



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA-HQ-OLEM-2020-0107; FRL-7814.2-02-OLEM]

RIN 2050-AH36

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; CCR Management Unit Deadline Extension Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is taking direct final action to establish an additional option for owners or operators of active coal combustion residuals (CCR) facilities or inactive CCR facilities with a legacy CCR surface impoundment to comply with the facility evaluation report (FER) Part 1 requirements and to extend compliance deadlines for the remaining CCRMU provisions published in the *Federal Register* on May 8, 2024. The May 8, 2024 rule (Legacy Final Rule) established regulatory requirements for legacy CCR surface impoundments and CCR management units (CCRMU) under the Resource Conservation and Recovery Act (RCRA).

DATES: This final rule is effective on January 22, 2026, without further notice unless EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the *Federal Register* informing the public about the specific regulatory paragraph(s) or amendment(s) that will not take effect.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2020-0107. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, 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 form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Taylor Holt, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566-1439; email address: holt.taylor@epa.gov, or Frank Behan, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566-0531; email address: behan.frank@epa.gov. For more information on this rulemaking please visit <https://www.epa.gov/coalash>.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Why is the EPA using a Direct Final Rule?
- II. General Information
 - A. Does this action apply to me?
 - B. What action is the agency taking?
 - C. What is the agency's authority for taking this action?
 - D. What are the incremental costs and benefits of this action?
- III. Background
 - A. 2015 CCR Rule
 - B. Legacy CCR Surface Impoundment and CCR Management Unit Rule
- IV. Revisions to Part 257, Subpart D
 - A. Revisions to the Facility Evaluation Report Part 1 Compliance Deadline
 - B. Revisions to the Groundwater Monitoring Compliance Deadline
 - C. Conforming Revisions to Other CCR Management Unit Compliance Deadlines
- V. The Projected Economic Impact of this Action
 - A. Introduction
 - B. Affected Universe
 - C. Baseline Costs
 - D. Costs and Benefits of this Direct Final Rule
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 14192: Unleashing Prosperity Through Deregulation
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)

- E. Unfunded Mandates Reform Act (UMRA)
- F. Executive Order 13132: Federalism
- 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)
- K. Congressional Review Act (CRA)

List of Acronyms

CBI Confidential Business Information
CCR coal combustion residuals
CCRMU coal combustion residuals management unit
CFR Code of Federal Regulations
EPA Environmental Protection Agency
FER Facility Evaluation Report
FR *Federal Register*
GWMCA groundwater monitoring and corrective action
ICR Information Collection Request
NAICS North American Industry Classification System
OMB Office of Management and Budget
PBI Proprietary Business Information
PRA Paperwork Reduction Act
RCRA Resource Conservation and Recovery Act
REA Regulatory Economic Assessment
USWAG Utility Solid Waste Activities Group
WIIN Water Infrastructure Improvements for the Nation

I. Why is the EPA using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because EPA views this as a noncontroversial action and anticipates no adverse comment since the amendments simply establish an additional option for owners or operators of an active CCR facility or an inactive facility with a legacy CCR surface impoundment to comply with the FER Part 1 requirements and extends the remaining deadlines for owners and operators of CCRMU. However, in the “Proposed Rules” section of this *Federal Register* publication, EPA is publishing a separate document that will serve as the proposed rule to adopt the provisions in this direct final rule if adverse comments are received on this direct final rule. In the companion proposed rule the Agency is additionally soliciting comment on an alternative to extend the deadlines to prepare part 2 of the FER by 12 months. If EPA receives comment that convinces EPA that extending the FER Part 2 deadline is warranted, the Agency will withdraw this direct final rule and pursue such

an extension through standard rulemaking procedures. The Agency will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of the proposed rule document.

If EPA receives adverse comment, EPA will publish a timely withdrawal in the *Federal Register* informing the public about the specific regulatory paragraph(s) or amendment(s) that will not take effect. The provisions that are not withdrawn will become effective on the date set out above. EPA would address all public comments in any subsequent final rule based on the comments and new information submitted in response to the proposed rule.

In this action, EPA is not reconsidering, proposing to reopen, or otherwise soliciting comment on any of the existing CCR regulations beyond those specifically identified in this action. For the reader's convenience, EPA has provided a background description of existing requirements in several places throughout this preamble. These descriptions do not reopen the underlying described provisions, but merely explain the context to inform the public of the basis for this action's regulatory amendments. EPA will not respond to comments submitted on any issues other than those specifically identified in this action, and such comments will not be considered part of the rulemaking record.

II. General Information

A. Does this action apply to me?

This rule may be of interest to electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112. The reference to NAICS code 221112 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not described here could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 257.50 of title 40 of the

Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the agency taking?

