ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124 and 270

[FRL-4889-1]

RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today proposes to amend its regulations under the Resource Conservation and Recovery Act (RCRA) governing the permitting of hazardous waste management facilities. This proposed rule expands the opportunities for public involvement by allowing public participation at an earlier point in the permitting process for all RCRA facilities, and during key permitting milestones. This proposed rule also amends and clarifies permit modification classifications pertaining to combustion facilities. Finally this proposed rule amends the procedures for interim status combustion facilities during the trial burn period by making the procedures more equivalent to the procedures governing permitted facilities.

DATES: Comments on this proposed rule must be submitted on or before August 1, 1994.

ADDRESSES: Written comments on this proposal should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (5305), 401 M Street SW., Washington, DC 20460. Commenters should send one original and two copies and place the docket number (F-94-PPCP-FFFFF) in the comments. The docket is open from 9 a.m. to 4 p.m., Monday through Friday except for Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260-9327 Copies of docket material may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 1-800-424-9346 (in Washington, DC, call (703) 412-9810), or Patricia Buzzell at (703) 308-8632, Office of Solid Waste, U.S. Environmental Protection Agency 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are proposed under the authority of sections 2002, 3004, 3005 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984.

II. Background

Section 3004 of the Resource Conservation and Recovery Act (RCRA), requires owners and operators of treatment, storage, and disposal facilities to comply with standards "necessary to protect human health and the environment." These standards are implemented generally through interim status standards applicable to facilities that achieve interim status under RCRA section 3005(c), and through permits that are issued by EPA or under authorized State programs. EPA continuously strives to improve the hazardous waste management standards in order to ensure protection of human health and the environment.

The role that combustion plays in hazardous waste management has changed dramatically over the last decade and a half. With the recognition that land disposal of hazardous waste

could present long term pollution problems, larger use of combustion ensued. However, waste treatment alone will not totally solve the problems associated with hazardous waste disposal. Therefore, EPA decided to take a fresh look at how to achieve a fully integrated waste management program that gives source reduction its proper emphasis.[1]

To this end, on May 18, 1993, the Agency announced its Draft Strategy on Waste Minimization and Hazardous Waste Combustion. EPA issued the strategy in draft form as the starting point for the debate on what source reduction/recycling actions and regulatory changes the Agency should pursue. The Agency has been aggressive in involving all the stakeholders as part of the national dialogue on these national policy questions. In addition, since EPA and the States are partners and co-regulators in hazardous waste management, any evaluation of the role of waste minimization and hazardous waste combustion in the hazardous waste management system must be a joint federal and state effort. Thus, EPA and the States have used, and will continue to use, a joint EPA/State committee to further develop the national strategy.

In the context of a national dialogue on waste minimization and hazardous waste combustion, the Agency has identified a number of specific actions it would pursue to ensure that existing combustion facilities operate safely and without unacceptable risks to human health and the environment. These actions include:

- Aggressive use of waste minimization measures in permitting and enforcement efforts that involve generators of combustible waste, as well as incinerators and boilers and industrial furnaces (BIFs);
- Ensuring that a comprehensive risk assessment, including indirect risk, is conducted at each facility site;
- Use of omnibus permitting authority to include dioxin/furan emission limits and more stringent particulate matter standards in new permits, where necessary to protect human health and the environment; and
- Giving low management priority to permitting any new incinerator and BIF capacity, unless the new facilities would replace and be a significant improvement over existing capacity; in other words, the draft strategy makes interim status combustion facilities the highest permitting priority, in terms of processing permits, in order to bring these facilities under more comprehensive environmental controls.

In addition, the draft strategy calls for development of mechanisms to facilitate increased public participation in the permitting process. By developing such mechanisms, EPA hopes to allow the public early access to information about the facility and an opportunity to participate in permitting decisions regarding hazardous waste storage, treatment, or disposal facilities (TSDFs) that may affect their communities.

By providing citizens an enhanced opportunity to participate in facility permitting, the Agency is striving to give citizens more input into decisions about facilities that may impact their communities. This may be particularly so in low income or minority communities where the lack of this opportunity has been felt strongly. Consistent with the Agency's efforts to ensure environmental justice, EPA intends that this rulemaking will give people in such communities increased opportunity to affect RCRA permitting decisions.

The draft strategy has many components and implementing all of its aspects will take time. Today's notice is the first regulatory action that EPA has taken under the draft strategy: it addresses public participation and several improvements to the RCRA permitting program that EPA had envisioned prior to the development of the draft strategy. Specifically, EPA proposes to: (1) Expand opportunities for timely and effective public involvement in the permitting process for all types of units; (2) improve the regulations pertaining to permit modifications, specifically, to clarify combustion modification classifications; and (3) align certain interim status requirements for combustion units with the more stringent permit standards for new units, particularly with regard to trial burns. Although the Draft Waste Minimization and Combustion Strategy focuses on combustion units, many of the requirements EPA is proposing today are more encompassing and apply to all RCRA facilities.

Additional efforts are underway to continue to improve EPA's hazardous waste management standards and to implement other components of the Agency's Draft Waste Minimization and Combustion Strategy. Today's proposed rule is only one piece of an integrated and comprehensive set of regulatory, non-regulatory, and guidance materials intended to support the Agency's Draft Waste Minimization and Combustion Strategy.

EPA has taken administrative steps to address the section of the draft strategy that discusses the Agency's permit denial and appeals process. In particular, the draft strategy indicates that EPA will evaluate ways to limit the burning of hazardous waste in interim status units during the administrative appeal of a permit denial, prior to a final decision. EPA considered a number of options for implementing this aspect of the draft strategy and selected one that could be effected immediately.

The Agency issued a directive under Administrator Browner's signature, on March 16, 1994, to prioritize and expedite the review by the Environmental Appeals Board (EAB) of Federal RCRA permit denials. Under the procedures set forth in the directive, entitled Expedited Administrative Review of Appeals of RCRA Permit Denials Filed by Interim Status Hazardous Waste Combustion Facilities, the Administrator directed the EAB to take final action on any combustion permit denial no later than 90 days from the receipt of a petition for review. EPA believes that these procedures will promote the draft strategy's goal of limiting burning of waste during the potentially lengthy appeals process, during which interim status facilities whose permits were denied were entitled to continue operating under interim status, without infringing upon important rights of appeal.

III. Section by Section Analysis

A. Expanded Public Participation Requirements for All RCRA Facilities

1. Purpose of Public Involvement in Today's Rule

The purpose of this section of the proposed rule is to enhance public involvement in the RCRA permit process by improving and increasing the opportunities for public participation. The permitting agency should carry out these new opportunities concurrently with the existing permitting process. Today's proposed requirements should not delay the process.

"Public participation" is part of the process leading to a final EPA or State permit decision; it provides an opportunity for the public to express its views to the permitting authority and the applicant, and enables both to give due consideration to the public's concerns. Today's proposal will establish procedures to promote better and more timely information-sharing, not only between the public and the

[1] While the Agency is committed to source reduction as its primary approach to waste management, it believes that there will continue to be a role for waste combustion, provided it is done safely and in compliance with federal regulations. Combustion is a proven waste treatment technique to address many types of wastes.

permitting agency, but among the facility applicant, EPA (or the State) and the public. In particular, the rule places new responsibilities on the permit applicant. The Agency believes that the permit applicant, who is responsible for initiating the permit process, is a key participant in the public participation process because it is the permit applicant who must interact and operate within the community.

Although this portion of today's proposal applies to all applicants for new RCRA permits, certain aspects of the proposal specifically respond to the Agency's Draft Waste Minimization and Combustion Strategy (see the Background Section of today's preamble for further discussion of the draft strategy). As noted above, one component of the draft strategy specifically calls for greater and earlier public involvement in the hazardous waste permitting process. Accordingly EPA proposes to amend the hazardous waste regulations to provide for earlier public involvement in the permitting process and, in the case of combustion units, to ensure public involvement at the trial burn plan stage. For example, today's regulations propose specific provisions to: solicit public participation at the beginning of the permit process for all new and interim status facilities; maintain open lines of communication with the public throughout the permit process; and increase public involvement with regard to trial burn plans at combustion facilities. These provisions will provide the public an expanded role in the permitting process by promoting community participation and input at all decision-making levels. These provisions will also help the permitting authority to better address public concerns during the permitting process and foster continued community involvement after facilities are permitted. These procedures are consistent with, and in furtherance of, the congressional mandate, expressed in RCRA section 7004(b)(1), to "encourage" and "assist" public involvement in implementation of the permit program.

2. Current Public Participation Requirements in the RCRA Permit Process

Today's proposed public involvement requirements build upon the current RCRA public participation process. EPA does not intend for the proposed provisions to replace or delete the existing public participation requirements in 40 CFR part 124 and 40 CFR 270.42; these requirements form the foundation for public involvement activities during the RCRA permitting process.

Four steps make up the existing RCRA permitting decision process: (1) Receipt and review of the permit application; (2) preparation of draft permit or decision to deny; (3) public comment period; and (4) final permit decision. EPA regulations currently require public involvement activities during two of the four steps. The first step in the decision process begins when the permitting agency receives the permit application from the facility. Under the existing federal rules, no direct public involvement activities occur at this stage; however, the permitting agency begins to assemble a mailing list of appropriate government agencies and individuals, including interested members of the public, as required by § 124.10(c). The permitting agency uses the list to distribute information about meetings, hearings, and available reports and documents later in the permit process. In addition, the permitting agency may periodically publicize the existence of this list and solicit additions to it.

The second step in the permitting decision process occurs after the regulatory agency completes review of the permit application. At this point, the regulatory agency decides either to tentatively deny the permit application or to prepare a draft permit for the facility. The third step occurs once the regulatory agency makes its preliminary decision about the permit application. Under the existing regulations, the public has its first formal participation opportunities in this step. If the permitting agency prepares a draft permit, it must give a formal public notice that the draft permit is available for public review and comment. In addition, the permitting authority must formally notify the public if it plans to deny a permit application. In both cases, the permitting agency must place the notice in a major local newspaper, broadcast it over local radio stations, and send it to all persons on the mailing list. A 45-day public comment period on the draft permit or notice of intent to deny the permit follows the publication of the notice. The comment period provides the public with an opportunity to comment, in writing, on conditions contained in the draft permit or notice of intent to deny. The regulatory agency may re-open or extend the comment period if, during the comment period, it receives substantial new questions or issues concerning the draft permit decision. In addition, the public may request that the permitting agency hold a public hearing on the draft permit decision. If the regulatory agency holds a public hearing, it must give the public a 30-day advance notice of the time and place of the hearing.

The final permit decision is the fourth step in the permitting decision process. After the public comment period closes, the regulatory agency reviews and evaluates all written and oral comments and, then, issues a final permit decision. At this time, the regulatory agency must send a notice of decision, together with a written response to all significant comments, to all persons who submitted public comments or requested notice of the final permit decision (in accordance with § 124.17). The response to comments summarizes all significant comments received during the public comment period and explains how the permitting authority addressed or rejected the comments in the final permit decision. The permitting agency must place the written response to comments in the Administrative Record established at the regulatory agency.

3. Summary of Proposed Approach

a. EPA's approach to public participation. Today's amendments introduce provisions for new public notices and meetings in the permit process. Through this approach, EPA intends to open opportunities for public participation earlier in the permit process. Through earlier public involvement and improved public awareness, today's requirements will result in more meaningful and interactive public participation. At the same time, these amendments are flexible and allow permitting agencies and facilities to tailor public participation activities according to facility-specific circumstances.

By expanding public involvement opportunities, the proposed rule should streamline the permitting process, since public issues will be raised and addressed earlier in the process. At present, formal public involvement in the permitting process does not begin until the draft permit stage. By this point in the process, the permitting authority and the applicant already have discussed crucial parts of the Part B application; thus, the public often feels that most major decisions on the permit are made before public input. Under today's proposed requirements, the permitting authority will be focusing discussion and dialogue on the permit application earlier in the permitting process. EPA wishes to encourage the public to participate in these earlier and expanded opportunities for involvement, fully raising issues and concerns early so they may be evaluated and responded to. Such early and

meaningful dialogue should result in an expeditious permit decision.

The earlier public involvement opportunities proposed today allow the public the opportunity to raise issues before many decisions are made. This then allows the applicant and the permitting authority to address citizen concerns. The idea of promoting earlier public involvement in the permitting process is also consistent with recommendations put forth by the RCRA Implementation Study and a number of outside sources (e.g., the Keystone Center, environmental groups, and business trade associations).

EPA considered a variety of approaches in developing today's proposal. After careful evaluation, EPA believes that the proposed requirements will meet the Agency's goal of providing increased opportunity for public involvement. Today's proposed requirements would not, of course, preclude additional public involvement activities beyond the regulations, where appropriate on a facility-specific basis, such as alternative public outreach activities, supplementary meetings, or fact sheets. At RCRA locations, in fact, permitting agencies and facilities have implemented a variety of public involvement activities that have helped affected communities to understand and participate in permit decision-making. EPA has published a practical how-to guidance for regional permit writers and public involvement staff, entitled the RCRA Public Involvement Manual (September 1993/ EPA 530–R–93–006). In the guidance, EPA recommends public involvement activities to encourage productive public participation in a variety of community and facility situations. Additional examples of ways to expand public involvement, beyond what is required by today's proposed regulations, are included in section 5.a: General Requirements for Providing Public Notice.

Before drafting this proposal, the Agency contacted a variety of interested parties involved in public outreach activities. EPA had discussions with a range of groups, including: Public interest groups, industry state and local government, Indian tribal representatives, trade associations, and public involvement specialists from EPA regions and Headquarters. These groups submitted valuable comments and suggestions to the Agency on how to expand and enhance public involvement. The Agency also held an informal meeting on October 13, 1993, with a small, yet diverse group of stakeholders to receive their input and to facilitate the exchange of information concerning greater opportunities for public participation. This meeting was a starting point for efforts to improve public involvement in the permitting process; EPA would like to continue these discussions beyond this proposal.

Today's rule is consistent with, and builds upon, the Agency's final Public Participation Policy, published in the **Federal Register** at 46 FR 5740, January 19, 1981. This policy established a uniform set of guidelines concerning public participation in all EPA programs. The guidelines encouraged EPA programs to provide a consistent level of public involvement during EPA activities, including State and local activities funded or delegated by EPA. The 1981 policy embodied many public comments on improving the process and outlined new steps that the Agency should take to ensure that members of the public are given earlier and better opportunities to be involved in EPA decision-making. Among other things, the policy emphasized public access to information as a critical component to successful public participation programs, and encouraged the use of a variety of outreach activities throughout the permit process so that the public can be kept up to date on matters of concern. Today's rule builds upon these policy statements and, in many cases, strengthens them through proposed regulatory language. For example, EPA is proposing regulatory requirements to provide the public with the opportunity to attend a public meeting at the outset of the permitting process. Additional public notices, including improved notification activities, are required at new points within the permit process. These proposed notices will provide information to the public at the beginning of decision-making processes so that the public will have adequate time to respond. Finally today's rule adopts the ideas suggested by the policy on "depositories" and incorporates them into a flexible tool called the information "repository."

In a separate effort, the Agency is reviewing its regulations that impose restrictions on siting RCRA hazardous waste treatment, storage, and disposal facilities (TSDFs). The Agency's current regulations impose restrictions on siting these facilities in flood plains and seismic zones. EPA believes that there may be a need for enhanced national minimum standards as required under section 3004(o)(7) of RCRA. Consistent with Executive Order 12898 on environmental justice, EPA is reviewing existing and potential standards for siting hazardous waste TSDFs. As a part of this review, the Agency intends to look at siting TSDFs in proximity to populations and institutions such as schools, hospitals, and prisons, to determine whether there is a need to consider (and the appropriate way to do so) such factors in siting these facilities.

In conducting the review, EPA will recognize the appropriate role of State and local governments in land use planning and facility siting. EPA does not intend to preempt this role. Rather, it is EPA's intention to review the current procedures and requirements to identify whether any additional measures are necessary to protect human health and the environment.

b. Structure of proposal. In expanding the public involvement activities within the permit process, EPA proposes to place these requirements within 40 CFR parts 124 and 270. EPA placed the general requirements for public participation within Part 124 Subpart B—Specific Procedures Applicable to RCRA Permits. Subpart B is an already established section, which does not contain any regulations at this time. EPA proposes to place public involvement requirements within Subpart B to ensure a clear and orderly integration of new RCRA permitting requirements into part 124. Please note that other sections of this rule will address additional public involvement requirements during the trial burn phase within part 270. The flow chart shown in Figure 1 indicates the points in the permitting process where the proposed additions to public involvement activities would occur.

