(3) Secondary service connection is established for ischemic heart disease or other cardiovascular disease under § 3.310(b).

(c) For claims for secondary service connection received by VA after June 9, 1998, a disability that is proximately due to or the result of an injury or disease previously service-connected on the basis that it is attributable to the veteran's use of tobacco products during service will not be service-connected under § 3.310(a).

(Authority: 38 U.S.C. 501(a), 1103, 1103 note)

§ 3.310 [Amended]

3. In § 3.310, paragraph (a) is amended by removing ''Disability'' and adding, in its place, ''Except as provided in § 3.300(c), disability''.

[FR Doc. 00–3662 Filed 2–15–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6538–2]

RIN 2050–AE76

Deferral of Phase IV Standards for PCB's as an Underlying Hazardous Constituent in Soil

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to temporarily defer a portion of the rule applying Land Disposal Restrictions (LDR) under the Resource Conservation and Recovery Act (RCRA) to underlying hazardous constituents (UHC) in soils contaminated with certain characteristic hazardous wastes. EPA promulgated this rule on May 26, 1998. Specifically, EPA is proposing to temporarily defer the requirement that polychlorinated biphenyls (PCBs) be considered a UHC when they are present in soils that exhibit the Toxicity Characteristic for metals. EPA is proposing this action because the regulation appears to be discouraging generators from cleaning up contaminated soils, which is contrary to what EPA intended when we promulgated alternative treatment standards for contaminated soils. In addition, EPA needs more time to restudy the issue of appropriate treatment standards for metal-contaminated soils which also contain PCBs as UHC. If this proposal is finalized, the Agency would still require generators to treat these soils to meet LDR standards for all hazardous constituents except PCBs. Generators would also be required to treat PCBs if the total concentration of halogenated organic compounds in the soil equals or exceeds 1000 parts per million.

DATES: Submit comments on or before April 3, 2000.

ADDRESSES: Address written comments on this proposed rule to the docket clerk at the following address: RCRA Information Center (RIC), Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2000–PCBP–FFFFF. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the Agency recommends that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the Supplementary Information section for information on accessing them.

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, D.C. metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Ernesto Brown, Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, D.C. 20460–0002, (703) 308–8608, brown.ernie@epa.gov

SUPPLEMENTARY INFORMATION: You can find the index and the following supporting materials on the Internet at: http://www.epa.gov/epaoswer/hazwaste/ldr/index.htm

Preamble Outline:

I. Authority

EPA is proposing these regulations under the authority of sections 1006(B), 2002, and 3004 of RCRA, as amended, 42 U.S.C. 6905, 6012(a), 6921, and 6924.

II. Purpose

EPA is proposing this action because the existing regulation appears to discourage remediation of certain contaminated soils, contrary to EPA's intent in promulgating alternative treatment standards for contaminated soils. In addition, EPA needs more time to review the issue of appropriate treatment standards for metal-contaminated soils that also contain PCBs as UHC.

III. How Can I Influence EPA's Thinking on this Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

IV. Background

A. Land Disposal Restrictions Program

The LDR program requires that generators of hazardous wastes pretreat the wastes before they can be disposed of on land. The treatment must substantially reduce the toxicity or mobility of the hazardous waste to minimize short-and long-term threats to human health and the environment posed by the waste's disposal. EPA typically accomplishes this objective by requiring that hazardous constituents in the wastes be treated to, or be present at levels no greater than levels that can be achieved using the Best Demonstrated Available Technology for the waste.

B. Soils Subject to LDR Requirements

The rule subjects soils contaminated with hazardous wastes to LDR requirements when a generator excavates soils from an area of contamination and disposes of it in a land disposal unit. (See RCRA sections 3004(d)(3) and (e)(3); 63 FR 28602) [1]. Before the Agency promulgated LDR Phase IV standards, the Agency subjected contaminated soil to the same land disposal restriction treatment standards that apply to industrial process waste. EPA, however, has promulgated different treatment standards for contaminated soils than for process wastes. The Agency did so because:

Soils are physically different from process wastes, so that the same treatment standards may not be technically appropriate. See 63 FR 28603.

When generators apply treatment standards for process wastes to contaminated soils, environmentally counterproductive results can ensue, because generators often choose not to undertake remediation such as the exhumation and treatment of contaminated soils, even though the Agency feels is the most permanent approach. See 63 FR 28603–28604. This is because EPA cannot always compel generators of contaminated soil to exhume, treat and redispose the soils.

