

Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the June 25, 2003 rule approving the revisions to the numbering and formatting of the Utah SIP.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 14, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These corrections to the identification of plan for Utah is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 1, 2003.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read as follows:

#### PART 52—[CORRECTED]

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart TT—Utah

■ 2. Section 52.2320 is amended in paragraph (c)(56)(i)(C) by revising "IX.D.2.h" to read "IX.D.2.h (except IX.D.2.h(2))".

[FR Doc. 03-25933 Filed 10-14-03; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 60

[Docket ID No. OAR-2002-0046; FRL-7566-2]

RIN 2060-AJ53

#### Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; amendments.

**SUMMARY:** On April 8, 1987, the EPA promulgated the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. On March 27, 2000, the EPA issued a memorandum which stated that process tanks are "storage vessels" under the definition in the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. On May 26, 2000, the American Forest and Paper Association (AF&PA) filed a petition for judicial review of the March 27, 2000 memorandum. In this action, we are promulgating final rule amendments which were proposed pursuant to a settlement agreement with the American Forest and Paper Association (AF&PA) regarding their petition for judicial review of the March 27, 2000 memorandum. The final rule amendments will exempt certain storage vessels by capacity and vapor pressure, exempt process tanks, and add the process tank definition. The EPA is also amending the performance standards to exempt storage vessels that are subject to the National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.

**EFFECTIVE DATE:** October 15, 2003.

**ADDRESSES:** Docket No. OAR-2002-0046 is located at the EPA Docket

Center, EPA West, U.S. EPA (6102T), Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Morris, Organic Chemicals Group, Emission Standards Division (Mail Code C504-04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5416, electronic mail address [morris.mark@epa.gov](mailto:morris.mark@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR-2002-0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center 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 Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

*Electronic Docket Access.* You may access the final rule amendments electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of the final rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule amendments will be posted on the

TTN's policy and guidance page for newly proposed or promulgated rules <http://www.epa.gov/ttn/oarpg>.

*Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS code	Examples of regulated entities
Industrial .....	325 324 424710	Chemical manufacturing facilities. Petroleum and coal products manufacturing facilities. Petroleum bulk stations and terminals.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in § 60.110b of the performance standards, as well as in today's final rule amendments to the applicability sections. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Judicial Review.* Under Clean Air Act (CAA) section 307(b), judicial review of the final amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 15, 2003. Only those objections to the final amendments which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements established by the final amendments may not be challenged separately in any civil or criminal proceeding we bring to enforce such requirements.

*Outline.* The information presented in this preamble is organized as follows:

- I. What Is the Background for this Action?
- II. What Standards Are We Amending and how Does this Action Relate to the Overall Scope of the Subpart Kb Rule?
- III. What Were the Comments Received on the Proposed Amendments?
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
  - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer Advancement Act
  - J. Congressional Review Act

**I. What Is the Background for This Action?**

The EPA proposed the 40 CFR part 60, subpart Kb, rules on July 23, 1984 (49 FR 29698) and promulgated them on April 8, 1987 (52 FR 11420). The performance standards implement section 111 of the CAA and are based on the Administrator's determination that volatile organic liquid (VOL) storage vessels cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

On March 27, 2000, the EPA issued a memorandum which stated that process tanks are "storage vessels" under the definition in the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.

On May 26, 2000, the AF&PA filed a petition for judicial review of the March 27, 2000 memorandum. The petitioner felt that the EPA had inappropriately expanded the scope of "storage vessels" with the interpretation in the 2000 memorandum. On August 23, 2001 (66 FR 44342), AF&PA and the EPA signed a settlement agreement that EPA would propose to amend subpart Kb to exclude from its applicability storage vessels that have a capacity less than 75 cubic meters (m<sup>3</sup>) or that contain a liquid with a maximum true vapor pressure below 3.5 kilopascals (kPa), and take final action on that proposal within a reasonable time.

On February 24, 2003 (68 FR 8574), we proposed amendments to subpart Kb pursuant to the agreement with AF&PA, as well as concerns raised by parties other than the petitioner. One party commented that in addition to the proposed amendments required by the settlement agreement, the EPA should exempt process tanks from subpart Kb. Another party commented that the regulatory overlap between subpart Kb and the National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (40 CFR part 63, subpart GGGG) should be addressed. Today's final rule

amendments address the issues raised by AF&PA and other parties.

**II. What Standards Are We Amending and How Does This Action Relate to the Overall Scope of the Subpart Kb Rule?**

We are amending various provisions in 40 CFR part 60, subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. For further details, please refer to the February 24, 2003 proposed rule amendments (68 FR 8574). In doing so, we are indicating by necessary implication that subpart Kb applies to all industries where volatile organic liquid (as defined in § 60.111b(k)) is stored, and thus applies to other industries in addition to the petroleum and synthetic organic chemical manufacturing industries.