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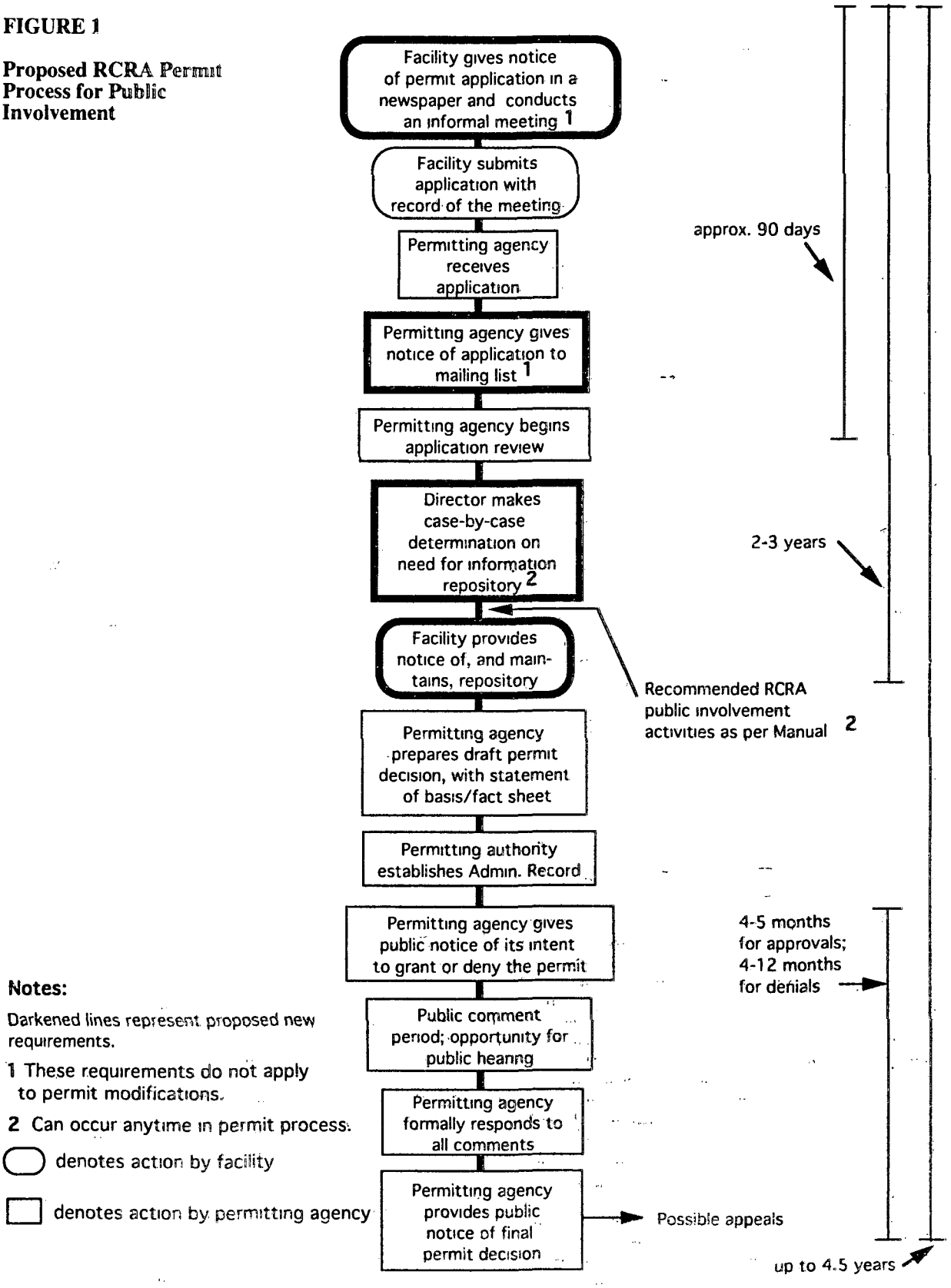
FIGURE 1

Proposed RCRA Permit Process for Public Involvement



Notes:

Darkened lines represent proposed new requirements.

1 These requirements do not apply to permit modifications.

2 Can occur anytime in permit process.

◯ denotes action by facility

□ denotes action by permitting agency

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To avoid any potential confusion, it should be noted that facilities operating under interim status would not lose this status if they do not follow the procedures the Agency is proposing in part 124 or 270. However, the permitting agency may choose to pursue an enforcement action, not connected to the termination of interim status provisions, including a requirement that the application be resubmitted or the notice be republished, if a facility fails to comply with the requirements. Similarly, for a new facility, the permitting agency's recourse would be to require that the application be resubmitted or the notice republished under the correct procedures, rather than permit denial.

c. Overview of proposed requirements. EPA first proposes that a permit applicant must give notice and hold at least one informal public meeting before submitting a RCRA permit application to EPA or the State. EPA believes this requirement will address the public concern that public involvement occurs too late in the RCRA permit process. One purpose of the meeting is to inform the affected community of the facility's proposed operations and its intent to apply for a RCRA permit in the near future. Another important purpose of the meeting is for the applicant to solicit and receive public input. EPA believes that dialogue between the applicant and the public, before the permitting process is initiated with the permitting authority will allow the public to raise important community issues early in the process, and will promote discussion between the public and the persons seeking the permit. In this way, the public will have direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to resolve public issues well in advance of the draft permit. For example, facility owners or operators could address public concerns through the permit application itself, by changing the proposed design or operation of the facility, or through subsequent public interactions.

The notice and meeting also will assist in the generation of a mailing list of interested citizens. This list is a currently required mechanism used in the distribution of notices and information concerning the facility at points throughout the permit process. The permitting authority is responsible for developing a representative mailing list for public notices under 40 CFR 124.10 (see also preamble Section A.2: Current Public Participation Requirements in the RCRA Permit Process). Section 124.10 specifies the timing and content of such mailing lists. The pre-application meeting will assist the permitting authority in identifying people or organizations to include on the list so that it is complete and represents everyone who demonstrates an interest in the facility and the permit process. The permitting authority may develop the mailing list, in part, from the pre-application meeting attendance list. It has been EPA's experience that mailing lists often are not fully developed until the permitting authority issues the draft permit for public comment. Since EPA seeks to increase public participation earlier in the process, generation of a mailing list should precede such activities.

Second, EPA is proposing that the permitting authority provide public notice upon receiving a permit application. Under this provision, the permitting authority would notify the public of proposed facility operations at a much earlier stage than 40 CFR part 124 currently requires. Existing § 124.10 requires the permitting authority to provide public notice of a facility's intention to obtain a RCRA permit, but only after the permitting authority has received and reviewed the application and proposes to grant or deny the permit. Due to the volume and complexity of information contained in a permit application, this process may take several years to complete from the time a permit application is initially submitted. (See Figure 1.) For some facilities, the public has expressed a concern that critical decisions about the facility already have been made by the time the permitting authority proposes the draft permit decision. A requirement for a notice at the permit application stage would allow members of the public to review a permit application at the same time as the permitting agency and inform the agency of any concerns or comments they may have.

In addition to involving the public earlier in the RCRA permitting process, the proposed provisions will also allow the public to get an overview of the RCRA application and permitting process, and the parts played by the permitting authority and the facility owner and operator in that process. Under the proposed rule, the permit applicant conducts the pre-application meeting since it is the applicant who initiates the permit process by submitting a permit application. The permitting authority issues the notice when it receives the permit application from the facility since, at that time, EPA or the State will use its authority to begin review of the permit application.

Table 1 below summarizes the applicability of the pre-application and notice of application provisions in today's rule.

TABLE 1 —PROPOSED REQUIREMENTS FOR THE PRE-APPLICATION MEETING AND THE NOTICE OF APPLICATION

Facility stage in permit process	Facility pre-application meeting	Agency notice of application
New Facility	Yes	Yes.
Interim Status	Yes	Yes.
Permit Renewal	No	Yes.
Permit Modification	No	No.
Post-Closure Permit	No	No.

Third, the Agency is proposing a provision that will allow the Director the discretion to require the facility to establish an information repository. An information repository is a central collection of documents, which could include reports, summaries of data, studies, plans, etc., that the regulatory agency considers in evaluating the permit. The collection would be set up by the applicant in a convenient and accessible location. An information repository similar to those required under Superfund and proposed under the RCRA Subpart S corrective action regulations of 40 CFR part 264 (see 55 FR 30798, July 27 1990), would allow the interested public greater access to information, such as the permit application, and other material relevant to the permit decision process. To maintain flexibility in the permit process, and in recognition that information repositories may not be necessary for all facilities, the Director will use his or her discretion, based primarily on the level of public interest, in requiring a facility to establish an information repository. In situations where public interest is high, a locally established repository may benefit a community by providing convenient and timely access to important information about a local facility. If EPA or an authorized State decides to require a facility to establish a repository it should be noted that only one repository is needed to fulfill the intent of today's proposed requirement, whether the permitting process for that facility is EPA-lead, State-lead, or joint federal-state.

4. Applicability of Public Involvement Requirements

a. Equitable public participation. The Agency believes that affected members of the community should have an equal opportunity to participate in the permitting process. EPA considers the community to be all residents in the vicinity of the facility who might be

most affected by the facility's operations. The Agency recognizes that local communities may be composed of a diverse group of people who may not share English as a primary language. Therefore, for a notice to be effective, the Agency is requiring under proposed § 124.30 that both the facility and the permitting authority make all reasonable efforts to communicate with the various segments within the community. Multilingual public notices and fact sheets may be necessary for some communities, for example, communities that contain a significant non-English speaking population. Likewise, interpreters may need to be provided at public meetings and hearings. EPA understands that developing multilingual notices and fact sheets, and providing translators, could be difficult to implement depending on the size, composition, and diversity of the community. Also, resource constraints could be a factor when determining what is a "reasonable effort" to communicate effectively with the public. EPA would like to solicit comments on how the requirements proposed in § 124.30 could be implemented.

a.1. Agency activities dealing with environmental justice.

The Agency is placing heavy emphasis on environmental justice issues across all environmental programs. The Agency has stated repeatedly that environmental justice is one of EPA's top priorities; all offices should consider environmental justice issues during decision-making.

In December 1993, the Office of Solid Waste and Emergency Response (OSWER) established an Environmental Justice Task Force to broaden discussion of these issues and formulate short and long-term recommendations for how OSWER can integrate the Agency's environmental justice goals and objectives into all of OSWER's programs and activities. Specifically, the task force has examined ways that OSWER can better address the concerns of minority populations and low-income populations that are affected by OSWER-regulated facilities and may face disproportionately high and adverse human health or environmental effects. The task force has included representatives from all OSWER program and administrative offices, as well as other offices throughout the Agency that have an interest in OSWER's programs and activities. The task force has met with representatives from citizen groups, industry, Congress, and state and local governments to ensure that stakeholders have an opportunity to influence OSWER's environmental justice strategy. The draft recommendations emerging from OSWER's Environmental Justice Task Force are consistent with and supportive of the Agency's environmental justice goals and objectives, as well as the President's Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

The Agency believes that this rule presents significant opportunities to be responsive to environmental justice concerns in relation to specific OSWER-regulated facilities. The measures recommended in this proposed rule would help enhance the level of public participation in the permitting process and thereby provide minority populations and low-income populations with a greater voice in decision-making and a stronger opportunity to influence permit decisions early in the process. In today s proposal, the Agency would like to solicit comments on ways to incorporate environmental justice concerns into the RCRA public participation process.

In addition to public participation, some of the key environmental justice issues for the RCRA permitting program include: (1) The siting of hazardous waste facilities; (2) the manner in which EPA should respond when confronted with a challenge to a RCRA permit based on environmental justice issues; and (3) environmental justice concerns in corrective action cleanups. The Agency requests comments on these aspects of the RCRA program in order to help identify the need for additional rulemaking or policy guidance.

The Agency has also begun to focus on how EPA's programs can take account of the "cumulative risk" and "cumulative effects" associated with human exposure to multiple sources of pollution. Although the Agency does not expect to address these issues in this rulemaking, EPA would like to solicit comment on suggested methodologies and procedures for undertaking this type of analysis.

With regard to the siting of a RCRA facility, EPA has in the past focused on geological factors to be considered when siting a facility, but has not undertaken a concerted effort to address environmental justice issues associated with the siting of a hazardous waste facility. The draft final report of the OSWER Environmental Justice Task Force recommends that the Agency compile a national summary of existing State, tribal, and local government requirements for siting with regard to environmental justice. The draft report also recommends that the Agency develop guidance for State, tribal, and local governments on how to best site a hazardous waste facility in the light of environmental justice concerns. In developing this guidance, the Agency would look to existing State and local requirements and would consult with a wide range of public and private stakeholders. EPA has placed the OSWER Environmental Justice Task Force Draft Final Report, April 25, 1994, into the docket for this proposed rule. The Agency is soliciting comments on the recommendations in the draft final report, as well as on any additional steps that the Agency might wish to consider in order to respond to environmental justice concerns associated with the siting of RCRA facilities.

EPA is also interested in exploring appropriate responses when confronted with a challenge to a RCRA permit based on environmental justice concerns. This issue has arisen in the context of recent challenges under Title VI of the Civil Rights Act alleging that federal grants allocated to States to support State RCRA permit programs are being administered in a discriminatory manner. The draft report of the OSWER Environmental Justice Task Force recommends that the Agency first seek to mediate appropriate resolutions among affected citizens, the State, and the permittee. Where necessary and prudent, the task force also proposes that the Agency explore ways of using risk and/or health assessments to determine whether the affected community would face unacceptable human health or environmental effects if the permit were issued. EPA requests comment on these recommendations as well as on the relationship of Title VI to RCRA permitting and EPA's administration of state grants.

The Agency would also like to solicit comments on ways to incorporate environmental justice concerns into the RCRA corrective action program. The OSWER Environmental Justice draft task force report recommends that the Agency examine the current priority-setting method for the cleanup of RCRA corrective action sites to determine whether this system adequately addresses environmental justice concerns. The task force has also recommended that environmental justice policy governing cleanup actions at RCRA corrective action facilities be consistent with the policy implemented under the Superfund program. The Agency would like to receive responses to these proposals as well as additional options under the RCRA corrective action program.

a.2. The relationship of today's rule with Indian Policy. Currently, EPA has the responsibility for ensuring the implementation of the Subtitle C hazardous waste program on Indian lands. This includes the issuance of hazardous waste permits. However, consistent with EPA's Indian Policy of 1984, the Agency will look directly to, and work with, Tribal governments in determining the best way to implement these proposed public involvement requirements in Indian country. This Indian policy recognizes the sovereignty of Federally-recognized Tribes and commits EPA to a government-to-government relationship with these Tribes.

b. Applicability of pre-application meeting. The requirements for the pre-application meeting would pertain only to new permit applications, i.e., the initial permit applications submitted by either new or interim status facilities. Therefore, the proposed pre-application meeting requirements would not affect facilities that are submitting a permit renewal application under § 270.51 or applying for a permit modification under § 270.42. The additional requirements would not apply to cases where a facility submits a permit renewal application, since information concerning the facility would have been previously available to the public throughout the life of its operation. The facility would have completed the permit process and conducted public involvement activities, usually through the permit modification requirements. For example, the public will have had access to the administrative record for the facility, and the permitting authority already would have developed a mailing list for the facility.

Furthermore, EPA is proposing today in § 124.32(a) that the permitting authority provide public notice when a renewal application is submitted. This will provide the public an opportunity to further review the state of operations at the facility, and be aware that the previously approved permit is expiring. The current opportunities for public involvement throughout the duration of a facility's permit should be sufficient to keep the public informed of the facility's activities. No change can occur to any permit without the public, at a minimum, being notified (see § 270.42 modification procedures). EPA would like to request comments on whether these current opportunities are indeed sufficient, or whether the pre-application meeting requirements should apply to renewal permits.