The relevant statutes and rules often allow generators to remediate soils by leaving contaminated soil in place and providing controls on possible human exposure to those soils, (for example, capping) which can be much less expensive than requiring that generators excavate and treat the soil. See 63 FR 28603–28604; *see also Louisiana Environmental Action Network v. EPA*, 172 F. 3d 65, 67, 70 (D.C. Cir. 1999) which upheld EPA's authority to develop more lenient treatment standards for contaminated soils and other remediation wastes in order to encourage remediation involving exhumation and treatment of these wastes, since ''the agency's authority to compel high-quality disposition of such waste is not as great as it is for as yet undisposed waste.''

C. Alternative Treatment Standards for Contaminated Soils

Generators have the option of complying either with the existing treatment standards for industrial process waste or with the new soil treatment standards. The purpose for these new standards is to encourage generators to remediate and treat contaminated soil, and in particular, to avoid discouraging such remediation when soil is contaminated with organic hazardous constituents. See 63 FR 28603. For soils contaminated with organic hazardous constituents, this choice posed special potential to discourage aggressive remediation because the Agency treatment standards for organic hazardous constituents in process wastes are based on performance of combustion technology. Generators often cannot achieve these standards except by combusting the wastes—a very expensive remedy for soils, and not always technically appropriate. See 63 FR 28603–28604. In recognition of this limitation, EPA established the special soil treatment standards for organics at levels that generators may achieve by technologies other than combustion; that is, EPA established the standards based on the performance of non-combustion technologies. See 63 FR 28614–28617.

D. Underlying Hazardous Constituents

Importantly for the present proposal, the existing standards further require that generators treat all UHC in contaminated soils. See 63 FR 28608–28609; 40 CFR 268.49(d). A ''UHC,'' for this purpose, is any hazardous constituent that might be present in the soil at levels exceeding 10 times the Universal Treatment Standard for that constituent. See 40 CFR 268.49(d). In the Phase IV rule, EPA imposed this requirement for the first time on soils exhibiting the Toxicity Characteristic (TC) for metals, and on soils containing listed hazardous wastes. [2]

PCBs can be an example of UHC in contaminated soils, including metal-containing soils. Where this occurs, the Phase IV rule establishes an alternative treatment standard of 100 ppm total PCBs in soil (10 times the Universal Treatment Standard) or 90 percent reduction of total PCB concentrations in the soil, whichever is higher. See 40 CFR 268.49(c). The other option available to generators is to treat soils to the standards applicable to process wastes, although in that instance as well, soils that exhibit a hazardous characteristic must achieve treatment standards for UHCs before they are disposed on land. 40 CFR 268.40(e). EPA found that generators can achieve these standards without applying combustion technology, see 63 FR 28616 Table 4, although treatment often requires that heat be applied to the waste, as occurs with thermal desorption technology.

The statutory provisions potentially address PCBs in soils in other way. The so-called California list provision, RCRA section 3004(d)(2)(E), provides that hazardous wastes that contain halogenated organic compounds at concentrations equal to or exceeding 1000 ppm cannot be land disposed. Congress specified this level (and the other California list levels) as a starting point in the land disposal prohibition process, prohibiting land disposal of wastes that pose the most obvious hazards. See 51 FR 44718 (Dec.11, 1986). PCBs are a type of halogenated organic compound. Consequently, in the absence of the Phase IV PCB standards, the 1000 ppm level would be the upper bound of PCBs that can be in contaminated soil without triggering LDR treatment requirements (i.e., contaminated soils could not be land disposed equal to or greater than 1000 ppm).

V. Need to Defer the Phase IV Rule

A. Why Has Remediation Stopped?

Unfortunately, initial indications are that the requirement that PCBs be treated as a UHC in soils exhibiting the TC for metals is having an effect opposite to what EPA intended. Cleanups of sites with metal characteristic soils where PCBs are now a UHC and where the remedy was to involve soil exhumation, treatment and redisposal have stopped, or been seriously delayed. See Letter from Phillip Comella Esq. to Steven

[1] Technically, the soils which are subject to LDRs, are a) soil which contains a listed hazardous waste, and b) soil which exhibits (or, in some cases, exhibited) a characteristic of hazardous waste. See discussion at 63 FR 28617–28619. This notice applies to subsets of each of these types of contaminated soils, as explained later in this notice. This notice also uses the term ''contaminated soils'' to refer to soils which may potentially be subject to LDRs.

[2] The requirement already applied, however, to soils exhibiting the ignitability, corrosivity, reactivity, or organic toxicity characteristics.

