

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 262**

[FRL-7916-2]

**Project XL Rulemaking Extension for
New York State Public Utilities;
Hazardous Waste Management
Systems; Final Rule****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Final rule; change of expiration
date.

SUMMARY: EPA is promulgating today the rulemaking extension proposed and published in the **Federal Register** on January 25, 2005 for the Project XL Final Rule for New York State Public Utilities; Hazardous Waste Management Systems (XL Rule) (70 FR 3501). The XL Rule was published as a final rule in the **Federal Register** on Monday, July 12, 1999 and, by its terms, expired, on January 10, 2005. The details of the XL Rule can be found in 64 FR 37636 (July 12, 1999). No further changes are being made to the XL Rule other than the change in expiration date. Because the requirements outlined in the XL Rule do not become effective until New York State adopts equivalent requirements through a State rulemaking and receives EPA authorization for these equivalent State requirements, EPA is extending the XL Rule for a period of 72 months from the effective date of today's rule. To date, the State has not adopted an equivalent rule and thus the XL Project for New York Public State Utilities has not been implemented. The XL Rule must be extended to facilitate completion of the New York State Public Utilities XL Project.

DATES: This rule is effective on May 24, 2005.

ADDRESSES: The docket containing supporting information used in developing this final rule are available for public inspection and copying. The docket can be found online through the EPA's EDOCKET Web site (<http://docket.epa.gov/edkpub/index.jsp>). EDOCKET is EPA's online public docket and comment system designed to expand access to public information. The docket for this rulemaking can be accessed by conducting a search for Docket ID RCRA-2004-0021.

A docket containing public comments and supporting materials from the original final rulemaking is available for public inspection and copying at the EPA Docket Center (EPA/DC), located at EPA West Building, 1301 Constitution Avenue, NW., Room B102, Washington,

DC. The EPA/DC is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays (all materials from this docket are available 24 hours a day online through the EDOCKET system with the new rulemaking's Docket ID of RCRA-2004-0021). The public is encouraged to phone in advance to review docket materials at the EPA/DC. Appointments can be scheduled by phoning the Docket Office at (202) 566-2270. Refer to RCRA docket number F-98-NYSP-FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 2, 290 Broadway, New York, NY 10007-1866 during normal business hours. Persons wishing to view the duplicate docket at the New York location are encouraged to contact Mr. Philip Flax in advance, by telephoning (212) 637-4143. Project materials are also available for review on today's action on the World Wide Web at <http://www.epa.gov/ProjectXL>.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Flax, U.S. EPA, Region 2, 290 Broadway, New York, NY 10007-1866, (212) 637-4143.

SUPPLEMENTARY INFORMATION: On July 12, 1999, EPA promulgated subpart I of 40 CFR part 262 (XL Rule) which sets forth the requirements for Project XL for public utilities in New York State. The XL Rule was published as a final rule at 64 FR 37624 (July 12, 1999). The XL Rule expired on January 10, 2005. Accordingly, EPA is amending the expiration date of the XL Rule in 40 CFR 262.90(j). EPA is not modifying any other provisions of the XL Rule.

EPA is amending the expiration date of the XL Rule and providing an additional 72 months from the effective date of today's rulemaking. This rule is effective upon its publication in the **Federal Register** (rather than six months from promulgation) based on EPA's finding that the regulated community does not need six months to come into compliance with this regulation. RCRA section 3010(b)(1), 42 U.S.C. 6930(b)(1). The extension of the expiration date for the XL Rule will enable the New York State Department of Environmental Conservation (NYSDEC) to implement portions of the project requiring regulatory changes. New York State has received authority to administer hazardous waste standards for generators that are equivalent to, or more stringent than, the federal program. Therefore, the requirements outlined in the XL Rule will not take

effect in New York State until the State adopts equivalent requirements through a State rulemaking and receives EPA authorization for these equivalent State requirements. EPA will not be the primary regulatory agency responsible for implementing the requirements of the XL Rule. EPA expects this XL Project to result in superior environmental performance in New York State, while providing cost savings to participating Utilities.