Similarly EPA does not believe the addition of a pre-application meeting requirement is necessary for requested permit modifications. A facility proposing changes to its permit must apply for a permit modification under § 270.42. Existing permit modification requirements have established public involvement procedures that must be followed by the permitting authority and the facility before the final decision. These requirements are comparable to those proposed today for permit applications submitted by new and interim status facilities. For example, significant permit modifications, called class 2 or class 3 modifications, require a public meeting at the initiation of the permit modification process to alert the public to changes the facility is proposing to make. Requiring an additional public meeting would be redundant.

EPA conducted a preliminary overview of State regulations containing public involvement requirements that could potentially overlap with today's pre-application requirements. Approximately a dozen States have siting permit regulations that contain public participation requirements, apart from RCRA requirements. The state siting requirements could overlap with the pre-application meeting requirement proposed today. For example, the two permit processes, i.e., for siting and RCRA permits, could share similar public involvement mechanisms.

EPA believes that it is important for the facility to host an informal and informational pre-application meeting with the public. This meeting should focus on the operating requirements for the permit, including (1) whether the facility should operate and (2) suggestions on how the facility should operate to protect human health and the environment. The informal atmosphere of the meeting should encourage dialogue between the public and the facility addressing questions, such as the need for the facility the proposed facility design, waste management practices, and safety considerations.

On the other hand, the public meetings required by State siting regulations are more formal and may be hosted by the State rather than the facility (although state siting regulations differ regarding which party is responsible for conducting the siting meeting). The focus of the siting meeting is also different than a pre-application meeting, usually examining such factors as the physical location of the proposed facility, including local land-use issues, location sensitivity and suitability.

In addition, there may be a large gap in time between the public siting meeting (for the dozen states with public involvement siting requirements) and the pre-application meeting. If a significant period of time were to elapse between the siting meeting and the actual commencement of the RCRA permitting process, then the issues raised at the siting meeting may not be fresh in the public's mind, or the public may not have the opportunity to raise new issues or potential solutions until later in the process.

Because the goals of each meeting are typically different, i.e., a decision for whether a new facility is located at a particular site versus a decision on whether a facility should operate and how a facility could operate to protect human health and the environment, EPA is not proposing today to allow siting meetings to automatically substitute for the pre-application meeting. Some of the same issues may come up in either public meeting; however, this should not deter the public from providing input at both meetings. Of course, if a State's requirements for siting meetings meet the goal of today's proposal for a facility-led pre-application meeting, particularly in terms of opening a dialogue between the applicant and the community then they would probably fulfill authorization requirements. In this case, the State would not have to require separate pre-application meetings. Refer to Section V State Authority of this preamble for further information on flexibility within the State authorization process.

EPA evaluated the option of allowing State siting meetings to substitute for the pre-application meeting, and, for the reasons discussed above, decided not to include it in today's proposal. However, the Agency is requesting comments on this issue. Specifically the Agency would like to hear comments on reasons for or against allowing State siting meetings to automatically substitute for the pre-application meeting.

c. Applicability of the public notice at permit application. The requirements for the permitting authority to provide public notice when it receives a permit application, like the pre-application meeting requirement, would not apply to permit modifications, because similar requirements already exist for both class 2 and class 3 permit modifications that would make the requirement redundant. Specifically, under § 270.42 (b)(2) and (c)(2), the permittee must send a notice of the modification request to all persons on the facility mailing list and publish the notice in a major local newspaper. The notice is required to give, among other things, the location where copies of the modification request and any supporting documents can be read and copied. EPA believes

that this requirement effectively substitutes for the public notice at application in the case of permit modifications.

Unlike the pre-application meeting requirement, the public notice requirement will apply to permit renewals. A public notice for permit renewals is appropriate because the renewal application may be significantly different from the original permit application, warranting early public involvement. For example, facilities may decide to propose major changes, such as addition of a new unit, at the time of permit renewal, separate from any modifications processed during its original permit. In this situation, the results would be an application that is new in certain key respects. The permitting authority should give the public the same notification as it would for a new permit application, even though the public may already be familiar with the general scope of operations at the facility.

In addition, since permit renewals generally occur 5 to 10 years after a facility is permitted and operating, a notice of the permit renewal alerts the public to the fact that the facility plans to continue operating. A public notice at permit renewal also would allow the public to compare changes between the initial approved permit and the permit renewal application to determine the magnitude of any proposed changes. Finally the notice could serve as a mechanism for updating the facility mailing list, which may not contain a thorough list of people who are interested in the facility.

The requirements for the pre-application meeting and the notice at permit application would not apply to post-closure permits. Post-closure permit applications raise a narrower set of issues and a narrower range of alternatives. The public may be adequately involved through notices at the draft permit stage. Furthermore, the post-closure period does not involve the same ongoing relationship between the facility and the community as the operating period. EPA is requesting comments on whether current requirements are adequate to ensure public involvement, or whether today's proposed requirements for public notice at application submittal should apply to post-closure permits.

d. Applicability of the information repository. The information repository is a public participation tool that the permitting authority can use at any time during the permit process. As proposed, the permitting authority may require the facility to establish a repository during the permit review process for a new facility or at any time during the life of a facility when the Director determines a repository is warranted due to significant public interest in the facility. The need for an information repository will be decided by the Director, based on decision criteria discussed elsewhere in today's preamble. It is important to have a repository requirement that the Director can adapt to different facility situations and public information needs. Thus, the Agency has allowed the Director the flexibility to decide whether and when a repository is established, for what activity, how long it must be maintained, and where it is housed.

5. Detailed Discussion on the Proposed Public Involvement Requirements

a. General considerations regarding public notices. EPA is proposing new requirements for public notice in order to address public concern that community members are sometimes unaware of hazardous waste permitting activities or that public notice about a facility comes too late in the RCRA process. EPA believes that appropriate public notice is necessary to fully inform communities and involve them in permitting decisions involving hazardous waste facilities. By appropriate public notice, the Agency means that sufficient information is provided in a timely manner to all segments of the public throughout the permit process. Towards this end, EPA is proposing additional public notices throughout the permit process. These new notices will require the permitting authority to notify the public when it reaches certain points in the permitting process (e.g., application submittal, prior to a trial burn). This provision will give the public the opportunity to become involved in the decision-making process. As a result, the public may become more informed about the various steps of the permit process and the time requirements of each step.

Similarly, a widely-distributed notice may reach interested individuals who otherwise may not have known about the opportunity to be on the facility mailing list. To address this issue, EPA is proposing requirements under § 124.31(c)(1) concerning the distribution of the public notice for the pre-application meeting. This notice will be the first activity required by the RCRA permit process; EPA believes that stronger requirements resulting in a wider initial outreach are appropriate at this juncture. EPA is not proposing that implementing agencies follow the new distribution requirements for subsequent notices. Such a requirement would be redundant since, as a result of the widely distributed notice of the pre-application meeting, the permitting authority would have a list of interested people that it could contact as part of the mailing list.

The Agency recognizes that the means by which a notice is effectively distributed is highly community-specific. The permitting authority may find any of a variety of distribution mechanisms effective, depending upon such factors as population density, geographic location, expanse, and cultural diversity of a community when such mechanisms are used in conjunction with required notice activities. EPA has learned, through discussions with States, Regions, and outside parties (environmental and industry organizations), of a number of mechanisms for distributing notices. Facilities and agencies may voluntarily use the methods that are most practical for disseminating information throughout their community. Several of these methods that go beyond today's proposed requirements, and which may be voluntarily implemented, are discussed below:

Press releases. Permitting authorities and industry alike have used press releases to successfully alert the local community to specific activities. A press release to one paper may be picked up by other local papers with no cost to the original party. Press releases have the advantage of providing in-depth coverage of a subject in a forum that can be widely distributed within a short timeframe. 40 CFR 124.10(c) specifically cites press releases as a method that permitting authorities can use to promote public participation.

Local cable tv channels. Many communities run their own cable channels for local news and activities. This medium may be used to target a local audience, often at no charge. TV spots may be advantageous for delivering pertinent information about a hazardous waste facility directly to people at home. The permitting authorities may also use the stations to broadcast logistics for upcoming meetings.

Local community groups. The facility may enhance the distribution of information by including local community groups on the facility mailing list. Such groups may have a particular interest in hazardous waste issues and can be effective in circulating the information to a wider audience. Local religious establishments, for example, can be particularly useful in distributing information locally. Local Emergency Planning Committees (LEPCs), required under Section 301 of the Superfund Amendments and

Reauthorization Act (SARA), can also be an effective group through which to disseminate notices. LEPCs are composed of representatives from a variety of groups or organizations, for example, local elected officials, law enforcement, fire fighting, health, and transportation personnel, community groups, and broadcast and print media. Facility mailing lists can include other community groups, such as professional and trade associations, planning commissions, civic leaders, and special interest groups.

b. Requirements for the pre-application meeting. EPA is proposing that the facility provide public notification of the pre-application meeting between the facility and the public. This provision would apply to all RCRA facilities that submit a Part B Permit application for the first time. The facility will have the dual responsibility of providing appropriate notice and conducting the meeting.

EPA believes that the requirements for the pre-application meeting should apply to all RCRA TSD facilities. EPA emphasizes that the pre-application meeting is meant to be flexible, informal, and informative. Owners and operators of hazardous waste facilities, including owners and operators of small businesses, should be able to meet the proposed requirements for the pre-application meeting without undue burden. EPA estimates that the costs associated with the pre-application will be small. In addition, EPA believes that this approach will benefit the facility, as well as the public, in the long run since the public will gain greater understanding of the facility's plans and responsibilities. As stated above, earlier and more meaningful public involvement could streamline the permitting process, since issues and concerns will be raised at the initial point of the process.

EPA solicits public comment on whether or not the Agency should require facilities to hold a pre-application meeting and, if so, whether the requirement should apply to all facilities, or only particular facilities, such as facilities conducting specific waste management practices, managing certain kinds of waste, or accepting off-site waste. In addition, EPA requests comment on the proposed functions of the pre-application meeting as well as comments about the notice requirements for the meeting.

b.1. Providing notice of the pre-application meeting. The Agency is proposing this requirement because EPA is concerned that the existing mechanisms for providing public notice (found in 40 CFR part 124) may not work as effectively at the pre-application stage of the permit process as they do later in the permit process. The main reason for this is that the permitting authority generally does not develop the facility mailing list by the pre-application stage; it usually develops the list after the facility submits its permit application. Consequently there is no mailing list for the facility to utilize. These initial outreach efforts will ultimately benefit the permit process by engaging interested individuals early in the process.

EPA is proposing to require that the applicant provide notice of the pre-application meeting to the public, including EPA and appropriate units of State and local government, in three separate ways. EPA has designed these requirements to ensure effective public notice for the meeting. As proposed under § 124.31(c)(1), two of these requirements are new approaches to providing public notice and apply only to the notice for the pre-application meeting. The third is a current requirement under § 124.10(c)(2)(ii). EPA believes that since the notice for the pre-application meeting is the first public notice in the RCRA permitting process and occurs so early in the process, i.e., possibly before a mailing list is developed, these additional requirements are necessary to ensure widespread notice so that the public is appropriately informed. All of the public notice requirements for the pre-application meeting must contain the information proposed under § 124.31(c)(2).

The first requirement proposes that the facility must place the notice not only in a paper of general circulation within the community where the facility is located, as currently required, but also in newspapers that cover each jurisdiction adjacent to that community. EPA believes this approach is necessary to ensure that the facility appropriately notifies neighboring jurisdictions in the event that a facility is located near a jurisdictional boundary. In these cases, people who live near, but across the county or state line from, a hazardous waste facility that is applying for a RCRA permit may not receive notice of the activity under the present scheme because the newspaper is not in general circulation across that jurisdictional line. As a result, these people may not learn about the facility until much later in the permit process or after the facility is permitted. This initial outreach requirement would avoid such a situation. Interested persons could respond to this initial notice either by attending the pre-application meeting or by signing up for the facility mailing list. In either case, the person would be on the list for subsequent notices that comply with existing requirements in § 124.10(c)(2) (including requirements for the facility mailing list).

In some states (especially in the western part of the United States), the geographic areas covered by a host county or adjacent counties can be very large. In these cases, the requirement for the facility to give public notice in adjacent counties may not be practical or useful. Therefore, in situations where the geographic area of a host jurisdiction or adjacent jurisdictions is very large (hundreds of square miles), the newspaper notice shall cover a reasonable radius from the facility such that all potentially affected persons have the opportunity to receive notice. EPA requests comment on how to implement this alternative notice provision in the regulations without prescribing a specific formula or approach that may not be appropriate in all circumstances.

The required newspaper notices must appear as display advertisements within the newspapers. This provision clarifies the form in which the official public notice must appear in the papers. As defined by this proposed rule, a display ad must be of sufficient size to be seen easily by the reader.

EPA intends the display ad requirement to make information about the pre-application meeting more visible within the newspaper. The display ad must be placed in a section of the newspaper that the average reader is likely to see, or in a manner that otherwise gives the general public effective notice. Currently most public notices related to RCRA permitting appear as legal notices. However, EPA proposes to change this practice for the notice at pre-application in response to public concerns that legal notices are not widely read.

EPA encourages facilities and permit writers, if it is within their means, to apply this requirement to other notices published in the newspaper. The requirements proposed in today's rule are in no way meant to inhibit additional public involvement activities that the owner or operator or the regulatory agency could carry out voluntarily.

The second proposed mechanism for enhancing public notice of the pre-application meeting is a requirement that the facility owner or operator post a sign on the facility property displaying information about the meeting. This requirement will give clear notice of the facility location, and activity the facility is, or will be, conducting. The posted sign must show the same information as

the other notices, except for the requirement to include a facility map, which is unnecessary. The sign must be large enough so that the wording is readable from the facility boundary; it should be located where it will be visible to the public, including passers-by. The Agency encourages facilities to post similar signs within the local community, where appropriate, to encourage people to attend the pre-application meeting. In some cases, the option of posting additional signs around the community may be a cost-effective way for the facility to communicate with the public.

The third requirement is that the facility owner or operator must provide a radio broadcast announcement of the pre-application meeting. This is a current mechanism for providing public notice in § 124.10(c)(2)(ii). The Agency is including it within today's proposed requirements for the pre-application meeting in order to maintain consistency with existing public notice requirements under § 124.10.

Over the years, EPA has received many questions from authorized states and the public concerning radio announcements. Today's proposal requires a radio announcement to be broadcast from at least one local radio station serving the community, which is the same as the current part 124 regulations. As mentioned earlier in the Equitable Public Participation section, EPA considers the community to be all residents in the vicinity of the facility who might be most affected by the facility's operations.

Facilities can, of course, go beyond the minimum requirement being proposed today. EPA provides the following suggestions as guidance for those facilities interested in going beyond the proposed minimum requirements. In some rural areas, community members may listen predominantly to one station; in this case, EPA recommends that the applicant use this station as the vehicle for the notice. Some areas are part of a radio market (i.e., as defined by services such as Arbitron s Radio Market Definitions) and have competing radio stations. Where there is more than one radio station, the facility owner or operator should carefully consider the likely listeners of the radio stations in order to ensure a substantial listener audience. For example, if the facility is located within a predominately Hispanic-American community the applicant should use the local Spanish language station as the vehicle for the notice.

Areas with many competing stations are more likely to have listener groups that may be delineated by, for instance, age, ethnicity, or income. In these situations, broadcasting the notice on several stations, or in more than one language, may be beneficial. In all cases, EPA suggests that the announcement occur at listening hours with a substantial audience, which will vary for each community as well as within listener groups. The facility may consult with radio stations and community members to determine the best times to broadcast the public notice.

The notice of the pre-application meeting is perhaps the most important of the permit notices, since it is the first notice of the permitting process for new or existing facilities. The applicant should make an attempt to ensure that all interested citizens are aware of the pre-application meeting. The new requirements proposed today—display ads, notices published across jurisdictional boundaries, and posted signs at facilities—are more likely to reach a wider audience than a single notice in the legal section of the paper.