EPA is amending the regulations governing the disposal of CCR in CCR management units (CCRMU), which are codified in subpart D of part 257 of title 40 of the CFR (CCR regulations). CCR management units are “any area of land on which any noncontainerized accumulation of CCR is received, is placed, or is otherwise managed, that is not a regulated CCR unit. . . .” See § 257.53. Specifically, EPA is (1) establishing an additional option for owners or operators of active facilities or inactive facilities with a legacy CCR surface impoundment to comply with the FER Part 1 requirements and (2) extending the remaining deadlines for owners and operators of CCRMU. Further details are discussed in Unit IV. of this preamble.

C. What is the agency’s authority for taking this action?

EPA is publishing this rule under the authority of sections 1008(a)(3), 2002(a), 4004, and 4005(a), (d) of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 and the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, 6945(a) and (d).

D. What are the incremental costs and benefits of this action?

EPA establishes the requirements under RCRA sections 1008(a)(3) and 4004(a) without taking cost into account. See, *Utility Solid Waste Activities Group, et al. v. EPA (USWAG)* 901 F.3d 414, 448-49 (D.C. Cir. 2018). The following cost estimates are presented in the Regulatory Economic Assessment (REA) and summarized in this preamble for compliance with OMB Circular A–4 and E.O. 12866. The requirements in this rule do not rely on these cost estimates.

The REA estimates that the annualized cost savings of this action will be approximately \$2.97 - \$3.48 million per year when discounting at 3%. The REA estimates that the annualized

cost savings of this action will be approximately \$9.43 - \$11.3 million per year when discounting at 7%. The REA estimates that the annualized reduction in benefits of this action will be approximately \$0.18 - \$0.62 million per year when discounting at 3%. The REA estimates that the annualized reduction in benefits of this action will be approximately \$0.38 - \$1.20 million per year when discounting at 7%. Overall, the REA estimates that the net annualized cost savings of this action will be \$2.84 - \$3.63 million per year when discounting at 3%, and \$9.05 - \$10.1 million when discounting at 7%.

Further information on the economic effects of this action can be found in Unit V. of this preamble.

III. Background

A. 2015 CCR Rule

On April 17, 2015, EPA finalized national minimum criteria for the disposal of CCR as solid waste under Subtitle D of RCRA titled, “Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities” (80 FR 21302) (2015 CCR Rule). The 2015 CCR Rule, codified in subpart D of part 257 of title 40 of the CFR, established regulations for existing and new CCR landfills, existing and new CCR surface impoundments, including all lateral expansions of these CCR units. The 2015 CCR Rule also imposed requirements on inactive surface impoundments at active facilities but exempted inactive surface impoundments at inactive facilities. On August 21, 2018, the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the CCR regulations. *USWAG*, 901 F.3d at 432-34.

B. Legacy CCR Surface Impoundment and CCR Management Unit Rule

On May 18, 2023, in response to the 2018 *USWAG* decision, EPA published the proposed rule for legacy CCR surface impoundments which included revisions to the CCR regulations (88 FR 31982).

On May 8, 2024, EPA published the Legacy Final Rule regulating inactive surface impoundments at inactive facilities (legacy CCR surface impoundments or legacy impoundments) under 40 CFR part 257, subpart D (89 FR 38950). In addition, the final rule established requirements to address the risks from the direct placement of CCR on the land that was exempt from regulation under the 2015 CCR Rule. This included inactive CCR landfills, as well as CCR surface impoundments and landfills that closed prior to the effective date of the 2015 CCR Rule; the final rule refers to these newly regulated units as CCRMU. The Legacy Final Rule added definitions for legacy CCR surface impoundments and CCRMU, among other terms. It also established the regulatory requirements applicable to legacy CCR surface impoundments and CCRMU, which largely consist of requiring compliance with certain existing CCR regulations, along with tailored compliance deadlines.

Owners or operators of an active facility or a facility with a legacy CCR surface impoundment are required to conduct a facility evaluation to identify and delineate any CCRMU at the facility and document the findings in two reports, FER Part 1 and FER Part 2. See § 257.75(b). The FER Part 1 documents the thorough review of readily and reasonably available records regarding where CCR was either routinely and systematically placed on land, or where facility activities otherwise resulted in measurable accumulations of CCR on land. The FER Part 2 documents the conclusions of a physical evaluation of the facility to address any data and information gaps identified in FER Part 1. Together, the FER Parts 1 and 2 give a complete picture of the historic use, placement and the status of CCR at the facility, ultimately identifying any CCRMU of 1 ton or greater onsite. In addition, owners or operators of CCRMU must comply with the existing requirements in 40 CFR part 257, subpart D for groundwater monitoring, corrective action (where necessary), and in certain cases, closure, and post-closure care requirements. This action addresses the compliance timeframes for the FER Part 1 and extends the deadlines for the remaining CCRMU provisions as discussed in Unit IV. of this preamble.

