13132 for MSW Landfills, Docket ID Item Nos. EPA-HQ-OAR-2014-0451-0013 and EPA-HQ-OAR-2014-0451-0100).

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

This action has tribal implications as specified in Executive Order 13175. This action will neither impose substantial direct compliance costs on federally recognized tribal governments nor preempt tribal law. The database used to estimate impacts of the 2016 MSW Landfills EG, identified one tribe, the Salt River Pima-Maricopa Indian Community, which owns three landfills potentially subject to this federal plan. One of these landfills is open, the Salt River Landfill, and is already controlling emissions under the current NSPS/EG framework, so while subject to this subpart, the costs of this proposal are not substantial. The two other landfills are closed and anticipated to meet the definition of the closed landfill subcategory. One of the closed landfills, the Tri Cities Landfill, is already controlling emissions under the current NSPS/EG framework and will not incur substantial additional compliance costs under the federal plan. The other landfill, North Center Street Landfill, is not estimated to install controls under the federal plan. The EPA will consult with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes in the process of developing this action to permit them to have

meaningful and timely input into its development. A summary of that consultation will be provided in the docket for this action once completed.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements a previously promulgated federal standard.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51

This action involves technical standards. The EPA proposes to use EPA Methods 2, 2E, 3, 3A, 3C, 18, 21, 25, 25A, and 25C of 40 CFR part 60, appendix A. The EPA identified 15 voluntary consensus standards (VCS) as being potentially applicable (ASTM D3154–00 (2006), ASTM D3464–96 (2007), ASTM D3796–90 (2001), ANSI/ASME PTC 19–10–1981 Part 10, ASME B133.9–1994 (2001), ISO 10396:1993 (2007), ISO 12039:2001, ISO 10780:1994, ASTM D5835–95 (2013), ASTM D6522–11, ASTM D6420–99 (2010), CAN/CSA Z223.2–M86 (1999), ASTM D6060–96 (2009), ISO 14965:2000(E), EN 12619(1999)). The EPA determined that 14 of the 15 candidate VCS identified for measuring emissions of pollutants or their surrogates subject to emission standards in the rule would not be practical due to lack of

equivalency, documentation, validation data, and other important technical and policy considerations. The agency identified no equivalent standards for EPA Methods 2E, 21, and 25C. However, one VCS was identified as an acceptable alternative to EPA Method 3A.

The VCS ASTM D6522–11, “Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers,” is an acceptable alternative to EPA Method 3A when used at the wellhead before combustion. It is advisable to know the flammability and check the lower explosive limit of the flue gas constituents, prior to sampling, in order to avoid undesired ignition of the gas. The results of ASTM D6522–11 may be used to determine nitrogen oxides and carbon monoxide emission concentrations from natural gas combustion at stationary sources. This test method may also be used to monitor emissions during short-term emission tests or periodically in order to optimize process operation for nitrogen oxides and carbon monoxide control. The EPA’s review, including review of comments for these 15 methods, is documented in the memorandum, *Voluntary Consensus Standard Results for Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 2016*, which is available in the docket for the 2016 MSW Landfills EG (Docket ID Item No. EPA-HQ-OAR-2014-0451-0206).

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has determined that because this action increases the level of environmental protection

for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority, low-income, or indigenous populations. To the extent that any minority, low-income, or indigenous subpopulation is disproportionately impacted by landfill gas emissions due to the proximity of their homes to sources of these emissions, that subpopulation also stands to see increased environmental and health benefit from the emission reductions called for by this action. The results of the demographic analysis are presented in the *EJ Screening Report for Municipal Solid Waste Landfills*, July 2016, a copy of which is available in the 2016 MSW Landfills EG docket (Docket ID Item No. EPA-HQ-OAR-2014-0451-0223).

Dated: August 14, 2019.

Andrew R. Wheeler,
Administrator.

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