In analyzing other approaches, such as applying the new pre-application notice requirements to all other RCRA public notices, EPA found that the requirements may become burdensome to regulatory agencies, who must publish a number of notices throughout the permitting process. (As proposed today, the facility bears the burden of the pre-application meeting requirements.) EPA's goal in proposing this approach is the efficient use of resources for effective public notice. EPA proposes a larger initial outreach effort to help establish a mailing list. By initiating a larger effort early in the process, people who desire to be put on the mailing list are included as early as possible in the permit process. The facility will conduct subsequent notices using the existing notice requirements, which have proven adequate when accompanied by a well-developed mailing list.

The Agency requests comment on the proposed requirements for public notice of the pre-application meeting. For example, EPA would like comments regarding the practicality or usefulness of these requirements and their application within the permitting process.

b.2. Conducting the pre-application meeting. Today's proposed rule requires the applicant to hold at least one informational meeting, open to all interested members of the public, before submitting a permit application. This meeting will provide earlier public involvement opportunities in the RCRA permitting process, and enable the applicant to explain facility plans and the scope of the project to the public. In addition, EPA intends this meeting to create a dialogue with the community raise public awareness, determine public views and questions raised with respect to the facility, and provide the applicant with the opportunity to make changes to its application based on public comments. (The facility may choose to hold additional meetings to answer questions raised at the pre-application meeting.) It is appropriate for the facility to conduct the public meeting because the facility initiates the permit process and conducts business in the area. The permit applicant must give the public adequate notice, at least 30 days before the date, of the pre-application meeting.

The Agency believes that the meeting should be informal and informational. This approach is consistent with the preamble discussion of public meeting requirements for Class 3 permit modification procedures (see 53 FR 37912, September 28, 1988). However, in contrast to the requirements for Class 3 modifications, today's rule would require the facility to submit a record of the pre-application meeting, a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, to the Director. The facility must include this record as part of the permit application and, if required, the information repository. The record requirement will provide the public, especially people who are unable to attend the meeting, and the Agency with a summary of information and issues raised at the pre-application meeting. The proposed rule does not require the permitting authority to attend the meeting. The Agency believes that attendance by the permitting authority in certain instances, may undercut one of the main purposes of the meeting, which is to open a dialogue between the facility and the community. In some cases, attendance by the permitting authority might be useful in gaining a better understanding of public perceptions and issues for a particular facility However, it should always remain clear that it is a facility-lead meeting. EPA believes it is important for the public to understand that it is the facility's responsibility both to initiate the permit process, by submitting an application to EPA, and to inform the public of its intentions. EPA would like to solicit comments on whether the permitting agency should attend the pre-application meetings.

With regard to the nature of the public meeting, EPA intends to provide facilities with considerable latitude. Through discussions with community

relations experts from a variety of backgrounds, EPA has found that "public meeting" means many things to many people. In most cases, however, it appears that people view public meetings as being similar to public hearings. EPA would like to dispel the idea that public meetings must be similar to formal public hearings; rather, EPA encourages facilities to be creative in their approach towards conducting the pre-application meeting, in order to encourage constructive and open participation with people in the community. The facility may accomplish this goal through any of a variety of meeting formats. EPA further encourages innovation in the type of public meeting by allowing the facility to choose the medium by which it reports the record of the meeting to EPA, as long as the medium provides an adequate record of the meeting. For example, facilities may choose to tape-record discussions at the meeting or find another effective medium with which the public is comfortable.

Many guidance documents are available on how to conduct public meetings and community outreach. Among them are EPA documents Community Relations in Superfund: A Handbook (January 1992, EPA/540/R-92/009), RCRA Public Involvement Manual (September 1993, EPA 530-R-93-006), as well as publications by private interests. The applicant may wish to consult these or similar publications for appropriate guidance on how to conduct an appropriate meeting with the public.

Regardless of the guidance source, EPA believes that the facility, in meeting regulatory requirements, should also consider the following factors to conduct what EPA believes to be an appropriate and effective public meeting: first, the applicant should give special attention to process, logistics, content and trouble-shooting when preparing for a public meeting; second, the applicant should provide appropriate public notification, as required by § 124.31(c), identify all sectors of the community that the facility will potentially affect, as required by § 124.30(a), and provide outreach to interested citizens and officials. All these factors are important to ensure that the audience is representative of the community.

The facility should encourage public participation through selection of a meeting date, time, and place that are convenient to the public. The facility should select the date and time of the public meeting to correspond to times when the public is most available; this may require the facility to conduct the meeting after normal business hours. The applicant should make sure that the meeting place has adequate space and is conducive to the type of meeting that the applicant will conduct. The applicant should take care in the development of the content of the meeting to meet the requirement of "sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility and the implications for human health and the environment" under proposed § 124.31(a). To meet the "sufficient detail" requirement, the applicant should have a clear meeting agenda that states the exact reasons for the meeting and the specific objectives of the meeting. The applicant shall give an overview of the facility in as much detail as possible, such as identifying the type of facility (i.e., commercial or private), the location of the facility the general processes involved, the type of wastes generated and managed, and implementation of waste minimization and pollution control measures. In addition, the applicant should provide information about risk to the public, where available.

Finally trouble-shooting potential problems will help the meeting to run smoothly in the event of unplanned obstacles. Trouble-shooting may involve planning for equipment failures, a shortage of parking spaces, or demonstrations, as well as locating facilities for handicapped individuals.

c. *Requirement for public notice at permit application.* Today's proposal would also require EPA or the State to publish a public notice upon receipt of a permit application. EPA proposes that the permitting authority send the notice to everyone on the mailing list. These requirements are consistent with the notice requirements under §§ 124.10 and 270.42. Unlike the proposed pre-application meeting requirement, the permitting authority must also publish this notice for permit renewals (see Section A.4: Applicability of public involvement requirements, of today's preamble discussion).

Information requirements for the public notice will give people a clear opportunity to contact the appropriate parties for questions and suggestions, sign up on the facility mailing list, and locate the appropriate documents, such as the permit application, for review. The permitting authority must provide the name and telephone number of the facility and permitting agency contacts. EPA suggests that the permitting authority designate a community affairs specialist as the appropriate contact person. The permitting authority must also provide an address to which people can send requests to be put on the facility mailing list. EPA believes that the public should have this opportunity during the permit process, and that the notice at application is a good mechanism for announcing this opportunity. Today's proposed rule requires the permitting authority to provide the notice; however, EPA would like to solicit comments on whether the permitting authority or the facility should be responsible for providing the notice at application submittal. While a person may request to be put on the mailing list at any time during the permit process, EPA intends this requirement to ensure that the permitting authority alerts the public early in the permit process. Finally EPA is requiring the notice to include specific information about the facility operations, facility location, and the location where the public may review and copy versions of the permit application and other important documents.

EPA believes that these requirements significantly increase the opportunities for, and the effectiveness of, public participation within the permitting process. The requirement for a public notice will tell the public when an application for a permit has been received by the permitting authority. It would also provide information on where the permit application is available for review by the public and, thus, would allow interested people to begin review of the permit application at the same time as EPA or the State authority. The public would have the opportunity to review all aspects of the permit application in its initial form, before EPA or the State review the application for completeness. The public has the opportunity to make suggestions and raise issues for consideration by the permitting agency at any time during the agency's review of the permit application. Consequently the permitting agency will receive public input earlier in the permit process as well as later, i.e., after the proposal of the draft permit. Another benefit of requiring such a notice is that it may alert the agency to facilities generating high public interest. The public notice will highlight public attention concerning a hazardous waste facility. Public interest and concerns may be expressed to the permitting authority in the form of letters, phone calls, and requests to be put on the facility mailing list. This early stage could be one potential point where the Director may choose to require the facility to establish an information repository. Furthermore, by providing

important and timely information at the beginning of the permit application review stage, the permitting authority can better inform the public about the steps of the permit process and the amount of time required for each step.

EPA believes that the public input that the permitted authority will receive early in the process will assist in the review of the permit application and result in the development of a draft permit that is responsive to community concerns. Once the permitting authority completes the draft permit, or the notice of intent to deny the permit, and proposes it to the public, then the public has the opportunity to review that decision, including any changes that occurred to the original permit application, since they will be reflected in the draft permit. These changes could include changes in response to the public comments EPA may have received during its review of the permit application.

d. Requirement for an information repository. Proposed §§ 124.33(a) and 270.30(m) would provide the Director with explicit authority to require the permit applicant or permittee, respectively, to establish and maintain an information repository. The repository would allow interested parties to: (1) Access reports, plans, findings, and other informative material relevant to the facility and the particular issues at hand; and (2) receive information on appropriate opportunities for involvement during a variety of permitting decisions. EPA expects that the Director would consider requiring a facility to establish a repository in a limited number of cases where the community expresses a high level of interest. A high level of community interest could be demonstrated, for example, in such ways as written requests from members of the public, or press coverage. However, the final decision for requiring the repository is at the Director's discretion. The Director may also specify any appropriate time period for the repository.

As provided in proposed § 124.33(b), the information repository will contain all public information that the Director determines to be relevant to public understanding of permitting activities at the facility. In general, the Director would require the facility to make available those reports or documents that provide the most relevant information about the facility and the best technical basis for decision-making. The information repository could include some of the following items: copies of the permit application, technical documents directly supporting the application, maps (i.e., sketched or copied street map) of the proposed location of the facility, notice of deficiencies (NODs), or summary reports of ground-water and air monitoring results at the facility if such reports exist for the facility location. The repository should also contain information on how the public may participate and become involved during the permitting process. For example, EPA may contribute a fact sheet that outlines public involvement opportunities within the permit process and how to be put on the facility mailing list. Similarly, the facility may provide information in the repository on any additional public involvement activities it chooses to conduct. Examples of background material the facility may maintain in the repository include copies of relevant RCRA regulations and related information, e.g., fact sheets. The facility may exclude from the repository any material it claims to be confidential business information (CBI). Examples of CBI could include trade secrets, commercial, or financial information whose general availability could cause substantial harm to the facility's competitive position. The contents and size of the information repository may differ among sites, depending upon the reasons for setting up the repository, the permitting phase of the facility and the site-specific characteristics of the facility.

The facility is responsible for site selection and maintenance of the information repository. The facility should place the repository at a local public library, town hall, county courthouse, community college, public health office, or another public location within reasonable distance of the facility. In instances where such a location is not feasible due to the remote location of the facility, the Director may require the facility to establish and maintain the repository at some other suitable location. In most instances, the information repository should not be at the facility. Interested communities have expressed a greater comfort level with siting the repository at a public location, instead of within facility boundaries. The repository must also be open to the public during reasonable hours or accessible by appointment. Reasonable hours could include, for example, weekend and evening hours of access (e.g., beyond normal business hours), depending, among other things, on work schedules of the interested individuals, the degree of public interest in the facility permitting activities, the convenience of the location of the repository, and the timing of public meetings or hearings. In these situations, EPA encourages facilities to select a location that already has extended hours of operation, such as a local library.

EPA encourages facilities to establish the information repository at a location that has reasonable access to a photocopy machine, if possible. Such a location would be more convenient for the people who wish to make copies of any of the materials at reasonable cost. For example, some of the public locations mentioned previously should, in most cases, have a photocopy machine on the premises. If it is not possible, the facility may want to explore other options, such as providing extra copies of documents that people can keep without charge or at reasonable cost.

In cases where physical space to house the documents is limited, a potential solution for the facility, where resources allow and capability is available at the location, is to copy documents onto microfiche or CD-ROM. Either of these possible options requires little space and would discourage document theft or vandalism.

Under § 124.33(d), the Director will specify requirements that the applicant must satisfy in informing the public of the existence of the information repository. At a minimum, the Director will require the facility owner/operator to notify individuals on the mailing list when the facility establishes the repository. The Director may also require the facility to provide public notice in a local newspaper. As a practical matter, the facility may, in some cases, choose to provide the relevant information to the permitting authority so that it may include the information in other required notices. The facility owner/operator would identify the EPA or State office contact and a facility contact person to answer questions related to the repository. EPA suggests that the permitting authority designate a community affairs specialist as the appropriate contact person.

The information repository EPA is proposing today closely resembles the repository proposed under Subpart S of the Corrective Action Rule (see 30798 FR, July 27, 1990) and is similar to the repositories established at Superfund sites under the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA). EPA's CERCLA experience has demonstrated that the public's interest in nearby hazardous waste activities is served effectively by a repository. Without a local repository, the burden falls on

citizens to locate and contact the appropriate officials who are knowledgeable about the site in Regional EPA or State offices, which could be located far from the site.

There are three major differences between the information repositories in today's proposal and the repositories included in the CERCLA program. First, Superfund requires information repositories at all sites on the National Priorities List (NPL), whereas, under today's proposal, the Director would use his or her discretion on a case-by-case basis. All communities may not desire or request every option available for public involvement. In most situations, an information repository may not be necessary and could become an unnecessary resource drain for the local community hosting the repository. Providing discretion to the Director will allow the facility and community to use their resources in the most efficient manner. In making such a determination, the Director would consider the degree of public interest (which could, for example, be demonstrated through written requests from the public to set up a repository), as well as the proposed location of the facility, the proposed types and volumes of wastes to be managed, and the type of facility. Furthermore, the Director may consider requiring information repositories at certain Class 3 modifications or at other stages within a permit where there is a high level of public interest.

The second major difference between the CERCLA and proposed RCRA repositories is that CERCLA repositories for NPL sites generally house the administrative record for CERCLA actions. Under the RCRA permitting program, and as described in proposed Subpart S, EPA Regional offices, or authorized States, maintain administrative records, which provide documentation of the basis of EPA's decisions and other parts of the record, at Regional office location. Because the RCRA permitting record is already available for public inspection at a separate location, the Agency does not believe that it is necessary to duplicate the entire administrative record for RCRA facilities at information repositories. The administrative record developed during the permitting process is often large, and could become burdensome to the Agency and the facility if it were duplicated in its entirety in an information repository. In addition, the space required to house an information repository, if it were required to be a duplicate of the administrative record, may severely limit prospective repository locations in a community.

The third major difference between the CERCLA and proposed RCRA provisions relates to the point in the waste management process when an information repository is established and maintained. Information repositories are established at NPL sites to give the public the opportunity to keep informed during the cleanup process. On the other hand, the repository proposed for certain RCRA facilities could be established by the facility at any time during the RCRA permitting process or during the life of the facility. In either case, the facility will set up the information repository to provide information to the community about the specific issues at hand. Therefore, the Director may require the facility to operate the information repository during the permit application process only or the active life of a facility, whichever best applies to the facility and the community. For new facilities, this provision means that the Director might instruct the facility to establish an information repository before construction of the facility. EPA is concerned that the information repository for a RCRA facility could become cumbersome if the Agency prescribes specific content and duration requirements in a regulation. Therefore, EPA believes that the Director should designate timeframes and details for the contents of the information repository on a case-by-case basis, in keeping with the goal of enhancing public participation in the permitting process.

The Agency chose what it believes to be the most flexible approach, that is, one that allows permitting authorities to readily respond to community demands. However, the Agency recognizes that questions may exist regarding this approach and requests comment on several aspects of the information repository. First, the Agency seeks comments on making the information repository an optional, as opposed to mandatory, tool within the permitting process. Second, EPA solicits comments on making the repository mandatory for some types of units; for example, the Agency could require all commercial facilities or facilities managing certain types of waste to establish information repositories. Third, EPA requests comments on the location of the repository and the point in the permitting process when it might be appropriate for the Director to require certain facilities to establish or terminate a repository. Fourth, the Agency seeks comments on what documents the facility should include within the repository as a minimum, and the process by which those documents are selected.

B. Permit Modification Procedures in § 270.42

1. Purpose

The main purpose of this section of the rule is to clarify the combustion modification provisions found in Appendix I of § 270.42. EPA is aware that there has been some confusion over the description of modifications listed under section L.7 of Appendix I, which covers the shakedown and trial burn phases of operation for combustion units. Through today's changes, EPA intends to make these modification classifications easier to understand and implement. Today's proposal clarifies and describes the phases of shakedown and trial burn in more detail, thus, making it easier for the facility to distinguish between modification classifications. By making it easier for a facility to select the appropriate classification for each modification activity, the proposed rule will make compliance with the modification process easier.

This section also proposes minor revisions to § 270.42(d) of the modification procedures and addresses those modification requests that are not classified in the Appendix I table of § 270.42. Today's proposal clarifies how facilities may implement and utilize the provision for other modifications in § 270.42(d).