*Exemption of Certain Storage Vessels by Capacity and Vapor Pressure.* Today's action amends the final rule by eliminating recordkeeping requirements for storage vessels with a capacity less than 75 m<sup>3</sup>, for storage vessels with a capacity between 75 and 151 m<sup>3</sup> storing liquid with vapor pressure less than 15 kPa, and for storage vessels with a capacity equal to or greater than 151 m<sup>3</sup> storing liquid with vapor pressure less than 3.5 kPa. Put another way, the EPA is exempting from subpart Kb those storage vessels presently subject to recordkeeping requirements only.

*Exemption of Process Tanks.* The EPA is amending the final rule to exempt process tanks from subpart Kb. The EPA considered whether it was justified to amend subpart Kb to include process tanks within its scope, which would apply to new sources, that is, only to those process tanks for which construction, reconstruction, or modification commenced after the date of proposal of the action (see CAA sections 111(a)(2) and (b)(1)(B)).

*Exemption of Storage Vessels Subject to the Vegetable Oil National Emission Standards for Hazardous Air Pollutants (NESHAP).* The EPA contends that the overall emissions to the environment will not increase by exempting storage

vessels from subpart Kb that are subject to the Vegetable Oil Production NESHAP, and that such exemption essentially amounts to avoiding duplicative regulation. The EPA is, therefore, exempting from subpart Kb all storage vessels that are subject to the Vegetable Oil Production NESHAP.

### III. What Were the Comments Received on the Proposed Amendments?

#### *Summary of Public Comments and Responses*

This section of the preamble is a summary of the major public comments received in response to the proposed rule amendments, and changes resulting from the comments. A full report of all comments received and responses to the comments are in the "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984—Public Comments and Responses." The document may be found in Docket ID No. OAR-2002-0046.

*Comment:* Two commenters recommended revising the definition of "process tank" to clarify that a vessel used within a process before material is transferred to a by-product storage vessel is considered to be a process tank. The commenters also recommended that the definition be revised to include tanks used to collect and recirculate solvents. One commenter suggested the EPA clarify that flare knockout vessels and vessels used for surge control for wastewater and/or sludge are process tanks. Another commenter requested the EPA clarify that pipeline emergency breakout tanks are process tanks, and another commenter requested the EPA clarify that vessels used for fermentation, distillation, mixing and blending, condensing, filtering, and extraction are process tanks.

*Response:* The EPA agrees that a vessel used within a process before material is transferred to a by-product storage vessel is considered to be a process tank. The definition of "process tank" in the final rule amendments reflects this view. The EPA considers vessels that receive and accumulate solvent or raw material from recovery processes to be storage vessels, not process tanks. Such vessels serve the same function as virgin solvent and raw material storage vessels, and some are located in tank farms with other storage vessels. The definition in the final rule amendments clarifies that "process tank" does not include such vessels.

However, the definition also clarifies that vessels used within solvent and raw material recovery processes (that are not used for the ultimate storage of recovered liquids) are process tanks. The EPA agrees that flare knockout vessels and vessels used for surge control for wastewater and/or sludge are process tanks. The EPA also agrees that vessels used as described by one commenter (fermentation, distillation, etc.) are process tanks, and that the proposed definition of "process tank" would be interpreted to include such vessels. Finally, the EPA agrees that vessels used for pipeline surge control (not storage) are considered to be process tanks.

*Comment:* Several commenters recommended raising the proposed vapor pressure applicability criteria to the levels at which control is required. One of the commenters stated that the EPA's rationale for the proposed levels would also support raising the criteria to the levels at which control is required.

*Response:* The EPA disagrees that the rationale for the proposed applicability criteria also supports raising the levels to those at which control is required. The proposed applicability criteria would exempt tanks storing liquids with a vapor pressure significantly lower than the vapor pressure criteria for control. Regarding the vapor pressure at which recordkeeping of the stored liquid is required, the preamble to the 1987 final subpart Kb (49 FR 29711) states, "These vapor pressures should be high enough so that records would not be kept on liquids that could not, under reasonable circumstances, reach the maximum true vapor pressure cutoffs, but low enough so that records would be kept on most liquids that could reach the maximum true vapor pressure cutoffs." This remains the EPA's position, and the EPA has, therefore, retained revised the applicability criteria as proposed.