IV. Revisions to Part 257, Subpart D

After the Legacy Final Rule went into effect on November 8, 2024, some members of the regulated community informed the Agency that they were facing challenges that would adversely impact their ability to comply with specific compliance deadlines for CCRMU. The information EPA received from the regulated community is available in the rulemaking docket. To address the challenges that these facilities are facing, EPA is revising the compliance deadlines for the FER Part 1 and the remaining CCRMU provisions.

A. Revisions to the Facility Evaluation Report Part 1 Compliance Deadline

EPA is revising the facility evaluation provisions in § 257.75 to provide flexibility to owners or operators of active facilities or facilities with a legacy CCR surface impoundment in preparing the reports documenting compliance (i.e., FER Part 1 and FER Part 2). The current regulations require the facility evaluation to be completed in two consecutive steps with separate deadlines to prepare FER Parts 1 and 2. Under this action, the Agency is finalizing an additional option to allow the two parts of the FER to be prepared concurrently so long as both reports are submitted no later than the current FER Part 2 deadline. That is, FER Parts 1 and 2 would need to be prepared no later than February 8, 2027, as specified in § 257.75(d)(1). In this action, EPA is not proposing to change the deadline to prepare the FER Part 2 or to eliminate the report documenting compliance with part 1 of the facility evaluation (i.e., FER Part 1).

1. Legacy Proposed Rule

In the Legacy Proposed Rule (88 FR 32020-32023), EPA proposed to require owners or operators of active or inactive facilities with one or more regulated CCR unit(s) to conduct a facility evaluation to confirm whether any CCRMU exist on-site and if so, delineate the lateral and vertical extent of the unit(s). EPA proposed that facilities prepare one report, to be completed in two consecutive steps, with a single deadline. As proposed, the first step would consist of a thorough review of available records in combination with a physical facility inspection and any necessary field work to fill any data gaps from the review of available

records. The second step of the facility evaluation would be to generate a professional engineer-certified FER to document the findings of the facility evaluation. The proposed compliance deadline for the completion of the FER was no later than three months after the effective date of the final rule.

Many commenters disagreed with EPA's proposal of a two-step process documented in a single report. They instead suggested EPA split the information collection requirements from the physical evaluation requirements, stating the separation would provide a more thorough evaluation of existing available information to better inform the physical evaluation to fill data gaps and properly identify CCRMU. Commenters also stated that the proposed FER deadline was infeasible and did not allow sufficient time to gather the required information and conduct a physical inspection. Most commenters cited concerns regarding the accessibility of historic information or data, difficulty locating off-site record storage, the possible extensive volume of information, the possible iterative nature of field work and sampling, the impact of seasonal disruptions to field work, the lack of qualified field personnel and the timing to acquire their services through contracts. Multiple commenters also suggested allowing significantly more time to complete individual aspects of the FER requirements.

2. Legacy Final Rule

In responses to these comments, the Legacy Final Rule adopted a two-part facility evaluation process with two separate P.E.-certified reports and compliance deadlines. See 89 FR 39054-39059. The FER Part 1 includes the results of the available information collection and evaluation and has a compliance deadline of February 9, 2026. The FER Part 2 addresses data and information gaps through a physical evaluation of the facility and has a compliance deadline of February 8, 2027. Together, the FER Part 1 and Part 2 will give a complete picture of the historic use, placement, and the status of CCR at each facility, ultimately identifying and delineating the lateral and vertical extents of any CCRMU onsite.

When determining the final compliance deadlines for the FERs, EPA relied heavily on the information provided by commenters citing the shortages and backlogs of qualified contractors, increased strain on those contractors related to the number of CCR units complying with the CCR rule simultaneously, difficulty accessing and reviewing historical documentation, potential seasonal disruptions, and time needed to perform quality control and quality assurance. After considering the information provided by the commenters, EPA substantially extended the compliance dates and separated the FER into two parts with separate deadlines to prepare the reports. Specifically, the final rule required FER 1 to be completed by February 9, 2026 (15 months from the effective date), and FER 2 to be completed by February 8, 2027 (27 months from the effective date).

3. Post-Publication Information

Since publication of the Legacy Final Rule, several companies have identified challenges in preparing the FER Part 1 report by the current deadline because of difficulty in obtaining, accessing and reviewing historical documentation. For example, EPA has received feedback that it is taking facilities longer than expected to process voluminous historical records and information. One company with multiple facilities has records stored in various locations in different states, including off-site warehouses, filing cabinets at office and plant locations, and electronic records stored on various servers or in a file database system. This company indicated that it has located over a quarter million boxes of records stored at ten off-site warehouses, as well as over 5.8 million electronic records. Another company described locating nearly 600 boxes and 30 file cabinets of documents resulting in approximately 30,000 pages and nearly 4 gigabytes of information in need of review and assessment. Other facilities have stated that they have collected tens of thousands or hundreds of thousands of documents thus far. Companies have reported that searching through these records is time consuming because of the sheer volume of information that must be reviewed. Additionally, narrowing the search is often complicated because the description of the contents of the boxes are vague or not detailed.