2. Background Summary

EPA first promulgated procedures for RCRA permit modifications in 1980 as part of the initial regulations establishing the RCRA permit program. This system of modifications consisted of two types: Major and minor. Major modifications followed the same public notice and comment procedures as for permit issuance, while minor modifications required only approval by the permitting authority. "Minor modifications" were defined as any modification contained in a short list in the regulations; all other modifications were deemed "major."

EPA gained experience in implementing these procedures and decided that the Agency could improve the modifications process. One of the Agency's primary concerns was that most modifications were processed under the major modification procedures since few modifications were listed as minor. Since many less consequential permit changes and facility improvements were subject to extensive "major" modification procedures, EPA found that facilities

were discouraged from making improvements to upgrade the facility to be more protective. At the same time, EPA and the States were diverting their resources to address minor modifications, instead of addressing modifications with greater environmental significance, or other permitting and enforcement actions. In considering how to address these concerns, EPA determined that the procedural structure needed modifying in order to classify the many activities that did not fall easily into only the major and minor categories.

EPA amended the procedures for facility-initiated permit modifications on September 28, 1988 (see 53 FR 37912). The goals of this rule were to allow for additional flexibility in processing permit modifications and to provide for an appropriate level of public involvement in the decision-making process. The main feature of these revised procedures was a system of three classes of permit modifications, ranging from Class 1 for the least significant changes to Class 3 for the most significant facility modifications.

EPA continues to believe that Agency and State permitting authorities must focus time, efforts, and resources on substantive changes to protect human health and the environment. With three classes of procedures, permitting authorities can classify modifications more accurately, according to their environmental significance, than they could under the former system. Individual examples of modifications are classified in a detailed appendix to the rule (Appendix I to § 270.42).

3. Technical Corrections

In today's rule, EPA is proposing certain technical corrections in §§ 270.42(a)(1)(ii), 270.42(b)(2), and 270.42(c)(2). One correction would change the reference for notifying appropriate units of state and local government in each of these paragraphs to § 124.10(c)(1)(x), in order to correct a typographical error. At present, these sections incorrectly reference § 124.10(c)(ix), which is the reference for notifying the facility mailing list.

EPA is also proposing to make a technical correction to § 270.42(b)(6)(i). In this paragraph, the term "notification request" should be changed to "modification request." It is clear from the preamble to the September 28, 1988 permit modification rule (see 53 FR 37916) that EPA intended that the deadline for EPA action be related to the date that the modification request is submitted to the permitting authority.

4. Unclassified Modifications

During the development of the September 1988 permit modification rule, EPA recognized that classifying all possible permit modifications under the items listed in Appendix I of § 270.42 would be impossible. Therefore, the Agency provided a procedure in § 270.42(d) to enable facilities to submit modification requests for changes that are not specifically listed in Appendix I. For these unclassified modifications, facilities must either use the Class 3 modification procedures or, alternatively, request that the Agency make a determination that the activity is either a Class 1 or 2 modification. In general, requests for a classification determination would be attached to the modification request. In making its determination whether to process the request as a Class 1, 2, modification instead of a Class 3, the Agency would consider the similarity of the specific modification to others listed in Appendix I and the criteria listed in § 270.42(d)(2).

After several years' experience, EPA has found that very few unclassified modifications have been processed using this procedure. EPA believes that both facilities and permit writers may be restricting themselves to only the classification examples that are in Appendix I. EPA is also concerned that in those cases where § 270.42(d) is used, the Class 3 modification procedure may be automatically selected, without consideration of whether the permit activity is less significant and should be reclassified to a lower category.

While EPA believes that Appendix I offers a good starting point for classifying modifications, facilities and the permitting authority should both make additional efforts to use the flexibility in § 270.42(d) when proposing modifications. Use of this flexibility will allow permit writers to better focus their efforts and resources on modification procedures that are necessary and appropriately tailored to the substantive changes proposed. Therefore, EPA believes that facilities should use the flexibility contained in § 270.42(d) when their site-specific permit changes are not listed in the Appendix I table. To address this situation, EPA is proposing to modify the wording in § 270.42(d) to clarify that unclassified modifications can be processed under Class 1 or 2 procedures, if this lower classification is more appropriate. EPA is also proposing to add a notation to Appendix I that instructs facilities to use the procedures in § 270.42(d) if a proposed modification is not listed in Appendix I.

In addition, EPA would like to clarify that the temporary authorization provision in § 270.42(e) may be used by the facility, subject to approval by the permitting authority, to implement unclassified modifications as well as classified ones. In other words, the permitting agency may grant a temporary authorization, without prior notice and comment, for activities that are necessary for facilities to respond promptly to changing conditions to be protective of human health and the environment. Temporary authorizations have a term of up to 180 days; the permitting agency may grant temporary authorizations for Class 2 or 3 modifications that meet the criteria in § 270.42(e), including compliance with the part 264 standards. Activities that will be completed before the 180 day term expires do not require a modification request. If a facility knows up front that the activity will take longer than 180 days to complete, it should submit a modification request at the same time as its request for temporary authorization.

5. Revisions to Appendix I of § 270.42

RCRA permits for new incinerators and boilers and industrial furnaces (BIFs) address four distinct phases of operation after construction. The four phases are: Shakedown, trial burn, post-trial burn operation, and final operation, which lasts for the duration of the permit. The permitting authority establishes operating conditions for each of these phases in the permit.

The shakedown phase of operation lasts from the initial start up after construction until the trial burn. The shakedown phase prepares the unit for the trial burn. During this period, possible mechanical difficulties are identified and the unit reaches operational readiness by achieving steady-state operating conditions immediately prior to the trial burn. Federal regulations limit the shakedown period to 720 hours of operation using hazardous waste feed; the permitting authority may allow one additional period of up to 720 hours with cause. Permit conditions limit operations during this period; the permit sets hazardous waste feed and other waste management practices and requires the facility to monitor certain key operational indicators.

The trial burn, which typically lasts several days, is the actual testing that the facility conducts, with permitting agency oversight, to (1) determine whether a combustion unit can meet the performance standards required by the

regulations and the permit, (2) establish the final facility operating conditions for the term of the permit, and (3) provide data on which the permit authority can base a risk assessment. The trial burn plan contains the parameters for conducting a trial burn. The trial burn plan is part of the original permit for new facilities and must be approved by the permitting agency before the facility can conduct a trial burn. The facility often tests several sets of operating conditions during the trial burn. The conditions are designed in order to determine the range of operating conditions where the unit meets the performance standards. For example, the facility may set one trial burn condition to determine what the maximum hazardous waste feed can be. The trial burn demonstrates the range of operating conditions that allow the facility to comply with the performance standards. The permit writer uses the results of the trial burn to define the operating conditions that the facility will operate under during the permit term.

The post-trial burn phase starts after the trial burn and lasts an average of 3 to 9 months. The permit specifies operating conditions that apply during this phase. Federal regulations require the permittee to analyze the results of the trial burn and submit them to the Agency within 90 days of completion of the trial burn, or later if approved by the Director. Also during this period, the facility may submit, and EPA may process, a permit modification to revise the final operating conditions to reflect the results of the trial burn and any other information. This phase ends once the permitting agency and the facility complete all necessary permit modifications and the final operating conditions take effect.

The final operating conditions are effective for the life of the permit, unless the facility's permit is modified pursuant to 40 CFR 270.41 or 270.42. The permit writer bases the conditions on actual trial burn data that reflect the conditions under which the facility met the performance standards during the trial burn.

a. Structure of today's proposal. Confusion has existed, at times, over the descriptions of modifications for certain items listed in section L of Appendix I to § 270.42, which covers incinerators and BIFs; in particular, the confusion has concerned changes during the shakedown period of operation and trial burn. How to interpret these modification classifications may be unclear in certain situations. In order to avoid further confusion or potential delays in determining these classifications, the Agency is proposing to reorganize and clarify Section L.7 of Appendix I.

Currently, Appendix I of § 270.42 places items regarding the shakedown period, trial burn plan, and post-trial burn operation into the same section, i.e., section L.7 EPA believes that placing those items regarding the shakedown period in one section and items concerning the trial burn plan into another section, along with describing each item more precisely, will clarify the intent behind each description. This reorganization will make it easier to classify individual modification requests and ensure that the permitting agency processes the requests under the appropriate procedures. EPA proposes today that all modifications regarding the shakedown period will remain in section L.7 and all items regarding the trial burn will move to new section L.8. The existing section L.8. will become section L.9. An explanation of the proposed revisions to sections L.7 and L.8. of the Appendix follows.

In this proposal, Class 2 will remain the highest classification for changes to the trial burn and shakedown period permit conditions. Further, the permitting agency will continue to process many changes under the Class 1 procedures, with prior Director approval. One reason for these classifications is the short period of operation for both the shakedown and trial burn phases. The permitting authority must be in a position to respond quickly to requests for changes that are necessary to ensure thorough testing of the unit. In addition, operating conditions during the shakedown period are generally more restrictive than the final operation conditions.

b. Shakedown. Appendix I to § 270.42 currently classifies modifications addressing the shakedown period for a permitted combustion unit in items L.7 a. and b. EPA today proposes to simplify item L.7.a. by applying it only during the shakedown period and moving the references to the trial burn plan and post-trial burn operation to newly proposed section L.8. The permitting agency should not process under L.7.a. any modifications that are classified in other items in Appendix I. Today's proposed rule will not change item L.7.b., which allows the Director to authorize an additional 720 hours of operation as a Class 1 modification.

EPA also proposes to reclassify proposed item L.7.a. as a Class 1 permit modification, with prior approval of the Director. Our basis for this change is that the narrower scope and limited duration of the shakedown period means that a facility's activities would be less significant than the activities found under the existing L.7.a. One example of a modification under proposed item L.7.a. would be a change in combustion temperature to increase the unit's efficiency. The purpose of the shakedown period is to prepare the unit for the trial burn and, thus, any changes made during the shakedown period would not affect long term operation. The shakedown period can last no longer than 720 hours of operation, with only one extension possible. As stated previously modification items related to the trial burn will now be addressed by the permitting authority under proposed section L.8.

c. Trial burn. Today EPA is proposing to create a new section L.8. in Appendix I to address modifications to permit conditions during the trial burn. These conditions are contained in the approved trial burn plan, which is a part of the RCRA permit. EPA has structured this section to progress from changes before any trial burns are completed to those after a trial burn has been conducted, including changes made to reflect the results of a successful trial burn. The format of the new section L.8. is as follows.

EPA is proposing to revise Appendix I to address changes to the trial burn plan before the trial burn is complete (items L.8.a. and L.8.b). Under the proposed scheme, the permitting authority will consider changes to the trial burn plan a Class 2 permit modification, unless they are minor, in which case they will be Class 1, with prior Director approval. One example of a minor change would be an increase in the secondary combustion chamber temperature for a trial burn condition that is testing the destruction and removal efficiency for organic wastes One example of a major change would be an increase in the waste feed rate. Please note that classifying changes as minor with regard to the trial burn is not a new requirement; it was previously listed under item L.7.c. However, to reflect the fact that the trial burn conditions are contained in the trial burn plan, EPA is deleting any references to "operating requirements set in the permit" from the modification table.

EPA expects that permittees may request technical changes in the trial burn plan under L.8.a. while the permitting authority is on-site immediately before, or during, the trial burn. These changes address unanticipated issues and are often necessary for effective and protective operation and testing during the trial burn. A representative of the permitting authority usually the permit writer, is

typically at the facility during the trial burn. The Agency encourages permit writers and facilities to write trial burn plans with the flexibility to accommodate alterations during the trial burn. The permitting authority can expedite the modification process by delegating approval authority to one of its agents. The permit itself can also specify what level of permitting agency staff has authority to approve these minor changes. In deciding whether to allow such changes on-site, we encourage the permit writer to consider the criteria contained in the February 16, 1989, Trial Burn Observation Guide. Of course, the final permit conditions would limit the permittee to those conditions that met the performance standards during the trial burn.

After a facility conducts a trial burn and submits the results to the permitting agency, the facility may request another trial burn. The facility must, then, submit a new trial burn plan. EPA is proposing to revise Appendix I to clarify this situation. Item L.8.c. specifically relates to situations where the facility did not meet the performance standards set in the trial burn plan and the facility proposes another trial burn, or portions of a trial burn, at improved conditions. Item L.8.c. addresses conducting additional tests to replace one or more of the failed conditions of a trial burn. Before the facility can conduct these tests, it must revise the conditions in the trial burn plan and the permitting agency must approve the revisions through a permit modification. In general, the permitting agency will not approve the modification request to conduct another trial burn unless the facility has provided a sound technical basis, demonstrating that the revised operating conditions are likely to meet the performance standards set in the permit.

EPA is also proposing to classify item L.8.c. as a Class 2 permit modification. The Agency recognizes that this classification represents a change from the preamble language in past incinerator technical regulations. An early incinerator rule preamble states that "if compliance has not been shown and an additional trial burn is necessary, the permit may also be modified under § 122.17 [old minor permit modification language] to allow for an additional trial burn" (See 47 FR 27524, June 24, 1982). This 1982 preamble language describes a trial burn retest of a failed condition. Since 1982, EPA has gained considerable experience regarding trial burns. EPA now believes that if a facility does not meet the regulatory performance standards during the trial burn, then the public needs to be involved before the facility revises the trial burn plan and conducts another test, because the facility's failure under certain conditions may raise concerns. Therefore, EPA believes that the additional public participation requirements of the Class 2 procedures are appropriate for this item. (See proposed § 270.74(c)(7) for the analogous procedures for interim status combustion facilities.)

Furthermore, EPA is proposing to add item L.8.d to address changes to the permit conditions that are in effect during the limited period called the post-trial burn period. (These modifications would currently be addressed under item L.7.a.) Because any changes during the post-trial burn period will be limited in duration, similar to those during the shakedown period, EPA is also reclassifying post-trial burn period modifications from Class 2 to Class 1 permit modifications, with prior approval of the Director.

For the last item in this section of Appendix I, EPA is proposing to move existing item L.7.d. to L.8.e. This item describes revising the final operating conditions to reflect the results of the trial burn. Changes in the final permit should reflect the operating conditions under which the facility met the required performance standards during the trial burn. EPA does not propose changes to the wording of this item.

C. Requirements Regarding the Trial Burn

1. Purpose and Applicability

The purposes of this section of the proposed rule are (1) to make the permitting procedural requirements for interim status combustion units more equivalent to current permitting requirements for new units, particularly with regard to trial burns, and (2) to clarify some administrative permitting procedures for combustion units. In addition, this section contains proposed requirements that will provide for more public involvement opportunities, both earlier in the combustion permitting process and at key points throughout the process.

The requirements in this section apply only to combustion units at both interim status and permitted facilities.

2. Summary of Proposed Approach

EPA is proposing today to create a new § 270.74, which will contain permitting procedural requirements for interim status combustion units. This proposed new section is a consolidation of §§ 270.62(d) and 270.66(g), which currently contain permitting procedural requirements for interim status incinerators and BIFs, respectively. Proposed § 270.74 is virtually identical to §§ 270.62(d) and 270.66(g), except where EPA is proposing additional permitting procedural requirements for interim status units. EPA intends the additional requirements to make the procedural requirements for interim status units more equivalent to the permitting procedural requirements for new units, and to expand public involvement opportunities during the trial burn phase. The flow chart shown in Figure 2 indicates the points in the permitting process where the proposed activities would occur. For instance, the administrative procedural changes EPA is proposing in § 270.74 will require interim status facilities to submit a trial burn plan with their initial Part B applications. Section 270.74 further states that the permitting agency must approve the trial burn plan before the facility conducts the trial burn. These proposed explicit requirements will ensure that interim status facilities conduct trial burns in accordance with approved plans, as do permitted facilities, and do not perform the trial burns before submitting their applications. In another permitting procedural change, EPA proposes to clarify the Director's authority to allow additional trial burns and to deny a permit to an interim status unit if the Director does not believe that the unit is capable of meeting performance standards.