Silverman, EPA Office of General Counsel, April 21, 1999 detailing experiences of private entities, including waste generators, treaters and disposers; Memorandum to Administrative Record, November 2, 1999 (detailing experiences of EPA site managers). As set out in more detail in these communications, the reason is that as a practical matter a choice is now being presented between combustion and leaving soils in place. Some of the reasons attributed for this are:

- limited effective non-combustion treatment presently available for PCBs, and what there is involves mobile units which face potential permitting delays at non-Superfund sites.
- lack of State authorization to implement the amended soil standards, thus retaining PCBs as a UHC, without the option of treating to 10 times the Universal Treatment Standards or 90 percent reduction from initial concentration.

Commenters further note that at least some of these situations could be eligible for a treatment variance under 40 CFR 268.44. Such situations can occur when the standard is demonstrably not achievable using non-combustion technology, or when treatment to LDR levels would discourage aggressive remediation. See *LEAN v. EPA*, 172 F. 3d at 70 (upholding EPA authority to issue treatment variances for remediation wastes where existing treatment standard discourages aggressive remediation). But there are undesirable delays attendant in the variance process, and EPA in any case believes that if a problem with a rule is widespread, it is appropriate to amend the rule rather than issuing variances piecemeal.

EPA does not necessarily agree with all of these comments, but does believe that remediations involving soils contaminated with both PCBs and metals are being delayed or stopped. This has taken place after promulgation of the new Phase IV requirements respecting these soils, and it appears that at least some of the reasons for these delays are legitimate. Thus, this aspect of the Phase IV rule appears to be having an environmentally counterproductive effect of delaying cleanups and discouraging aggressive remediation.

B. Why is EPA Considering Temporary Deferral?

EPA believes it is appropriate to temporarily defer the requirement that PCBs be treated as an underlying hazardous constituent in TC soils under RCRA 1006(b) in order to investigate how best to integrate the RCRA LDR requirements for PCBs with the cleanup programs under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and RCRA (both the specific ''corrective action'' requirements of RCRA 3004 (u) and (v) and 3008(h), and the cleanup requirements applying to RCRA regulated units, e.g., during closure).

An additional reason EPA is considering a temporary deferral is to investigate further the relationship of the RCRA rules with those for PCB remediation wastes EPA issued under the authority of the Toxic Substances Control Act (TSCA) not long after EPA promulgated the Phase IV rule. See 63 FR 35384 (June 29, 1998). TSCA allows ''bulk PCB remediation wastes'' including soils containing 50 ppm PCBs or greater to be disposed without treatment in a TSCA disposal facility or an RCRA subtitle C landfill. See 40 CFR 761.61(b)(2)(i). These TSCA standards, which allow disposal without treatment of soils containing any concentrations of PCBs greater or equal to 50 ppm, were not established to represent levels at which threats posed by land disposal of PCB-containing soils are minimized. Furthermore, those rules require persons disposing of PCBs to comply with all other applicable Federal, State, and local laws and regulations. These regulations consequently cannot be read as preempting RCRA requirements. Nonetheless, the TSCA rule serves a similar purpose as the RCRA Phase IV rule—an attempt to encourage aggressive remediation of contaminated soil (see 63 FR 35386) and reflects the Agency's judgment that land disposal of these soils is reasonably protective. Certainly as an interim measure EPA believes it appropriate to seek to coordinate better the two sets of rules, and thus to defer the Phase IV rule while we further evaluate the workings and actual effect of the two sets of rules.

C. What is the Effect of the Deferral?

Should EPA adopt a temporary deferral, the statutory California list provision mentioned above (RCRA section 3004(d)(2) (E)) would create an upper bound on the concentration of PCBs in soil that could be disposed without treatment. As explained earlier, that upper bound would be 1,000 ppm, the statutory limit for halogenated organic compounds. This means that a temporary deferral would only affect a relatively narrow class of wastes: soils exhibiting the TC for metals and containing PCBs in concentration between 100 ppm and 1000 ppm.

RCRA allows temporary deferral of the Phase IV requirement. As in the temporary deferral of RCRA requirements to accommodate a potentially overlapping regulatory regime for underground storage tanks at issue in *Edison Electric Inst.* v. *EPA*, 2 F. 3d 438 (D.C. Cir. 1993), EPA here needs to investigate further the relationship of different sets of rules addressing PCB-contaminated soil disposal. These soils will be managed protectively during a deferral period, either in RCRA subtitle C or TSCA-approved landfills, and there is a reasonable upper bound on the concentration of PCBs that could be disposed of without treatment. See 2F.3d at 452–53 citing these factors as a reasonable justification for a comparable temporary deferral. Moreover, EPA may permissibly alter land disposal restriction treatment standards for remediation wastes in order to encourage aggressive remediations. See *LEAN*, 172 F. 3d at 69–70.