Companies have also stated that identifying relevant records maintained in electronic formats has presented challenges. These companies reported that in many cases electronic records are not given many useful attributes on which to search so it has been difficult to identify what documents may provide useful information. One company described the difficulty of identifying relevant files that have been digitized and preserved on a hard drive for a facility that operated for 40 years. Another company stated that operating systems hosting documents have changed over time (e.g., software systems for document management and storage), as well as some information being stored on out-of-date electronic filing systems. Moreover, some companies have found that subsequent conversions to newer operating systems were not seamless, thus creating issues in retrieving data. Finally, a company discussed the challenges with accessing and reviewing microfiche information, specifically that the process of digitizing microfiche information is time consuming.

Multiple companies have also found that many of the historical engineering and construction documents and drawings stored in boxes at offsite warehouses are in poor condition. These companies reported that documents are torn or otherwise damaged, making them illegible or difficult to use. Older drawings or documents that have been scanned and saved electronically have poor resolution or are faint and difficult to read. These companies have stated that document condition and completeness has slowed the review process.

EPA has also received feedback that the current FER Part 1 deadline does not provide sufficient time for facilities owned and operated by affiliate companies to collaborate on the FER. These companies further stated that such coordination is time-consuming, but necessary to ensure uniformity across different companies and facilities.

Several companies also stated that they are using contractors to complete the facility evaluation process, including the drafting of the report documenting compliance with part 1 of the facility evaluation requirements (i.e., FER Part 1). These companies have identified shortages and backlogs in qualified contractors resulting from the simultaneous demand for contractors.

Many of the specific difficulties that have been presented to the Agency primarily relate to the information gathering tasks required under FER Part 1. One suggestion offered to address these concerns was to provide companies with additional flexibility to complete the FER Part 1, consistent with the Agency's original proposal. EPA is adopting that approach, by creating an additional regulatory option under which a facility could prepare both FER Parts 1 and 2 by February 8, 2027 (i.e., by the existing deadline for FER Part 2).

This option of a single deadline for FER Part 1 and Part 2 (as opposed to two separate deadlines) allows flexibility to complete tasks, such as reviewing historical documentation and conducting field work to confirm the presence of CCRMU. The activities involved in achieving compliance with the facility evaluation requirements (FER Parts 1 and 2) (e.g., coordinating with local, state, and federal authorities; collecting samples; conducting field work; receiving lab results) are susceptible to factors outside a facility's control, such as extreme weather events, shortages of qualified contractors, and permitting or approval delays, and therefore, warrant greater flexibility. Additionally, required activities can be restricted dependent on the time of year and the location of the facility (e.g., due to seasonality, protected species, site clearing restrictions). Because all the CCRMU requirements build upon the FER, EPA must ensure that facilities nationwide can achieve regulatory compliance by the deadline. Utilizing a single deadline for the facility evaluation requirements allows facilities to make reasonable accommodations for facility-specific challenges in a way the existing deadlines do not.

Under this action, compliance with the existing provisions that require completion of the FER Parts 1 and 2 by separate deadlines would remain as an option. EPA is retaining this as an option because most commenters on the original rule raised concern with a two-step process documented in a single report. They instead suggested EPA split the information collection requirements from the physical evaluation requirements, stating the separation would provide a more thorough evaluation of existing available information to better inform the physical evaluation to fill data gaps and properly identify CCRMU. Establishing alternative compliance

options ensures that these concerns will still be addressed, and that facilities will have flexibility to account for their individual circumstances.

EPA is not modifying the FER Part 2 deadline because, as noted, it does not appear that the deadline for FER Part 2 needs to be adjusted to address the concerns that have thus far been raised to the Agency. Nevertheless, in the companion proposed rule, EPA is soliciting comment on whether facilities have identified challenges that warrant extending the FER Part 2 deadline. See the “Proposed Rules” section of this *Federal Register* publication.

Therefore, EPA is providing owners or operators with two options to meet the FER Part 1 requirements at § 257.75(c). An owner or operator may still complete an FER Part 1 no later than the existing compliance deadline of February 9, 2026, or, alternatively, may complete it along with the FER Part 2, no later than February 8, 2027 (i.e., the existing compliance deadline for FER Part 2).