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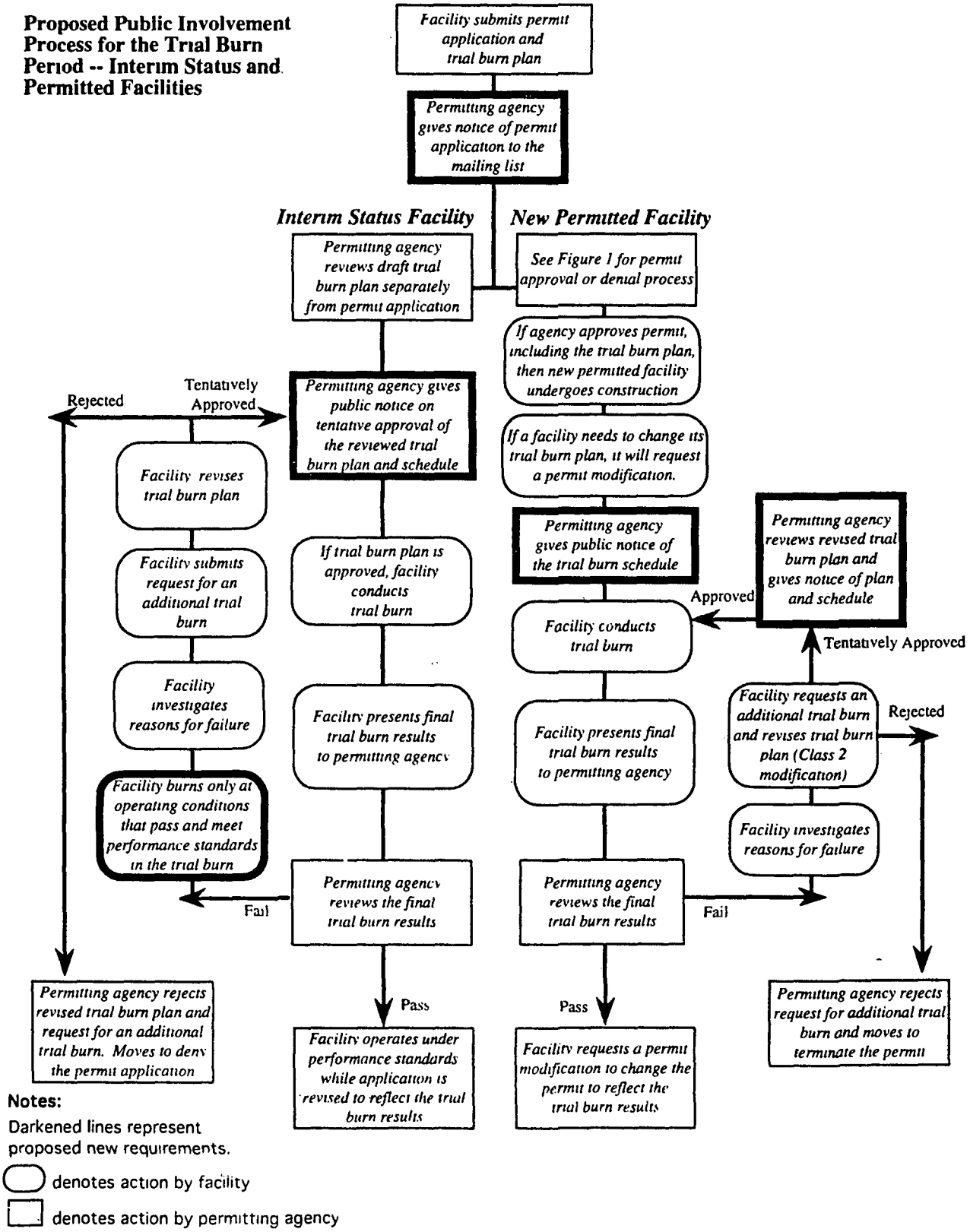
FIGURE 2

Proposed Public Involvement Process for the Trial Burn Period -- Interim Status and Permitted Facilities



Notes:

Darkened lines represent proposed new requirements.

denotes action by facility

denotes action by permitting agency

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EPA is proposing a new regulatory requirement, not addressed in previous regulations, which pertains to post-trial burn conditions at interim status combustion facilities. EPA is proposing that, upon completion of the trial burn, interim status facilities must operate only under conditions that passed and were demonstrated to meet the performance standards of § 264.343 (for incinerators) or §§ 266.104 through 266.107 (for BIFs), and only if the successful trial burn data are sufficient to set all applicable operating conditions.

Concerning public involvement, the Agency is proposing additional public participation opportunities in the combustion permitting process by requiring public notices at key points in the trial burn process. The Agency would like to build on the public involvement requirements in today's proposed rule and expand them to the trial burn stage. The Agency believes that public involvement opportunities should continue beyond the initial permit application stage and throughout the permitting process. For instance, the proposed rule requires the permitting authority to give public notice of the actual trial burn for both interim status and new combustion facilities. It is important to inform the public of the pending burn and give members of the public an opportunity to participate in this later phase of the permitting process. As mentioned previously in the public involvement segment of the preamble, expanded public participation in the RCRA program and decision-making process is a high priority for the Agency.

3. Current Trial Burn Procedures

Trial burns are an important step in the permitting process for combustion facilities. There are differences in the permitting process for new and interim status combustion facilities, which stem from the original composition of the regulated community in 1980 when EPA first promulgated the RCRA Subtitle C regulations. At that time, Congress granted existing facilities interim status if they complied with notification and application requirements, so they could continue operating while pursuing a permit. Anyone proposing a new facility now had to obtain a permit prior to construction. This distinction between existing and proposed facilities led to differences in the permitting procedural requirements for combustion units. For example, existing combustion facilities that have interim status must conduct a trial burn prior to permit issuance, whereas proposed facilities must obtain a permit before they may construct the combustion unit and then conduct a trial burn.

a. Current trial burn procedures for permitted combustion facilities. The trial burn procedures for new combustion units are currently set forth in § 270.62(b) for incinerators, and § 270.66(c) for BIFs. These regulations require new hazardous waste incinerators and BIFs to submit trial burn plans with their initial Part B permit applications. The actual trial burn is conducted after: (1) The public has reviewed and commented on the permit application; (2) the permitting authority has reviewed and approved the permit application; and (3) the facility has constructed the combustion unit. The permitting authority uses the results of the trial burn to determine whether a facility can meet the applicable performance standards and, if it does, to establish the final operating conditions in the permit that enable the facility to comply with those standards.

The facility or the permitting authority must initiate changes to the trial burn plan through the permit modification procedures in §§ 270.41 through 270.42 (see Section B. Permit Modification Procedures). The permitting authority must approve any modifications before the facility can implement them. Where results of a trial burn show non-compliance with performance standards, a facility would typically be required to either: (1) revise the trial burn plan to test new conditions; or (2) submit a request to the permitting authority to modify the permit to permanently exclude the conditions that resulted in non-compliance. Both the permit review/determination process and the permit modification process have built-in opportunities for public involvement, including procedures for appealing decisions made by the permitting authority

b. Current trial burn procedures for interim status combustion facilities. The trial burn procedures for interim status combustion units are currently in §§ 270.62(d) and 270.66(g). These requirements are not as detailed as the requirements for new combustion facilities, although it is common practice for owners/operators of interim status facilities to follow many of the requirements for new facilities. For example, the interim status regulations in §§ 270.62(d) and 270.66(g) require facilities to submit the results of the trial burn before permit issuance, but do not explicitly state that facilities must receive permitting agency approval of the trial burn plan before conducting the burn.

The procedures for interim status and new combustion facilities differ in other areas. Contrary to permitted facilities, interim status facilities do not have a permit during the trial burn stage; thus, the permit modification procedures do not apply As a consequence, the permitting agency currently does not have the same authority to regulate post-trial burn changes by interim status facilities as it does for new combustion facilities, especially in the case of incinerators [BIFs are more highly regulated under interim status].

Unlike the requirements for new facilities, there is no opportunity for public involvement in the permitting process for interim status combustion facilities until after the facility has conducted the burn and the permitting agency issues the draft permit.

EPA believes that many of the requirements for new combustion facilities are appropriate for interim status facilities; the Agency proposes to change the regulations to apply some of these requirements specifically to interim status facilities. It is the Agency's intent, in changing the regulations, to ensure protection of human health and the environment and provide a greater opportunity for public involvement in the permitting process.

4. Discussion of Proposed Permitting Requirements for Trial Burns

EPA is proposing to consolidate the permitting procedural requirements for interim status combustion facilities by moving the incinerator and BIF interim status permitting requirements, found in §§ 270.62(d) and 270.66(g), to proposed § 270.74. In addition, EPA is proposing to amend these requirements to make them more equivalent to the permitting requirements for new combustion units. EPA believes that consolidating the permitting requirements for interim status combustion facilities and distinguishing them from the requirements for permitted facilities will simplify the interim status trial burn process.

The consolidation and movement into proposed § 270.74(a) and (b) will not change the majority of the regulatory language in the existing provisions. However, EPA is proposing additional language that will make interim status permitting procedures more consistent with new facility permitting procedures and expand the opportunities for public participation.

EPA is also revising provisions for submitting data in lieu of a trial burn, § 270.19 for incinerators and § 270.22 for BIFs, to reflect actual Agency practice. As currently written, this waiver, which the permitting agency

can grant to either permitted or interim status units, could be seen as relatively open-ended; yet, in actual practice, permitting authorities have allowed facilities to use the provisions only under a narrow range of circumstances. EPA believes that granting the waiver only under a narrow range of circumstances is appropriate for the reasons discussed below and, therefore, is proposing to revise this provision to specifically restrict application to this narrow range. This revision to the regulatory language will ensure consistency among permit writers. It could also benefit facilities in the following way. The proposed rule will make explicit the strict circumstances under which a permitting agency will grant a waiver. Once a facility knows these circumstances, it will not misuse its resources in compiling a waiver request that the permitting agency will not grant; instead, the facility can focus its resources on developing a trial burn plan.

EPA is concerned that units constructed at different locations at different times, or with slight design or operating differences, may not perform in an identical manner. For example, if the locations are at different altitudes, the differences in atmospheric pressure could affect the performance of the units. In addition, there would likely be different operators running the units at different locations; thus, the units may not be operated in an identical manner.

The Agency believes that the theory of submitting data from other units in lieu of conducting a trial burn is sound; however, sufficient data is not available to ensure that the theory could be applied to real world situations without imposing strict limitations. EPA believes that most combustion units will need to conduct trial burns in order to develop operating conditions that ensure compliance with the performance standards.

To this end, EPA is proposing today to codify EPA's current policy by making the following changes: (1) Replace "sufficiently similar" with "virtually identical"; and (2) specify that the units must be located at the same facility. The "data in lieu of" provision, therefore, would not apply to mobile treatment units when moved from site to site, since they would not be located at the same facility.

a. Submittal of trial burn plans for interim status facilities. Today's proposed rule would require interim status hazardous waste incinerators (proposed § 270.74(a)(1)) and BIFs (proposed § 270.74(b)) to submit a trial burn plan with their initial Part B permit applications. EPA believes that the trial burn plan for interim status facilities should be subject to public notice and available for review with the initial Part B application, as it is for new facilities seeking permits. EPA's objective in proposing these revisions is to involve the public much earlier in the interim status facility permitting process than current regulations require.

EPA intends that today's requirements regarding submittal of the trial burn plans for interim status facilities will: (1) Specify the point in the permit process when the facility submits the trial burn plan, which will be the same point as for new facilities; and (2) explicitly provide that interim status facilities must conduct the burn in accordance with an approved plan.

Since EPA is proposing a specific point for trial burn plan submittal in the proposed rule, i.e., with the Part B application, the Agency is deleting the current provisions that refer to the trial burn plan submittal (§§ 270.62(d) and 270.66(g)).

b. Approval of trial burn plans for interim status facilities. In § 270.74(c)(1), EPA is explicitly requiring that any interim status combustion facility that seeks a permit must obtain the Director's approval of the trial burn plan before conducting the trial burn. EPA is also proposing, in § 270.74(c)(4), that the Director, after approving a trial burn plan, must specify a time period during which the facility shall conduct the burn. EPA adds this latter requirement to ensure that facilities conduct trial burns in a timely manner. The Agency believes that requiring the permitting agency's approval of interim status trial burn plans will ensure that the facilities submit plans that reflect, and the permitting authority reviews the plans in the context of, current EPA policy and guidance. EPA also believes that today's proposed requirements will ensure that, in most cases, the burns will supply adequate data and information to set permit operating conditions. This proposed requirement for interim status facilities is equivalent to the permitting procedures for new facilities seeking permits.

It should be noted, however, that unlike the procedures for new facilities, approval of the trial burn plan for interim status facilities is on a separate track from the rest of the permit application. As mentioned earlier in this preamble, a new combustion facility must receive a permit before building the combustion unit and conducting the trial burn. Review and approval of trial burn plans for these facilities is concurrent with review and approval of the entire permit application; the trial burn plan is just one of many components. However, for interim status facilities, the permitting authority does not issue the draft permit, or the notice of intent to deny the permit, until after the facility conducts the trial burn. Since facilities must conduct the burn in accordance with a plan approved by the permitting agency, it is clear that the plan must be on a separate approval track from the rest of the permit application. Furthermore, interim status facilities typically must revise their permit applications to reflect the results of the burn, so that the conditions set in the permit can be based on conditions known to ensure compliance with the performance standards.

c. Notices of trial burns. In today's proposed rulemaking, EPA is seeking to expand opportunities for public involvement during the trial burn phase of the combustion permitting process for both new and interim status facilities. EPA requests comments on whether the facility or the permitting authority should be responsible for publishing the public notices discussed in the following sections.

c.1. Permitted combustion facilities. EPA is proposing, in § 270.62(b)(6) for incinerators and § 270.66(d)(3) for BIFs, to require the Director to send a notice of the expected trial burn schedule to all persons on the mailing list and to appropriate units of State and local government. As mentioned previously in the preamble, the trial burn plan is available for public review at other points in the permitting process (e.g., at application submittal, at draft permit issuance, and at final permit determination). Thus, unlike the notice requirement for interim status facilities, explained in the section below, the notice of the trial burn schedule for permitted facilities does not refer to the trial burn plan.

EPA recognizes that, in a limited number of situations, circumstances beyond the control of the facility or the permitting authority could delay a trial burn. It is not EPA's intent, in these limited situations, to require an additional notice with a revised burn schedule.

The notice must contain the following information, specified in §§ 270.62(b)(6) or 270.66(d)(3): (1) Name and telephone number of the facility's contact person; (2) name and telephone number of the permitting authority's contact office; (3) location where the approved trial burn plan and any supporting documents are available for review; and, (4) the expected time period during which the facility is scheduled to conduct the trial burn. Including this information in the notice enables members of the public to

speak with a person who is knowledgeable about the trial burn plan, and to be aware of an imminent trial burn in their community.

c.2. Interim status combustion facilities. In § 270.74(c)(3), EPA is proposing notice requirements for interim status facilities that are similar to the requirements for permitted facilities. The proposed rule will require the Director to send a notice to all persons on the mailing list and appropriate units of State and local government, informing them of the proposed approval of the trial burn plan and the expected trial burn schedule. The Agency is requiring this notice before the permitting authority approves the plan in order to provide an additional opportunity for the public to review the final draft plan. It should be noted that, for interim status facilities, the Director's decision to approve the trial burn plan is not subject to administrative appeal.

EPA recognizes that the draft plan submitted with the initial Part B application may differ significantly from the final version that the permitting authority approves. EPA wants to ensure that the public has a chance to see the revisions prior to approval and the actual burn. EPA would like to solicit comments on whether the Agency should establish a comment period for interim status facilities prior to approving the trial burn plan, in view of the fact that, for permitted facilities, the public has an opportunity to comment on the draft trial burn plan as part of the draft permit process.

Currently there are less public involvement opportunities for interim status facilities than there are for permitted facilities, with regard to the review of trial burn plans. As mentioned previously for permitted facilities, the public has the opportunity to review the trial burn plan at both the application and draft permit phases before a trial burn occurs.