A final note: The Agency is not contemplating any type of deferral for other organic hazardous constituents in TC metal soils. Nor is EPA accepting comments on the requirement to treat PCBs present as underlying hazardous constituents in soil exhibiting the TC due to organics. This requirement has been in place without significant issue since 1994 and so is unrelated to the Phase IV rule. The scope of today's document thus is exclusive to soils exhibiting the TC for metals containing PCBs as an underlying hazardous constituent.

The requirement to treat PCBs as a UHC also can apply to soils containing a listed hazardous waste, where the generator elects to comply with the alternative soil standard of 10 times Universal Treatment Standard or 90 percent reduction of initial concentrations. See 40 CFR 268. 49(d). Although the comments EPA has received to this point have dealt exclusively with situations involving soils exhibiting the TC for metals, EPA also solicits comment on whether PCBs should continue to be considered a potential UHC for listed wastes being treated to comply with the alternative soil standards. It should be noted, however, that a generator would have the option of treating the soil to the standards for process wastes, see 40 CFR 268.49(b), in which case there is no requirement to treat UHCs. Thus, generators would not appear to be facing the same quandary as they do with TC soils with PCBs as a UHC.

VI. State Authorization

Under section 3006 of RCRA, EPA may authorize qualified States to

administer and enforce the RCRA hazardous waste program within the State. Following authorization, we maintain independent enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have enforcement responsibility. A State would become authorized for today's proposed PCB treatment standard for contaminated soil by following the approval process described under 40 CFR 271.21. See 40 CFR part 271 for the overall standards and requirements for authorization.

Like all land disposal restriction treatment standards, today's changes are proposed under the authority of 3004(g) and (m) of RCRA. These statutory provisions were enacted as part of the Hazardous and Solid Waste Amendments (HSWA) of 1984. Under section 3006(g) of RCRA, new requirements promulgated under the authority of statutory provisions added by HSWA go into effect in authorized States at the same time as they do in unauthorized States—as long as the new requirements are more stringent than the requirements a State is currently authorized to implement.

However, none of the provisions in today's proposed rule are more stringent than the existing Federal requirements. Authorized States are not required to modify their programs when we promulgate changes to Federal requirements that are less stringent than existing Federal requirements. This is because RCRA section 3009 allows the States to impose (or retain) standards that are more stringent than those in the Federal program. (See also 40 CFR 271.1(i)). Therefore, States that are authorized for the LDR program would not be required to adopt today's proposed changes, and these changes would not go into effect until the State revised its LDR program accordingly. However, if EPA finalizes the proposed temporary deferral, we would encourage States to allow compliance with today's proposed PCB treatment standard for contaminated soil if they have the ability under State law to waive existing land disposal restriction treatment standards, or if they have adopted them but are not yet authorized. Again, if a State were not currently authorized for the LDR program, we would implement this proposed treatment standard in that State.

VII. Regulatory Assessments

A. Executive Order 12866

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

(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 this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.''

Economic Assessment

We estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. The analysis considered compliance cost savings from the deferral and resulted in cost savings. A detailed discussion of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's final rule, followed by a presentation of the cost, economic impact and benefit results were prepared and documented in the following report: ''Economic Assessment of the Deferral of Phase IV Land Disposal Restriction Treatment Standards for Polychlorinated Biphenyls (PCBs) as an Underlying Hazardous Constituent in Contaminated Soils.'' This report can be found in its entirety in the docket for today's proposed rule. A summary of the report is provided below.

Methodology

To estimate the cost savings associated with today's proposed deferral of UHC requirements for PCB-containing hazardous soils, the Agency estimated the difference between the costs that would have been incurred in the absence of the deferral and the costs estimated under the post-regulatory environment with the deferral. The cost savings are reported in a range of savings based upon two baseline scenarios: one baseline scenario compels incineration or other thermal treatment for TC metal PCB-containing hazardous waste soils followed by immobilization of the residue; a second baseline scenario is based upon a number of compliance alternatives, including (1) thermal treatment (e.g., incineration/thermal desorption, other); (2) nonthermal treatment (e.g., solvent extraction/soil washing, chemical dechlorination, ex-situ bioremediation, immobilization); (3) source controls (e.g., capping); (4) no site remediation; and, (5) treatability variances. The second baseline scenario models soil washing, chemical dechlorination and immobilization of the soil for half of the affected soils. The other half of the soils are modeled to be treated through thermal treatment. This baseline scenario will result in lower cost savings because the range of remedies is largely less expensive than thermal treatment.