*Comment:* One commenter urged the EPA to state that it will not seek to enforce subpart Kb for process tanks that have been constructed, reconstructed or modified after July 23, 1984 and before the date of the proposed amendments to subpart Kb.

*Response:* The EPA stated in the preamble to the proposed rule amendments that the 1998 interpretation of subpart Kb was definitive (in the sense that it was intended to set out the EPA's view and was written by an entity within the EPA with authority to do so) and, as such, can only be changed after notice-and-comment rulemaking. The EPA also stated that it would not be worthwhile

to now propose to include process tanks under subpart Kb, and that the Agency was thus proposing to amend subpart Kb to exempt process tanks to codify the 1998 position. Therefore, the EPA will not be taking any enforcement action regarding the tanks described by the commenter.

*Comment:* One commenter urged the EPA to clarify its "enforcement posture" with respect to storage tanks in facilities other than the chemical and petroleum industries. The commenter stated several reasons for subpart Kb not applying outside the chemical and petroleum industries. The commenter stated that storage tanks outside the chemical and petroleum industries were not considered when determining the economic impacts of the proposed standards. The commenter also stated that the information collection request (ICR) for the standards was limited to the chemical and petroleum industries.

*Response:* The EPA stated in the preamble to the proposed rule why the text of the rule indicates that the rule's scope is not limited to the chemical and petroleum industries. The EPA also described the process by which a source category on the CAA section 111 priority list for regulation was revised (concurrently with the promulgation of subpart Kb) to include all volatile organic liquid storage. The priority list had previously included storage vessel source categories only for the petroleum industry and the synthetic chemical manufacturing industry, confirming what is already clear from the proposed rule's text—it applies to industries other than chemical and petroleum.

The commenter is correct that the economic analysis for subpart Kb did not include storage vessels in industries other than the chemical and petroleum industries. However, in the background information document for the proposed subpart Kb (EPA-450/3-81-003a), the amount of storage in industries outside the chemical and petroleum industries was estimated to be small enough (relative to storage in those industries) to be disregarded in the analysis.

The commenter is also correct that the supporting statement for the ICR for subpart Kb lists only the chemical and petroleum industries as respondents. Again, the EPA estimated that these industries contain the overwhelming majority of volatile organic liquid storage vessels. The list of respondents in the ICR supporting statement does not determine the applicability of subpart Kb; 40 CFR 60.110b determines applicability. Subpart Kb has such broad applicability that an exhaustive list of respondents would be difficult to develop. The Office of Management and

Budget approved the current ICR for subpart Kb under terms which state that the EPA must submit a revised ICR, pursuant to the Paperwork Reduction Act and 5 CFR part 1320. The EPA intends to develop this expanded list during the next ICR renewal for subpart Kb.

In conclusion, the EPA interprets subpart Kb to apply to volatile organic liquid storage vessels, regardless of industry.

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

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

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action exempts certain sources from 40 CFR part 60, subpart Kb. Therefore, it is likely that this action could only reduce the information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0074 (EPA ICR No. 1132.06).

Copies of the ICR document(s) may be obtained from Susan Auby, by mail at

the Office of Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at [auby.susan@epa.gov](mailto:auby.susan@epa.gov), or by calling (202) 566-1672. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. Include the ICR or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to, a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule amendments on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 324 or 325 that has up to 500 employees; (2) a small business in NAICS code 424710 that has up to 100 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the final rule amendments impose no additional regulatory requirements on owners or operators of affected sources. In fact, the final rule amendments should decrease the impacts on small businesses because they exempt some sources from regulation.

##### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule amendments do not contain a Federal mandate that may result in

expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The final rule amendments exempt certain sources from regulation. Thus, today's final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

The final rule amendments do not have federalism implications. They 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, as specified in Executive Order 13132. The final rule amendments exempt certain sources from regulation. The final rule amendments impose no additional burden on sources, and the emissions reductions lost because of the exemptions are not significant. Thus, Executive Order 13132 does not apply to the final rule amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicited comment on the proposed rule amendments from State and local officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule amendments do not have tribal implications, as specified in Executive Order 13175. The final rule amendments exempt certain sources from regulation. The final rule amendments impose no additional burden on sources, and the emissions reductions lost because of the

exemptions are not significant. Thus, Executive Order 13175 does not apply to the final rule amendments.

The EPA specifically solicited additional comment on the proposed rule amendments from tribal officials.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. Today's final rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the final rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

The final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB,

explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The final rule amendments do not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

#### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on October 15, 2003.