The notice must contain the information specified in proposed § 270.74(c)(3). The notice should include the following: (1) Name and telephone number of the facility's contact person; (2) name and telephone number of the permitting authority's contact office; (3) location where the draft trial burn plan and any supporting documentation are available for review and (4) a schedule of activities that are required prior to permit issuance, including the date by which the Director expects to approve the plan and the expected time period during which the facility is scheduled to conduct the trial burn and submit results to the Director (refer to proposed § 270.74(c)(4)). Including this information in the notice enables the public to speak with a person who is knowledgeable about the trial burn plan, receive or review additional information, and learn of an imminent trial burn in their community.

As stated earlier, interim status facilities will conduct the trial burn prior to permit issuance, as required by current regulations. Although the public will have an opportunity to review the trial burn plan, since it must be submitted with the initial Part B application, in accordance with today's proposed requirements in § 270.74(a) or (b), a significant amount of time may elapse before the Director approves the plan and announces the facility's expected schedule for the burn. EPA believes that it is important to inform the public of the Director's proposed approval of the trial burn plan, separate from the rest of the Part B permit application, and the anticipated time period for conducting the burn. Again, this is consistent with the Draft Combustion Strategy goal of promoting public involvement in the trial burn stage.

d. Post-trial burn period at interim status combustion facilities. In today's rule, EPA is proposing that interim status combustion facilities be subject to the performance standards of § 264.343, for incinerators, or §§ 266.104 through 266.107 for BIFs, upon completion of the trial burn. During the post-trial burn period, interim status facilities must operate only under conditions that passed and were demonstrated to meet these performance standards, and only if the successful trial burn data is sufficient to set all applicable operating conditions. EPA has provided information, in its June 1994 Guidance on Trial Burn Failures, for determining whether conditions resulted in non-compliance and under what circumstances successful data from the trial burn is sufficient to set all applicable operating conditions.

This proposal is more stringent than current regulations and practices. Currently no regulations provide for setting post-trial burn conditions at interim status facilities. EPA believes that these proposed regulations will give the permitting agency the direct authority it needs to restrict these interim status facilities' operations to ensure that they are in compliance with the basic performance standards applicable to permitted facilities during the post-trial burn period. Establishing these requirements will ensure that interim status combustion facilities are operating in a manner that is protective of human health and the environment during the post-trial burn period.

This proposed requirement for interim status facilities is consistent with the post-trial burn requirements for permitted facilities. It is also consistent with EPA's draft model permit (September 1988), which has wording for the permitting agency to incorporate into combustion permits regarding temporary restriction of operating conditions following the trial burn.

Today's proposed rule supports and builds upon the language contained in the draft model permit. EPA is proposing that if the trial burn data for an interim status combustion facility show non-compliance with any set of the performance standards, then the facility will be required to (1) immediately cease operating under the condition(s) that resulted in non-compliance and (2) notify the Director. The facility may only continue operating if there are enough successful data from the trial burn to set all applicable operating conditions, and the facility is able to modify its design and/or limit its operating conditions to operate within the performance standards.

For example, one component in establishing a complete set of operating conditions is determining a maximum and a minimum combustion temperature. A maximum temperature is important for the metals volatilization standard; a minimum temperature is important for the destruction and removal efficiency (DRE) standard. For the sake of simplicity, this example assumes that the facility tested under only two temperature conditions, a high and low temperature, and that all other variables remained constant. By setting minimum and maximum temperature limits, the test burn can establish an operating "envelope," in other words, a range of temperatures within which the facility can operate safely in compliance with the performance standards. If the trial burn results show that the high temperature was successful, but that the low temperature was not sufficient to meet performance requirements, then there may not be enough successful data to set all applicable operating conditions. In this example, the facility would be required to stop operating.

On the other hand, following up on the above example, a facility may want to run tests over a range of temperatures in order to avoid shutdown. By running multiple temperature tests, the facility could attempt more conservative tests, as well as tests that would push the combustion unit's operating envelope. For instance, a facility may plan to conduct multiple tests to establish its minimum operating temperature. Thus, a facility may choose to test at two

temperatures, e.g., low and medium. If the trial burn results show that the low temperature could not meet the performance standards, but the medium temperature did, then enough successful data would exist to set all applicable operating conditions. In this scenario, the facility would restrict its operations to burn between the medium and the high temperature during the post-trial burn period and, thus, would continue operating within the performance standards.

EPA intends for the facility to be responsible for restricting its operations if any of the trial burn data show non-compliance with performance standards. If the facility wishes to continue operating under restricted conditions during the post-trial burn period, it must provide to the Director a description of the conditions under which it is operating, and a preliminary explanation of how the conditions were determined to be sufficient to ensure that the unit functions within the performance standards. EPA is proposing to require facilities to submit this information with the trial burn results. As currently required in §§ 270.62(b)(7) and (8) for incinerators, and 270.66(d)(3) and (4) for BIFs, facilities must submit the results of the trial burn and any data from the trial burn within 90 days of conducting the burn. As part of the proposed consolidation of the permitting procedural requirements for interim status combustion facilities, EPA has also reiterated this requirement by incorporating it, by reference, into § 270.74(c)(5).

EPA is proposing, in § 270.74(c)(6), to give the Director the discretion to further restrict operating conditions during the post-trial burn period to ensure that the unit is operated within the performance standards. The Director will make a determination on the need for further restrictions after reviewing the trial burn data and the preliminary explanation submitted by the facility within 90 days of the trial burn. The Director will inform the facility in writing, of any operational restrictions that he or she is imposing on the facility beyond those listed by the facility in its preliminary explanation.

e. Additional trial burns. The existing permit modification procedures (§ 270.42) contain provisions to address additional trial burns at permitted combustion facilities. As mentioned previously public involvement opportunities are built into the permit modification procedures. The procedures require the permitting authority to notify the public when any change is made to the existing permit through these procedures. Since the permit modification procedures do not apply to interim status facilities, EPA is proposing, in § 270.74(c)(7), to specify requirements for additional trial burns at interim status combustion facilities. As discussed in the previous section, if any results of a trial burn at an interim status combustion facility show non-compliance with any set of the performance standards, the facility must restrict its post-trial burn operations to conditions that passed and demonstrated compliance with performance standards. At this point, there are two potential courses of action a facility may follow. On one hand, the facility may choose to revise its Part B application to exclude those conditions. A facility that opts for this course of action is, in essence, choosing not to pursue those conditions in its final permit. For example, if the facility failed conditions relating to burning of aqueous wastes, it may decide to restrict its long-term operations by handling only non-aqueous wastes; the facility would then reflect that decision in its permit application.

Alternatively a facility may choose to revise its trial burn plan to address the reasons for the failure and then conduct an additional burn under improved design or operating conditions. EPA believes that the majority of facilities that fail trial burn condition(s) will choose this latter course of action in order to establish permit conditions that meet their needs for long-term operation.

EPA believes that there may be a misconception that permitting authorities allow facilities to run the same conditions over and over again without making any changes. The Agency would like to remove any confusion over its policy regarding performance of additional trial burns when a test condition fails. It is important first to recognize that a facility spends a considerable amount of time and resources on the trial burn, and intends to pass the first time. An informal poll of EPA Regions showed that only a dozen additional trial burns for incinerators have occurred to date.

Furthermore, EPA has clarified, in its Guidance on Trial Burn Failures (June 1994), the circumstances under which facilities would be allowed to run additional trial burns. According to this guidance, facilities may submit a request to conduct an additional trial burn to the Director. As part of this request, the facility should demonstrate that it has investigated the reasons for the failure and describe planned substantive changes to its process. A facility should not be allowed to retest under the same design and operating conditions at which it failed. The facility should demonstrate in a revised trial burn plan that the changes to its design and/or operations are sufficient to prevent failure from reoccurring. The Director reviews, and either approves or denies, the request. The Director should not approve an additional trial burn unless the facility has demonstrated satisfactorily that the changes proposed in the revised trial burn plan are likely to meet the performance standards.

As indicated in the trial burn guidance, existing EPA policy allows for facilities to conduct additional trial burns. Current regulations, on the other hand, do not specifically address permitting procedures for interim status combustion facilities for the limited number of situations when facilities would request additional burns. Today's proposed rule establishes procedures for these situations and builds upon EPA's current policy by incorporating the circumstances described in guidance into proposed regulatory language.

Under proposed § 270.74(c)(7), interim status combustion facilities may request an additional trial burn. According to the proposed section, the facility's request for an additional trial burn must contain an explanation of the reasons for the previous trial burn failure, as well as a revised trial burn plan that has substantive changes to address the reasons for the previous failure. EPA encourages facilities that pursue this option to fulfill the above requirement by expanding the preliminary explanation that they are required to provide in order to continue operating during the post-trial burn period (as discussed in the previous section). The Agency believes that these provisions, along with the requirement that the permitting agency approve trial burn plans before the facility conducts the burn, will help ensure that facilities conduct trial burns properly and the public is informed throughout the process.

EPA believes it is important to inform the public when the permitting authority anticipates an additional trial burn. Thus, in proposed § 270.74(c)(7), the rule will require the Director to inform the people on the mailing list and appropriate units of State and local government once he or she has reviewed the revised trial burn plan and has tentatively decided to approve it. This notice will provide the public with an opportunity to review the revised plan, and see the rationale for the additional burn. EPA wants the public to be aware of the reasons why the facility believes the additional run will be successful. The Director's decision to approve a

revised trial burn plan is not subject to administrative appeal.

f. Denial of permit application after the trial burn. There may be occasions when a combustion facility cannot demonstrate compliance with the performance standards through the trial burn, or has not demonstrated to the Director that an additional burn is likely to address the causes of the previous failure. In the case of permitted facilities, the Director may choose to terminate the permit. Existing regulations in § 270.43 provide the Director with the authority to terminate a permit for cause, following procedures set forth in part 124.

EPA would like to provide similarly clear authority to the Director in the case of interim status combustion facilities. Existing regulations in § 270.29 provide the Director with authority to deny a permit application, pursuant to procedures in part 124. In order to clarify the applicability of this provision to trial burn failure situations, EPA is proposing, in § 270.74(c)(8), to provide specific authority for the Director to deny a permit, pursuant to procedures in part 124, for an interim status combustion facility based on the facility's inability to demonstrate compliance with the performance standards. It is not EPA's intent, in providing this authority to imply that the Director would deny a permit automatically if the facility failed any of the trial burn plan conditions. Every facility, permitted and interim status alike, will have the option of requesting and proving that it can meet the requirements for an additional burn.

In keeping with EPA s goal of involving the public at key points in the permit process, EPA would like to reiterate that the current procedures for permit denial, set forth in part 124, include requirements for the permitting authority to notify to the public of intent to deny the permit application.

IV Solicitation of Comments

EPA is soliciting comments on a number of items in today's proposed rule. The following is a list of the items on which EPA solicits comment in the preamble. Detailed discussions of each of the items can be found in the relevant sections of the preamble. For ease in referencing these sections, the items are briefly summarized below.

A. Expanded Public Participation

1. Equitable Public Participation

EPA is asking for comments, in section 4.a: Equitable Public Participation, on how the requirements proposed in § 124.30 could be implemented.

2. Environmental Justice

EPA is soliciting comments, in section 4.a.1. Agency activities dealing with environmental justice, on several items relating to environmental justice. For instance, EPA is interested in receiving comments on ways to incorporate environmental justice concerns into the RCRA public participation process. EPA is also requesting comments on the need for additional rulemaking or policy guidance for incorporating environmental justice into certain aspects of the RCRA permitting program, such as corrective action. The Agency is also interested in receiving comments on suggested methodologies and procedures for undertaking analysis of "cumulative risk" and "cumulative effects" associated with human exposure to multiple sources of pollution. Finally, EPA is soliciting comments on some of the recommendations developed by the OSWER Environmental Justice task force, discussed in section 4.a.1.

3. Pre-Application Meeting—Applicability

EPA is soliciting comments on the applicability of the pre-application meeting requirements in two sections. In section 4.b: Applicability of Pre-application Meeting, EPA is requesting comments on whether the pre-application meeting should apply to permit renewal applications. In section 5.b: Requirements for the Pre-application Meeting, EPA is requesting comment on whether the requirements should apply to all facilities or only to certain groups (e.g., incinerators, commercial facilities). EPA is also requesting comments on whether the permitting authority should attend the pre-application meeting.

4. Pre-Application Meeting—Possible Alternative

In section 4.b: Applicability of Pre-application Meeting, EPA is requesting comments on whether a State's public participation meeting for siting a facility should be an allowable substitute for today's proposed pre-application meeting.

5. Pre-application Meeting Notice Requirements

As discussed in section 5.b.1. Providing Notice of the Pre-application Meeting, EPA would like comments on whether these expanded notice requirements should apply to other notices during the RCRA permitting process. EPA also requests comments on how to implement the alternative notice provision in the regulations without prescribing a specific formula or approach that may not be appropriate in all circumstances.

6. Public Notice at Permit Application—Applicability

EPA is requesting comments in section 4.c: Applicability of Public Notice at Permit Application on whether today's proposed requirements should also apply to post-closure permits.

7 Public Notice at Permit Application—Responsibility

In section 5.c: Requirement for Public Notice at Permit Application, EPA is requesting comments on whether the permitting authority or the facility should be responsible for providing the public notice at application submittal.

8. Information Repository

EPA is requesting comments on the proposed information repository requirements described in section 5.d: Requirement for an Information Repository For example, at what time during the permitting process would it be useful to have the repository be maintained or terminated? Should the repository be limited to certain types of facilities? What specific documents would the public like to see in the repository?

B. Requirements Regarding the Trial Burn

1. Notices of Trial Burns

In section 4.c: Notices of Trial Burns, EPA is requesting comments on whether the permitting authority or the facility should be responsible for providing public notices during the trial burn stage. EPA is also requesting comments, in section 5.c.2: Interim Status Combustion Facilities, on whether the Agency should establish a comment period for interim status facilities prior to approving the trial burn plan, in view of the fact that, for permitted facilities, the public has an opportunity to comment on a draft trial burn plan as part of the draft permit process.

C. Cost Estimates

In section VI. Regulatory Impact Analysis Pursuant to Executive Order 12866, EPA is asking for comments on the data and methodologies used to derive the cost estimates associated with this proposed rule.

EPA intends to consider all comments on these, and any additional, items before drafting a final rule.

V State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program within the state (see 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized states have primary enforcement responsibility.

Prior to enactment of the Hazardous and Solid Waste Amendments (HSWA) of 1984, a state with final RCRA authorization administered its hazardous waste program entirely in lieu of the federal program. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified timeframes. However, the new federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

In contrast, HSWA amended RCRA to add section 3006(g) (42 U.S.C. 6926(g)). Under section 3006(g), new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in nonauthorized states. EPA is directed by statute to implement those requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA-related provisions as state law to retain final authorization, the HSWA requirements are implemented by EPA in authorized states in the interim.

Today's proposal is promulgated pursuant to pre-HSWA authority. These provisions, therefore, would become effective as RCRA requirements in states with final authorization once the state has amended its regulations and the amended regulations are authorized by EPA. However, EPA would like to encourage States to adopt the changes proposed today expeditiously, and implement them as part of their own programs as rapidly as possible.

B. Effect on State Authorizations

The provisions of this rule are proposed under pre-HSWA authority. This section discusses the implications of the pre-HSWA authority on EPA's and the states' implementation, and the schedule for state adoption of these new requirements.

1. Pre-HSWA Provisions

a. Part 270—Hazardous Waste Permitting. The provisions of today's proposal that would affect the permitting and permit modification procedures for combustion units (BIFs and incinerators) are proposed under pre-HSWA authority. These provisions include revised §§ 270.22(a) and 270.19(d) which clarify allowable circumstances for using the "data in lieu of trial burns" in connection with permitting combustion units; proposed § 270.74, and revisions to §§ 270.62 and 270.66 for permitted units, which would add new procedures for public involvement in the trial burn planning and trial burn phases for both permitted and interim status combustion facilities, make interim status procedures more equivalent to permitted, and require interim status facilities to comply with performance standards during the post-trial burn period. In addition, the proposed amendments to the permit modification provisions of § 270.42 (to distinguish further between the shakedown and trial burn phases when modifying permitted combustion units) are also based on pre-HSWA provisions. These provisions of the proposal, since they are based on pre-HSWA authority, will apply immediately only in those states that do not have RCRA authorization. In authorized states, these requirements will not apply until the states revise their programs to adopt requirements under state law that are at least as stringent and have these new requirements approved by EPA.

b. Part 124—Public Participation Requirements. EPA desires to provide for, encourage and assist public participation. This proposed rule would establish procedures to promote better and more timely information sharing between the public, the state, EPA, and the facility applicant. The following is required under the part 124 regulations to comply with new public participation requirements: A pre-application meeting, a notice of application, and an information repository. However, these provisions, since they are based on pre-HSWA authority, will apply immediately only in those states that do not have RCRA authorization. In authorized states, these requirements will not apply until the states revise their programs to adopt requirements under state law that are at least as stringent and have these new requirements approved by EPA.