EPA received one comment letter in response to the January 25, 2005 proposed rulemaking extension **Federal Register** notice from the Utility Solid Waste Activities Group (USWAG), the Edison Electric Institute (EEI), the American Public Power Association (APPA), the National Rural Electric Cooperative Association (NRECA), and the American Gas Association (AGA) (collectively referred to herein as USWAG). The letter stated that USWAG strongly supports the six-year extension of the XL Rule. The letter reiterated USWAG's belief that the XL Rule will promote more efficient and environmentally sound management of hazardous wastes by allowing participating New York State utilities to consolidate wastes from remote locations at a utility central collection facility (UCCF) without requiring the utility to obtain a hazardous waste permit. USWAG stated that the XL Rule will result in environmental benefits, financial benefits, and reduced paperwork and reporting burdens for both the utilities involved and the New York State Department of Environmental Conservation. No changes have been made to the proposed rulemaking extension based on this comment.

Additional Information*1. Applicability of Rules in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law. A state may receive authorization by following the approval process described in 40 CFR part 271. 40 CFR part 271 also describes the overall

standards and requirements for authorization.

After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (*i.e.*, 42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. Although authorized states are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

2. Effect on New York State Authorization

Today's rule is promulgated pursuant to RCRA provisions that predate HSWA. New York State has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the federal program. New York State has received authority to administer hazardous waste standards for generators. As a result, today's rule will not be effective in New York State until the State adopts equivalent requirements as State law and receives EPA authorization for those equivalent State requirements. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

Statutory and Executive Order Review

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA 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 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 in 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 entitlement, grants, user fees, or loan programs of 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.

Because the annualized cost of this rule will be significantly less than \$100 million and will not meet any of the other criteria specified 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.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to conduct a Regulatory Flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) 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 (3) 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 on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

This final rule will not impose any requirements on small entities. EPA is extending the Project XL Final Rule for New York State Public Utilities; Hazardous Waste Management Systems (XL Rule) that was published on July 12, 1999, which expired January 10, 2005. No other changes are being made to the XL Rule other than to change the expiration date by providing an additional 72 months from the effective date of today's rulemaking.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2010-0026.

EPA is collecting information regarding the locations and amount of waste involved as well as the money saved and what the savings was invested in. EPA plans to use this information to determine whether the XL project is successful. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a Utility decides to participate, EPA requires the filing of a report containing pertinent information. These reports will be publicly available. The estimated cost burden of filing the annual report is \$10,000 and the estimated length of time to prepare the report is 40 hours. The estimated number of respondents is 15. 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. EPA amended the 40 CFR part 9 table of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in the XL Rule. The table lists the CFR citations for EPA's reporting and recordkeeping requirements, and the current OMB control numbers. This listing of OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act and OMB's

implementing regulations at 5 CFR part 1320.

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, 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 of 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.

Today’s rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. As noted above, this final rule is applicable only to New York State Utilities. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this final rule does 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 one year. Thus, today’s rule is not subject to the

requirements of sections 202 and 205 of the UMRA.

E. Applicability of Executive Order 13045

The Executive Order, “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 rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

F. 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” 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.”

This final 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. This rule does not create a mandate on State, local, or tribal governments and does not impose any enforceable duties on these entities. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires 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.” This final rule does not have tribal implications, as specified in Executive Order 13175. The rule does not significantly or uniquely affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (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

As noted in the proposed rule, 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 standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider 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. 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**. A “major rule” cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective May 24, 2005.

List of Subjects in 40 CFR Part 262

Environmental protection, Hazardous materials transportation, Hazardous waste, Packaging and containers,

Reporting and recordkeeping requirements.

Dated: May 17, 2005.

Stephen L. Johnson,
EPA Administrator.

■ For the reasons set forth in the preamble, part 262 of title 40 of the Code of Federal Regulations is amended as follows:

PART 262—[AMENDED]

■ 1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 9612, 6922–6925, 6937, and 6938.

Subpart I—[Amended]

■ 2. Section 262.90 is amended by revising paragraph (j) to read as follows:

§ 262.90 Project XL for Public Utilities in New York State.

* * * * *

(j) This section will expire on May 24, 2011.

[FR Doc. 05–10196 Filed 5–23–05; 8:45 am]

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