B. Revisions to the Groundwater Monitoring Compliance Deadline

EPA is extending the deadline for owners or operators of CCRMU to comply with the groundwater monitoring provisions in § 257.90. The current regulations require owners or operators of CCRMU to have designed and installed the groundwater monitoring system, developed the groundwater sampling and analysis plan, collected eight independent samples, and initiated detection and assessment monitoring no later than May 8, 2028. Under this action, the Agency is providing owners or operators of CCRMU more time to comply with these requirements. Specifically, EPA is extending the groundwater monitoring compliance deadline by 15 months, to no later than August 8, 2029.

1. Legacy Proposed Rule

In the Legacy Proposed Rule, EPA proposed to require owners and operators of regulated CCRMU to comply largely with the existing groundwater monitoring and corrective action criteria in §§ 257.90 through 257.98. However, EPA also proposed to require sampling and analysis of constituents listed in appendix IV. at the same time as those listed in appendix III.

See 88 FR 32023-32024. In addition, EPA proposed two deadlines for the groundwater monitoring requirements, instead of the single deadline in the 2015 CCR Rule. The first deadline was six months from the effective date of the final rule for the installation of the groundwater monitoring network and development of the groundwater sampling and analysis plan. The second deadline was 24 months from the effective date of the final rule for the initiation of the combined detection and assessment monitoring, including the collection of the eight independent samples for each background and downgradient well, as required by § 257.94(b).

EPA received numerous comments on the proposed compliance timeframes, including the proposal to establish two separate deadlines. Commenters overwhelmingly disagreed with the split deadlines, stating the split eliminated the flexibility provided under the 2015 CCR Rule's single deadline. Additionally, most commenters stated the proposed compliance deadlines were infeasible and should, at a minimum, allow as much time for compliance as the 2015 CCR Rule deadlines, although several commenters expressed that even the 2015 CCR Rule deadlines were too short to develop adequate groundwater monitoring networks, sampling and analysis plans, and corrective action programs. Commenters pointed to several factors that they believed EPA did not fully incorporate into the proposed deadlines: EPA's gross underestimation of the CCRMU universe; the large number of CCR units (i.e., existing CCR units, legacy CCR surface impoundments, CCRMU) competing for limited resources to meet overlapping compliance deadlines; the limited number of qualified contractors available to conduct necessary activities to reach the compliance deadlines; the nationwide labor shortage; limited existing alternative disposal options; overlapping regulatory requirements (e.g., state drilling permits, timing restrictions related to protected habitats, state CCR permits, Consent Decrees/Orders); and seasonality impacts.

2. Legacy Final Rule

As explained in the Legacy Final Rule, in response to comments, EPA finalized a single deadline of 42 months from the effective date for owners or operators of regulated CCRMU to

comply with the groundwater monitoring requirements. See 89 FR 39061-39069. EPA was convinced by commenters that a single deadline would provide facilities with necessary flexibility to complete tasks required for compliance, such as installing groundwater wells and collecting independent samples. The activities involved in achieving compliance with the groundwater monitoring requirements (i.e., drilling wells, collecting samples, receiving lab results) are susceptible to factors outside a facility's control, such as extreme weather events, shortages of qualified contractors, and permitting or approval delays, and therefore, warrant greater flexibility. Therefore, EPA concluded that a single deadline for the groundwater monitoring requirements gives facilities more opportunities to make reasonable accommodations for regional factors.

Additionally, EPA reevaluated the CCRMU groundwater compliance timeframe considering the following: the potential size of the CCRMU universe; seasonality; required local and state approvals to clear vegetation or drill wells; need to coordinate with local or state regulatory authorities; the national labor shortage and contractor and laboratory backlogs; and the impact of overlapping compliance deadlines. Overall, EPA found the information provided regarding the infeasibility of the proposed groundwater compliance deadlines convincing. Therefore, EPA substantially extended the deadlines, to comply with the groundwater monitoring requirements in §§ 257.90 through 257.95 until May 8, 2028. This deadline granted facilities more than the amount of time facilities had to comply with the 2015 CCR Rule; it also ensured that the initial groundwater compliance deadlines for legacy CCR surface impoundments do not coincide with the initial groundwater compliance deadlines for CCRMU.

3. Post-Publication Information

Since publication of the Legacy Final Rule, members of the regulated community have raised concerns that the existing deadline is infeasible for many owners or operators of CCRMU. These entities have stated that the compliance timeframes in the Legacy Final Rule incorrectly assume that the FER process can proceed concurrently with the first tasks required to comply

with the groundwater monitoring requirements. They contend that the first tasks to comply with the groundwater monitoring requirements (i.e., the design and installation of the groundwater monitoring system) cannot begin until all CCRMU onsite are identified and delineated, which in many cases will be ongoing through late 2026. One organization specifically pointed out that it is impossible to design a groundwater monitoring system that accurately represents the groundwater passing the CCRMU's waste boundary and the quality of background groundwater, as required in § 257.91, before the unit is fully delineated. Furthermore, the CCR regulations allow for the use of multiunit systems, which requires a complete knowledge of all CCR units onsite prior to design.