#### **List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 24, 2003.

**Marianne Lamont Horinko,**  
*Acting Administrator.*

■ For the reasons set out in the preamble, part 60 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

#### **PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

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

**Authority:** 42 U.S.C. 7401-7601.

#### **Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984**

- 2. Section 60.110b is amended by:
- a. Revising paragraphs (a) and (b);
  - b. Removing and reserving paragraph (c); and
  - c. Adding paragraph (d)(8).
- The revisions and addition read as follows:

**§ 60.110b Applicability and designation of affected facility.**

(a) Except as provided in paragraph (b) of this section, the affected facility to which this subpart applies is each storage vessel with a capacity greater than or equal to 75 cubic meters (m<sup>3</sup>) that is used to store volatile organic liquids (VOL) for which construction, reconstruction, or modification is commenced after July 23, 1984.

(b) This subpart does not apply to storage vessels with a capacity greater than or equal to 151 m<sup>3</sup> storing a liquid with a maximum true vapor pressure less than 3.5 kilopascals (kPa) or with a capacity greater than or equal to 75 m<sup>3</sup> but less than 151 m<sup>3</sup> storing a liquid with a maximum true vapor pressure less than 15.0 kPa.

(c) [Reserved]

(d) \* \* \*

(8) Vessels subject to subpart GGGG of 40 CFR part 63.

\* \* \* \* \*

■ 3. Section 60.111b is amended by:

■ a. Removing the paragraph designations and placing the definitions in alphabetical order;

■ b. Revising the definition of "Storage vessel;"

■ c. Revising the definition of "Maximum true vapor pressure;"

■ d. Revising the definition of "Volatile organic liquid (VOL);" and

■ e. Adding, in alphabetical order, a definition of "Process tank."

The revisions and addition read as follows:

**§ 60.111b Definitions.**

\* \* \* \* \*

*Maximum true vapor pressure* means the equilibrium partial pressure exerted by the volatile organic compounds (as defined in 40 CFR 51.100) in the stored VOL at the temperature equal to the highest calendar-month average of the VOL storage temperature for VOL's stored above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for VOL's stored at the ambient temperature, as determined:

\* \* \*

*Process tank* means a tank that is used within a process (including a solvent or raw material recovery process) to collect material discharged from a feedstock storage vessel or equipment within the process before the material is transferred to other equipment within the process, to a product or by-product storage vessel, or to a vessel used to store recovered solvent or raw material. In many process tanks, unit operations such as reactions and blending are

conducted. Other process tanks, such as surge control vessels and bottoms receivers, however, may not involve unit operations.

\* \* \* \* \*

*Storage vessel* means each tank, reservoir, or container used for the storage of volatile organic liquids but does not include:

(1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors;

(2) Subsurface caverns or porous rock reservoirs; or

(3) Process tanks.

*Volatile organic liquid (VOL)* means any organic liquid which can emit volatile organic compounds (as defined in 40 CFR 51.100) into the atmosphere.

\* \* \* \* \*

**§ 60.116b [Amended]**

■ 4. Section 60.116b is amended by removing the last sentence of paragraph (b).

[FR Doc. 03-24774 Filed 10-14-03; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 258**

[RCRA-2002-0034; FRL-7573-6]

RIN 2050-AE91

**Municipal Solid Waste Landfill Location Restrictions for Airport Safety**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Technical amendment.

**SUMMARY:** EPA is amending the location restriction section in the Criteria for Municipal Solid Waste Landfills (MSWLFs) under the Resource Conservation and Recovery Act (RCRA), in order to add a note providing information about landfill siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act). Today's amendment does not change existing criteria under RCRA with respect to siting MSWLF units.

**EFFECTIVE DATE:** This technical amendment is effective on October 15, 2003.

**ADDRESSES:** Copies of the documents relevant to this action (Docket No. RCRA-2002-0034) are available for public inspection during normal business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding

federal holidays, at the RCRA Information Center (RIC), located at EPA West, Room B-102, 1301 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703-412-9810 or TDD 703-412-3323 (hearing impaired).

For information on specific aspects of this rule, contact Mary T. Moorcones, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 540-338-1348; e-mail:

[moorcones.mary@epamail.epa.gov](mailto:moorcones.mary@epamail.epa.gov).

Some information about this rule can be accessed via the Internet at: <http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/airport.htm>.

**SUPPLEMENTARY INFORMATION:**

**General Information**

*A. How Can I Get Copies of This Document and Other Related Information?*

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA-2002-0034. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the RCRA Information Center (RIC), located at EPA West, Room B-102 1301 Constitution Avenue, NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call 202-566-0270 or TDD 703-412-3323 (hearing impaired). To review the docket materials in person, we recommend that the public make an appointment by calling 202-566-0270.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgrstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to access the index listing of the contents of the official public