Volume Results

The procedure for estimating the volumes of PCB-containing hazardous wastes affected by today's proposed rule is detailed in the background document ''Economic Assessment of the Deferral of Phase IV Land Disposal Restriction Treatment Standards for Polychlorinated Biphenyls (PCBs) as an Underlying Hazardous Constituent in Contaminated Soils,'' which was placed in the docket for today's proposed rule. The Agency has assumed that 60 percent of all TC metal soils with organic UHCs (104,730 tons) contain PCBs.

Estimated Cost Savings

The extent of the cost savings from the proposed deferral of LDR treatment standards for TC metal PCB-containing hazardous waste soils depends on the decision whether to remediate the site, the decision to switch to in-situ clean-up remedies (avoiding LDR treatment standards) and the decision to pursue other administrative remedies such as treatability variances. As the result, EPA has estimated the incremental treatment cost savings attributable to the deferral of the Phase IV LDR treatment standards for PCBs as a UHC in hazardous soils to total between $35.3 million and $86 million annually for the thermal treatment baseline—post regulatory scenario and $33.2 million and $55.3 million annually for the multiple remedy/response baseline-post regulatory scenario.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an agency publishes a notice of rulemaking, for a rule that will have a

significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The overall economic impact of today's proposed rule to defer LDR treatment standards for TC metal PCB-containing hazardous waste soils results in cost savings ranging from $33.2 million to $86 million. For the reasons stated above in the estimated cost savings discussion of section X.A.3, the Agency does not believe that today's proposed rule will have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

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

EPA has determined that this rule does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon state, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule. It is expected that states will adopt this rule, and submit it for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has prepared and Information Collection Request (ICR) document: OSWER ICR No. 1442.15 (LDR PhaseIV), and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, D.C. 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

EPA believes the changes in this proposed rule to the information collection do not constitute a substantive or material modification. This proposed rule would not change any of the information collection requirements that are currently applicable RCRA Land Disposal Restrictions Phase IV except to possibly reduce those requirements by requiring fewer references to PCBs. There is no net increase in recordkeeping and reporting requirements (if anything, there may be a slight decrease, as just noted). As a result, the reporting, notification, or recordkeeping (information) provisions of this rule will not need to be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure that may result from this activity.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

G. Executive Order 12898: Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of this final rule on low-income populations and minority populations and concluded.

Today's proposed rule is intended to encourage aggressive remediation of contaminated soils, and thus, and to benefit all populations. As such, this rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

H. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires 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'' are 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule 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, as specified in Executive Order 13132. EPA has determined that this proposed rule, if adopted, would not have ''federalism implications'' within the meaning of Executive Order 13132. This is because the proposal would not impose any direct effects on States, would not preempt State law, and would not constrain State administrative discretion. In fact, States need not even adopt this proposal as part of their authorized programs. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's proposal does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste.

Dated: February 9, 2000.

Carol M. Browner,

Administrator.

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

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart C—[Amended]

2. Section 268.32 is added to subpart C to read as follows:

§ 268.32 Waste specific prohibitions—California list waste.

Effective **[insert effective date of final rule]**, hazardous wastes containing halogenated organic compounds in total concentrations greater than or equal to 1,000 mg/kg are prohibited from land disposal.

Subpart D—[Amended]

3. Section 268.49 is amended by revising paragraph (d) to read as follows:

§ 268.49 Alternative LDR treatment standards for contaminated soil.

* * * * *

(d) *Constituents subject to treatment.* When applying the soil treatment standards in paragraph (c) of this section, constituents subject to treatment are any constituents listed in 40 CFR 268.48 Table UTS-Universal Treatment Standards that reasonable expected to be present in any given volume of contaminated soil, except flouride, selenium, sulfides, vanadium, zinc, and PCB's when present in soils exhibiting the characteristic of toxicity solely because of presence of metals, at concentrations greater than ten times the universal treatment standard.

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[FR Doc. 00–3672 Filed 2–15–00; 8:45 am]

BILLING CODE 6560–50–P