These parties have also stated that they use third parties to complete tasks required to comply with the groundwater monitoring provisions, including the design and installation of the groundwater monitoring network and the collection and analysis of samples. These companies have identified shortages and backlogs in qualified contractors and laboratories resulting from the increased demand on these resources and existing backlogs and labor shortages as discussed in the Legacy Final Rule. One organization requested EPA provide 30 months from the completion of FER Part 2, because this would allow as much time as was granted under the 2015 CCR Rule (i.e., 24 months), plus an additional six months to account for contractor backlogs.

EPA reviewed the information provided and is convinced that because owners or operators will be delineating CCRMU late into 2026 (i.e., late into the FER process), the existing deadline does not provide sufficient time for facilities both (1) to design and install a groundwater monitoring system capable of meeting the standards at § 257.91 and (2) to collect and analyze the eight independent samples for each background and downgradient well, as required by § 257.94(b). EPA acknowledged in the Legacy Final Rule that the deadline for the groundwater monitoring requirements must account for the amount of time owners or operators need to locate CCRMU as part of the FER (89 FR 39063). Based on the amount of time typically needed to design and install a groundwater monitoring system and to collect and

analyze the eight independent samples, and the information provided by commenters regarding the timeframe in which CCRMU will be delineated, EPA concludes that the existing CCRMU groundwater compliance deadline do not provide a sufficient amount of time to come into compliance. Nor do the existing deadlines adequately account for delays related to the shortage of qualified contractors. Therefore, EPA calculates that an extension of 15 months of the Legacy Final Rule deadline is necessary to provide sufficient time for owners or operators to comply with the groundwater monitoring requirements. This 15-month extension will allow owners or operators of regulated CCRMU a total of 30 months from the completion of the FER Part 2 to comply with the groundwater monitoring requirements. This is six months longer than was provided under the 2015 CCR Rule to mitigate impacts mentioned by commenters regarding the current labor shortages and backlogs experienced by third-parties necessary to accomplish tasks involved in complying with the groundwater monitoring requirements. Therefore, EPA is extending the deadlines for owners or operators of CCRMU to comply with the groundwater monitoring requirements to no later than August 8, 2029. See revised §§ 257.90(b)(3) and 257.95(b)(1)(ii).

C. Conforming Revisions to Other CCR Management Unit Compliance Deadlines

As explained in the Legacy Final Rule, the FER serves as the prerequisite for all other CCRMU requirements. See 89 FR 39060. Similarly, the groundwater monitoring requirements serve as the prerequisite for the closure and post-closure requirements so that owners or operators can incorporate information about groundwater quality, groundwater flows, seasonality impacts, and the migration of contaminants (if any) into units' closure and post-closure care plans. See 89 FR 39079-39080. Therefore, in this action, EPA is making conforming changes to the remaining CCRMU compliance deadlines. These conforming changes are shown below in table 1.

In the Legacy Final Rule, the deadline to establish a public CCR website is tied to the first reporting requirement. For owners or operators of active CCR facility or inactive facility

with a legacy CCR surface impoundment, the first reporting requirement is the FER Part 1. See § 257.75(c)(1) and (4). Therefore, because this action is creating an option for FER Part 1 to be completed along with the FER Part 2, EPA is similarly providing owners and operators the option to establish the public CCR website specified in § 257.107 by no later than either February 9, 2026 or February 8, 2027 to correspond to when the owner or operator completes FER Part 1. See revised § 257.75(c)(4).

The design and installation of the groundwater monitoring system, development of the groundwater sampling and analysis program, and the initiation of the combined detection and assessment monitoring programs are prerequisites to completing the initial groundwater monitoring and corrective action report. Because the groundwater monitoring compliance deadlines have been extended by 15 months to August 8, 2029, EPA is extending the deadline to complete the initial groundwater monitoring and corrective action report to no later than January 31 of the next calendar year, January 31, 2030. See revised § 257.90(e).

As mentioned above, EPA concluded that the closure and post-closure care plans should be informed by groundwater monitoring data. Because the groundwater monitoring compliance deadlines have been extended by 15 months to August 8, 2029, EPA is extending the deadline to complete the written closure and post-closure care plans and the deadline to initiate closure by 15 months to February 8, 2030 and August 8, 2030, respectively. See revised §§ 257.101(f)(1), 257.102(b)(2)(iii), and 257.104(d)(2)(iii).

