

were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not have substantial direct effects on States, the relationship between the national government and the States, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249 (Nov. 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 rule does not have tribal implications, as specified in Executive Order 13175. This rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, entitled "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885 (Apr. 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. 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.

This rule is not subject to the Executive Order because it is not a significant regulatory action under Executive Order 12866 and is not based on health or safety risks. This rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions implemented certain requirements of the Acid Rain Program that were not on based on health or safety risks.

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

This rule is not subject to Executive Order 13211, entitled "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 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 rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not address the use of any technical standards. Thus, this rule is not subject to the NTTAA.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their

mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of protection provided to human health or the environment, but simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not change the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Parts 72, 73, 74, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 5, 2008.

Stephen L. Johnson,
Administrator.

[FR Doc. E8-29386 Filed 12-12-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA-R07-RCRA-2008-0849; FRL-8751-9]

Adequacy of Iowa Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a modification to Iowa's approved municipal solid waste landfill (MSWLF) program. The modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its State law. The Region is also proposing to approve updates to Iowa's approved MSWLF program for adding financial assurance mechanisms for local governments, adding the financial test and corporate guarantee to financial assurance mechanisms, adding a technical amendment to solid waste location restrictions for airport safety,

and adopting language from the Federal MSWLF criteria at 40 CFR part 258.

DATES: Comments on this proposed action must be received in writing by January 14, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2008-0849, by one of the following methods:

1. *www.regulations.gov*: Follow the online instructions for submitting comments.

2. *E-mail*:
mclaughlin.chilton@epa.gov.

3. *Mail or Hand Delivery or Courier*: Chilton McLaughlin, Environmental Protection Agency, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2008-0849. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard

copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Chilton McLaughlin at (913) 551-7666, or by e-mail at *mclaughlin.chilton@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through State-issued RD&D permits. RD&D permits are only available in States with approved MSWLF permit programs which have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Also, EPA issued a final rule on November 27, 1996, for financial assurance mechanisms for local governments (61 FR 60328 at 60337); a final rule on April 10, 1998, adding the financial test and corporate guarantee to financial assurance mechanisms (63 FR 17706 at 17729); and a final rule on October 15, 2003, providing a technical amendment to solid waste location restrictions for airport safety (68 FR 59335). The Federal MSWLF criteria are codified at 40 CFR part 258. Approval procedures for provisions of 40 CFR part 258 are outlined in 40 CFR 239.12.

Iowa's MSWLF permit program was approved on August 19, 1997 (62 FR 44127). On March 17, 2008, Iowa applied for approval of its RD&D permit provisions and its updated rules for its MSWLF program.

B. Decision

After a thorough review, EPA is proposing that Iowa's RD&D permit provisions and its updated rules for its MSWLF program, as defined under Iowa

Administrative Code (IAC) 567, Chapter 113, "Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes," effective December 10, 2007, are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

C. Statutory and Executive Order Reviews

This action proposes to approve state solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866;

2. Paperwork Reduction Act—This action does not impose an information collection burden under the Paperwork Reduction Act;

3. Regulatory Flexibility Act—After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities;

4. Unfunded Mandates Reform Act—Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, this action does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act;

5. Executive Order 13132: Federalism—EO 13132 does not apply to this action because this action will not have federalism implications (i.e., there are no substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities between Federal and State governments);

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this action because it will not have tribal implications (i.e., there are no substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes);

7. Executive Order 13045: Protection of Children from Environmental Health

and Safety Risks—This proposed action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks;

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866;

9. National Technology Transfer Advancement Act—This provision directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. 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. EPA approves state programs so long as the State programs meet the criteria delineated in 40 CFR part 258. It would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets 40 CFR part 258 requirements. Thus, the National Technology Transfer and Advancement Act does not apply to this action;

10. Congressional Review Act—EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**.

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: December 3, 2008.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E8-29642 Filed 12-12-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

RIN 0648-AX36

Notification of Receipt of a Petition for Rulemaking to Implement the Provisions of the Marine Mammal Protection Act for Swordfish Imports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Receipt of petition for rulemaking; request for information and comments.

SUMMARY: NMFS announces receipt of a petition for rulemaking under the Administrative Procedure Act. Center for Biological Diversity and Turtle Island Restoration Network, non-governmental organizations, have petitioned the U.S. Department of Commerce and other relevant Departments to initiate rulemaking to ban importation of commercial fish or products from fish that have been caught with commercial fishing technology that results in incidental mortality or serious injury of marine mammals in excess of United States standards.

DATES: Comments must be received by January 29, 2009.

ADDRESSES: You may submit comments by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.
- Mail: Director, Office of International Affairs, Attn: Swordfish Petition, NMFS, F/IA, 1315 East-West Highway, Silver Spring, MD 20910
- Fax: (301) 713-2313

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

The complete text of Center for Biological Diversity and Turtle Island Restoration Network's petition is available via the internet at the following web address: <http://www.nmfs.noaa.gov/ia/>. In addition copies of this petition may be obtained by contacting NMFS at the above address.

FOR FURTHER INFORMATION CONTACT:

Lekelia Jenkins at 301-713-9090 x131.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(2) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1371(a)(2), states that "The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary [of Commerce] (A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States."

Some information pertinent to the effects of commercial fishing technology on marine mammals can be found in a report entitled "Worldwide Bycatch of Cetaceans: An evaluation of the most significant threats to cetaceans, the affected species and the geographic areas of high risk, and the recommended actions from various independent institutions." This report, published by NMFS Office of International Affairs and prepared by outside experts, was commissioned by NMFS to identify threats to cetaceans, ongoing efforts to address these threats, and prioritize areas where the agency could focus future initiatives to improve international cetacean conservation. The complete text of this report is available via the internet at the following web address: <http://www.nmfs.noaa.gov/ia/docs/OPR36.pdf>.

Information in the Petition

NMFS received the petition on March 5, 2008. The petition asserts that the Secretaries of Commerce and other relevant federal Departments are required to obtain reasonable proof from countries exporting swordfish and swordfish products to the U.S. regarding the effects of their commercial swordfish fishing technology on marine