Table 1. Comparison of Compliance Deadlines for CCRMU under the Legacy Final Rule and this Direct Final Rule

| 40 CFR part 257, subpart D requirement | Description of requirement to be completed | Legacy final rule deadlines | Direct final rule deadlines |
|---|---|------------------------------------|--------------------------------------|
| Internet Posting (§ 257.107) | Establish CCR website | February 9, 2026 | February 9, 2026 or February 8, 2027 |
| Facility Evaluation (§ 257.75) | Complete the Facility Evaluation Report Part 1 | February 9, 2026 | February 9, 2026 or February 8, 2027 |

| | | | |
|---|--|------------------|------------------|
| Facility Evaluation (§ 257.75) | Complete the Facility Evaluation Report Part 2 | February 8, 2027 | February 8, 2027 |
| GWMCA (§ 257.91) | Install the groundwater monitoring system | May 8, 2028 | August 8, 2029 |
| GWMCA (§ 257.93) | Develop the groundwater sampling and analysis program | May 8, 2028 | August 8, 2029 |
| GWMCA (§§ 257.90–257.95) | Initiate detection monitoring and assessment monitoring. Begin evaluating groundwater monitoring data for SSIs over background levels and SSLs over groundwater protection standards | May 8, 2028 | August 8, 2029 |
| GWMCA (§ 257.90(e)) | Complete the initial annual GWMCA report | January 31, 2029 | January 31, 2030 |
| Closure (§ 257.102) | Prepare written closure plan | November 8, 2028 | February 8, 2030 |
| Post-Closure Care (§ 257.104) | Prepare written post-closure care plan | November 8, 2028 | February 8, 2030 |
| Closure and Post-Closure Care (§ 257.101) | Initiate closure | May 8, 2029 | August 8, 2030 |

V. The Projected Economic Impact of this Action

A. Introduction

The EPA estimated the costs and benefits of this action in a Regulatory Economic Assessment (REA), which is available in the docket for this action.

B. Affected Universe

The universe of facilities and units affected by the direct final rule consists of two categories. The first is composed of facilities with CCRMU. The REA identifies 195 CCRMU at 104 facilities. The second category is composed of CCRMU at “other active facilities,” (referred to as OAFUs in the Legacy Final Rule). The REA identifies 15 CCRMU at OAFUs. Most of these facilities correspond to NAICS code 221112.

C. Baseline Costs

The baseline costs of this action consist of all reporting and recordkeeping costs mandated by the Legacy Final Rule for facilities with CCRMU. The Regulatory Impact Analysis for the Legacy Final Rule estimated these costs to be an annualized \$102 – 119 million when discounting at 3% and an annualized \$144 – 173 million when discounting at 7%.

D. Costs and Benefits of this Direct Final Rule

This direct final rule is expected to result in cost savings from time value of money impacts by delaying the compliance dates for reporting activities at CCRMU. The REA estimates annualized cost savings of approximately \$2.97 - \$3.48 million per year when discounting at 3%, and annualized cost savings of approximately \$9.43 - \$11.3 million per year when discounting at 7%.

Similarly, the direct final rule is expected to result in reductions in benefits associated with time value of money impacts from delaying the groundwater monitoring and closure requirements for CCRMU from the Legacy Final Rule. The REA estimates annualized reductions in benefits of approximately \$0.18 - \$0.62 million per year when discounting at 3%, and annualized reductions in benefits of \$0.38 - \$1.20 million per year when discounting at 7%.

Overall the REA estimates that this direct final rule will result in net annualized cost savings of \$2.48 - \$3.63 million per year when discounting at 3%, and net annualized cost savings of \$9.05 - \$10.1 million per year when discounting at 7%.

VI. 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 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. Details on the estimated cost savings of this final rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. An ICR covering the information collection activities contained in the existing Legacy Final Rule has been submitted for OMB's approval under the temporary OMB control number 2050-0231.

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. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden on the small entities subject to the rule. The rule relieves burden by establishing an additional option for owners or operators of CCRMU to comply with the FER Part 1 requirements and extending the deadline for owners and operators of CCRMU to comply with groundwater monitoring requirements. This delay affords all entities, including small entities, more time to comply, and reduces compliance costs by pushing them into the future. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or Tribal governments or the private sector.

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 rule relieves burden by establishing an additional option for owners or operators of CCRMU to comply with the FER Part 1 requirements and extending the deadline for owners and operators of CCRMU to comply with groundwater monitoring requirements. This rule does not impose any additional requirements. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045 directs federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of 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.

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)

This rulemaking does not involve technical standards.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 257

Environmental protection, Beneficial use, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

Lee Zeldin,
Administrator.

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

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

1. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6927, 6944, 6945(a) and (d); 33 U.S.C. 1345(d) and (e).

2. Amend § 257.75 by revising paragraphs (b), (c)(1) introductory text, and (c)(4) to read as follows:

§ 257.75 Requirements for identifying CCR management units.

* * * * *

(b) *Facility evaluation.* (1) The owner or operator of an active facility or a facility with a legacy CCR surface impoundment must conduct a facility evaluation to identify all CCR management units at the facility in accordance with paragraphs (c) through (e) of this section. At a minimum, the presence or absence of CCR management units at the facility must be confirmed and documented through a thorough evaluation of reasonably and readily available records that contain the information needed to prepare the Facility Evaluation Reports Part 1 and Part 2 required by paragraphs (c) and (d) of this section. The facility evaluation must also include a physical inspection of the facility. Where necessary, the physical inspection must include field investigation activities to fill data gaps, such as conducting exploratory soil borings, geophysical assessments, or any other similar physical investigation activities to establish the location and boundaries of potential or likely CCR management units, and to affirmatively rule out other areas of potential CCR placement at the facility that were identified during the information review or physical inspection. The facility evaluation must identify all CCR management units at the facility regardless of when the CCR management unit came into existence.

(2) An owner or operator subject to the facility evaluation requirements may either:

(i) Complete the facility evaluation in two consecutive steps with separate deadlines to prepare Facility Evaluation Report Part 1 and Part 2. The deadline to complete Facility Evaluation Reports Part 1 and Part 2 is specified in paragraphs (c)(1) and (d)(1) of this section, respectively; or

(ii) Complete the facility evaluation such that Facility Evaluation Report Part 1 and Part 2 are completed no later than the deadline specified in paragraph (d)(1) of this section.

(c) * * *

(1) Except for an owner or operator complying with the timeframes provided by paragraph (b)(1)(ii) of this section, no later than Monday, February 9, 2026, the owner or operator of an active facility or a facility with a legacy CCR surface impoundment must prepare a Facility Evaluation Report Part 1, which shall contain, to the extent reasonably and readily available, the information specified in paragraphs (c)(1)(i) through (xiv) of this section. The owner or operator has prepared the Facility Evaluation Report Part 1 when the report has been placed in the facility's operating record as required by § 257.105(f)(25).

* * * * *

(4) No later than Monday, February 8, 2027, or the date the Facility Evaluation Report Part 1 is prepared, whichever is earlier, the owner or operator must notify the Agency of the establishment of a CCR website using the procedures in § 257.107(a) via the “contact us” form on EPA’s CCR website.

* * * * *

3. Amend § 257.90 by revising paragraphs (b)(3) introductory text and (e) introductory text to read as follows:

§ 257.90 Applicability.

* * * * *

(b) * * *

(3) *CCR management units.* No later than Wednesday, August 8, 2029, the owner or operator of the CCR management unit must be in compliance with the following groundwater monitoring requirements:

* * * * *

(e) *Annual groundwater monitoring and corrective action report.* For existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator must prepare an annual groundwater monitoring and corrective action report. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator must prepare the initial annual groundwater monitoring and corrective action report no later than January 31 of the year following the calendar year a groundwater monitoring system has been established for such CCR unit as required by this subpart, and annually thereafter. For CCR management units, the owner or operator must prepare the initial annual groundwater monitoring and corrective action report no later than January 31, 2030, and annually thereafter. For the preceding calendar year, the annual report must document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of this section, the owner or operator has prepared the annual report when the report is placed in the facility's operating record as required by § 257.105(h)(1). At a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available:

* * * * *

4. Amend § 257.95 by revising paragraph (b)(1)(ii) to read as follows:

§ 257.95 Assessment monitoring program.

* * * * *

(b) * * *

(1) * * *

(ii) The owner or operator of a CCR management unit must sample and analyze the groundwater for all constituents listed in appendix IV to this part no later than Wednesday, August 8, 2029.

* * * * *

5. Amend § 257.101 by revising paragraph (f)(1) to read as follows:

§ 257.101 Closure or retrofit of CCR units.

* * * * *

(f) * * *

(1) No later than Friday, August 8, 2030, an owner or operator of a CCR management unit must initiate the closure of the CCR management unit in accordance with the requirements of § 257.102.

* * * * *

6. Amend § 257.102 by revising paragraph (b)(2)(iii) to read as follows:

§ 257.102 Criteria for conducting the closure or retrofit of CCR units and closure of CCR management units.

* * * * *

(b) * * *

(2) * * *

(iii) *CCR management units*. Except as provided for in paragraph (b)(2)(v) of this section, no later than Friday, February 8, 2030, the owner or operator of the CCR management unit must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this section.

* * * * *

7. Amend § 257.104 by revising paragraph (d)(2)(iii) to read as follows:

§ 257.104 Post-closure care requirements.

* * * * *

(d) * * *

(2) * * *

(iii) *CCR management units*. No later than Friday, February 8, 2030, the owner or operator of a CCR management unit must prepare an initial written post-closure care plan as set forth in paragraph (d)(1) of this section.

* * * * *

[FR Doc. 2025-13698 Filed: 7/21/2025 8:45 am; Publication Date: 7/22/2025]