2. Procedures Applicable to Pre-HSWA Provisions

40 CFR 271.21(e) requires that states that have final authorization must modify their programs to reflect federal program changes and must subsequently submit the modifications to EPA for approval. The deadlines for state modifications are set out in § 271.21(e)(2), and depend upon the date of promulgation of final rules by EPA, announcing the program changes. For example, if a final regulation based on this proposal is promulgated by EPA before June 30, 1995, the deadline by which the states must modify their programs to adopt this regulation would be July 1, 1996 (or July 1, 1997 if a state statutory change is needed). These deadlines can be extended in certain cases (see 40 CFR 271.21(e)(3)). Once EPA approves the modifications, the state requirements become RCRA subtitle C requirements.

States with authorized RCRA programs may already have requirements similar to those proposed today. These state regulations have not been assessed against final federal regulations to determine whether they meet the tests for authorization. Thus, similar provisions of state law are not considered to be authorized RCRA requirements until they are submitted to EPA and evaluated against final EPA regulations. Of course, states may continue to administer and enforce their existing standards as a matter of state law.

States that submit their official applications for final authorization less than 12 months after the effective date of final standards are not required to include standards that are at least as stringent as these standards in their application. However, states that submit final applications for final authorization 12 months or more after the effective date of the final standards must include standards that are at least as stringent as these standards in their applications. 40 CFR 271.3 sets forth the requirements that states must meet when submitting final authorization applications. Because the proposed public participation requirements in § 270.74 represent a significant upgrade to the combustion unit permitting process, EPA strongly encourages States that have not yet adopted the BIF rule (56 FR 7134, February 21, 1991) to adopt these new public participation procedures concurrently with their BIF rules, rather than deferring their adoption to the much later deadline that would apply under the Cluster Rule to this new regulation. It should be noted that in situations where EPA retains permitting

authority for BIFs (because the State has not yet received authorization for BIFs), EPA may implement both the permitting and public involvement procedures described in today's proposed rule. In this joint permitting situation, EPA would be the responsible Agency for the BIF permitting requirements in unauthorized States that are not authorized to issue BIF permits.

EPA believes that the overall effect of this proposed regulation would increase the stringency of the RCRA permitting processes. Therefore, all authorized states will be obligated to modify their programs to adopt these requirements when they are finalized by EPA, unless their existing state programs and laws are deemed by EPA to be equivalent in effect. For those states which are obligated to modify their programs to adopt these requirements when they are finalized by EPA, § 271.21(e) deadlines for state modifications will apply accordingly.

In developing today's proposed regulations, EPA was sensitive to impacts on existing State programs. The proposed requirements may be viewed as performance objectives the Agency wants States to meet. It is not EPA's intent to restrict States from using similar activities that accomplish the same objectives. Therefore, EPA will allow latitude and room for interpretation when reviewing state modifications for adopting these regulations.

VI. Regulatory Impact Analysis pursuant to 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 review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. 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 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.

OMB has determined this is a significant rule under Executive Order 12866. Pursuant to the terms of Executive Order 12866, this section of the preamble summarizes the potential economic impacts of the proposed RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures rule.

Based upon the economic impact analysis for today's proposed rule, the Agency's best estimate is that the requirements regarding expanded public participation before and during permit application would result in an incremental national annual cost of $130,000 to $380,000.

In addition, the annualized incremental national cost of the permitting requirements in today's proposed rule is estimated to be between $0 to $520,000. EPA expects that much of the effect of the permitting provisions in today's proposed rule will be to clarify and codify current practice.

Based upon the economic impact analysis for today's proposed rule, the Agency's best estimate is that the requirements of today's proposed rule would result in an incremental national annual cost of $130,000 to $900,000.

A complete discussion of the economic impact analysis is available in the regulatory docket for today's proposed rule in a report entitled "Economic Impact Analysis for the Proposed RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures Rule."

EPA requests comments on the data and methodologies used to derive the estimates described below and in the background document.

A. Cost Analysis

This section summarizes estimated costs and potential impacts of two aspects of today's proposed rule: (1) Expansion of opportunities for public involvement in the permitting process, and (2) modification of combustion unit permitting requirements. These two pieces of the proposed rule affect a different universe of facilities at different stages in the permitting process and, thus, are presented separately.

1. Expanded Public Involvement Opportunities

Most of the requirements of the expanded public involvement portion of today's proposed rule apply only to new hazardous waste treatment, storage, and disposal permit applications. With the exception of the information repository requirement (see below), the expanded public involvement requirements do not apply to post-closure permits and permit modifications.

EPA estimates that, over the next ten years, the bulk of new permit applications will be submitted by the 159 interim-status boilers and industrial furnaces (BIFs). In addition, based on information provided by the Regional permit writers, EPA estimates that an additional 53 to 127 new treatment, storage, and disposal facilities (for a total of 212 to 286 facilities) will submit permit applications over the next ten years.

Today's proposed rule includes several requirements that would result in direct costs to facilities submitting new permit applications. The analysis estimates the costs to all affected facilities of (1) Preparing a public notice announcing the intention to submit a permit application and to hold a public meeting; (2) disseminating the public notice in local newspapers and over the radio; and (3) holding a public meeting and preparing a transcript.

In addition, for communities with a non-English speaking population, the rule will require the facility to "make all reasonable efforts to communicate with the community in ways that reach all segments." Based on conversations with RCRA and Superfund Regional community relations specialists and on data about existing RCRA facilities, this analysis assumes that between 5%–30% of the facilities (11 to 86 facilities over the next ten years) will fulfill this requirement by publishing multi-lingual notices and providing an interpreter at the public meeting.

Finally the rule will give the Director the discretion to require a facility to set up an information repository based on the level of public interest or other factors. This requirement can apply anywhere in the permitting process, including post-closure permits, permit renewals, and permit modifications. Thus in addition to the interim status BIFs and the new facilities mentioned above, the repository requirement can apply, at the discretion of the Director, to the approximately 4,100 treatment, storage, and disposal facilities that EPA expects will undergo permit renewals, modifications, or closure over the next ten years. EPA estimates that 15–20% of the estimated 212 to 286 facilities submitting a new Part B application, and 1% of the 4,100 already-permitted facilities (73 to 98 facilities total) would be affected over the next ten years by the repository requirement in today's proposed rule.

The total cost per facility of the above requirements is approximately $5,000 to

$14,000. Annualized over a ten-year period, using a 7% discount rate, the resulting national annual cost of the expanded public involvement requirements is estimated to be between $130,000 to $380,000.

2. Modification of the Permitting Process

a. Direct costs. Today's proposed rule includes two new permitting requirements that have direct cost implications for the regulated universe: (1) Changing the "data in lieu of" requirements, and (2) specifying the events that follow a trial burn failure.

Currently, interim status combustion facilities have the option of submitting "data in lieu of" a trial burn for a unit that is "sufficiently similar" to an already-permitted unit. Today's proposed rule proposes changing the requirements for "data in lieu of" by requiring the units to be "virtually identical" and to be located at the same facility.

Based on information from trial burn contractors, preparing a trial burn plan and conducting a trial burn costs about $110,000 to $550,000 per facility. Submitting "data in lieu of" a trial burn is assumed to cost approximately the same as preparing a trial burn plan, or $10,000 to $50,000. The net incremental cost of denying the "data in lieu of" option would be $100,000 to $500,000 per affected facility.

EPA estimates that between zero and eight percent (0–13 facilities total) of the interim-status BIFs could incur a cost of doing a trial burn due to this proposed rule. The resulting annual national cost is $0 to $520,000.

The low end of the affected facility universe is "zero" because, although submission of "data in lieu of" a trial burn is an option under current regulations for a facility with "sufficiently similar" units, it appears that facilities almost never exercise this option. EPA guidance on trial burns states that "although it is possible to satisfy this requirement by submitting information showing that a trial burn is not required, this is a rare occurrence * * *"[2] Neither of the trial burn contractors that were contacted was aware of a successful "data in lieu of" application. Regional permit writers knew of a few permits that were granted based on the "data in lieu of" provision, but in those cases the units were determined to be identical and, therefore, would still qualify under today's proposal. Thus it is likely that the main effect of changing the "data in lieu of" provision will be to clarify already existing practices, and to reflect more realistic situations and how EPA currently interprets this provision.

The second permitting requirement that may result in a direct cost to the regulated community is the delineation of the process following a trial burn failure. Today's proposed rule proposes that, following a trial burn failure, (1) The combustion facility must immediately restrict operation for those conditions that failed the trial burn, and (2) the combustion facility must either revise the permit application to reflect the new conditions (estimated cost $5,100), or revise the trial burn plan and rerun the trial burn (estimated cost $110,000 to $550,000).

EPA estimates that 4% of interim status combustion units (six facilities over the next twenty years) will fail a trial burn for one or more conditions. Of these, 17% (one facility) is expected to simply revise the permit application and 83% (five facilities) are expected to revise the trial burn plan and rerun the trial burn. Annualized over a ten year period, discounted at 7%, the resulting annualized national total cost of facility actions that follow a trial burn failure is $70,000 to $340,000.

Although the above costs can be attributed to today's proposed rule, EPA does not expect there to be any true incremental costs. Currently, if an interim status facility fails a trial burn, the permitting authority can deny the permit. In addition, based on conversations with EPA Regional permit writers, no permit writer would grant a permit to a facility that failed the trial burn unless the facility re-ran (and passed) the trial burn or revised the permit conditions. Thus, the incremental cost of this proposed requirement, when current practices are taken into account, is $0. The main effect of the delineation of the process that follows trial burn failures would be to clarify current permitting requirements.

In summary, the potential annualized total national cost for the permitting section of today's proposed rule is estimated to be $70,000 to $860,000. The annualized incremental cost, when current practices are taken into account, is estimated to be between $0 to $520,000. EPA expects that the main effect of the permitting provisions of today's proposed rule will be to clarify and codify current practice.

b. Other effects. In addition to the costs estimated above, the requirement that interim status combustion facilities be subject to the performance standards of § 264.342 (for incinerators) or § 266.104 through § 266.107 (for BIFs) upon completion of trial burn has the potential to impose costs due to the restricted operating conditions.

However, despite the proposed restriction following trial burn failure, operations at the affected units are not expected to cease entirely, because the proposed restriction on operations pertains only to the condition(s) that fail to meet the specifications in the trial burn plan. The unit can continue operations under a modified design and/or operating conditions that are sufficient to allow the unit to function within the performance standards. In addition, the restriction lasts only until the trial burn plan is revised and a new trial burn occurs or the permit application is modified. Therefore, EPA does not expect this provision to significantly disrupt facility operation or impose significant additional costs.

B. Summary of Benefits

The RCRA permitting program was developed to protect human health and the environment from the risks posed by the treatment, storage, and disposal of hazardous waste. By improving and clarifying the permitting process, today's proposed rule produces environmental benefits that result from a more efficient permitting process. Below is an explanation of how each of the provisions of today's rule provides benefits.

1. Expanded Public Involvement Opportunities

The main benefit of the expanded public participation requirements of today's rule is to provide more opportunities for the public to become involved early in permitting decisions regarding hazardous waste storage, treatment, and disposal facilities that may ultimately affect their communities. EPA believes these requirements will allow applicants and permitting authorities the opportunity to address public concern in making decisions about the facility and the proposed permit.

Providing the public with an expanded role in the permit process, by promoting community participation and input at all decision-making levels, also will help to foster continued community involvement after sites become permitted.

In addition, expanding public involvement opportunities should streamline the permitting process, since public issues will be raised and addressed earlier in the process. Currently, the public does not formally get involved in the permitting process until the draft permit stage. This stage occurs after the permitting agency and

[2] Guidance on Setting Permit Conditions and Reporting Trial Burn Results. US EPA January 1989.

the permit applicant have discussed crucial parts of the Part B application; thus, the public feels that most major decisions on the permit have already been made at this point.

2. Modification of the Permitting Process

One benefit of the permitting provisions of today's rule is to clarify current practices and, therefore, facilitate the permitting process by making it easier to understand for the public and the regulated community.

For example, today's proposal moves § 270.62(d) and § 270.66(g), which address interim status requirements, to proposed § 270.74, where the majority of the interim status provisions are contained. The wording is essentially the same, clarifying when the facility must submit the trial burn plan and emphasizing that the permitting authority must approve the trial burn plan before the facility may conduct the trial burn. The new language structure presents the requirements chronologically and makes the regulation easier to understand.

EPA is also stating in § 270.74(c)(1) that interim status combustion facilities seeking permits must receive approval of the trial burn plan by the Director before conducting the trial burn. EPA believes that making the requirements more explicit will ensure that trial burn plans reflect EPA policy and guidance, and that the burns will be adequate to set permit operating conditions. As discussed in the cost analysis section, EPA is also proposing a revision of the provision for submitting data in lieu of a trial burn (§ 270.19 for incinerators and § 270.22 for BIFs) to reflect current practices.

By specifying that a unit must be "virtually identical" to, and at the same facility as, a permitted unit, instead of "sufficiently similar" today's rule will remove any confusion surrounding the interpretation of the "data in lieu of" option and will reflect EPA's current interpretation of this provision.

Another aspect of the permitting process that may cause confusion is the fact that, although existing EPA policy allows the facility to conduct additional trial burns, current regulations do not specifically address permitting procedures following an interim status facility trial burn failure. Today's proposed rule, by clarifying existing EPA policy will help state what actions follow a trial burn failure.

Finally today's proposed rule describes in more detail the phases of both shakedown and the trial burn permit modifications listed under section L.7 of Appendix I, and clarifies how a facility may implement and utilize section 270.42(d) of the modification procedures. This revision will simplify a facility's compliance with the modification process by making it easier for a facility to select the appropriate classification for the modification activity.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If the analysis identifies affected small entities, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

In developing the proposed regulations for expanding public involvement in the RCRA permitting process, EPA was sensitive to the needs and concerns of small businesses. Therefore, the proposed regulations describe the minimum efforts necessary to fulfill the public involvement requirements. Additional examples of activities facilities may choose to conduct are provided in the preamble, rather than incorporated into the regulatory language. EPA's intent in doing so is to provide flexibility for a facility to determine how elaborate it wishes to be in conducting public involvement activities. In addition, EPA recognizes that, in some situations, an information repository could become resource intensive for a facility or for the local community EPA has addressed this concern by providing discretion to the Director to determine whether to require a repository rather than requiring it for all facilities.

In regards to the burden placed on facilities that burn small quantities of hazardous waste, EPA has already provided an exemption under section 3004(q)(2)(B) of RCRA. The Agency carefully evaluated the risks posed by small quantity burning and concluded that a conditional exemption for small quantity burners should be allowed where hazardous waste combustion poses an insignificant risk. This small quantity burner exemption would therefore reduce the burden placed on small entities from the revised permitting requirements for hazardous waste combustors.

The following sub-sections summarize the potential impacts on small entities of three aspects of today's proposed rule: expanded public participation requirements, revised requirements for "data in lieu of" a trial burn, and requirements following a trial burn failure. In summary EPA has determined that there are no significant impacts on small entities from the requirements of this proposed rule.

1. Small Entity Impacts of Expanded Public Participation Requirements

The universe of facilities affected by the public participation requirements include all facilities submitting a new part B application. In the case of the repository requirement, facilities undergoing permit modification or closure may also be affected.

Determination of which facilities that submit new part B applications might be small entities is somewhat speculative. Assuming future RCRA facilities will resemble past facilities, approximately 12% of the estimated 53 to 127 new hazardous waste treatment, storage, and disposal facilities may be "small entities."[3] In addition, 14 of the 159 interim status BIFs are owned by companies that are potentially "small entities," based on current size thresholds established by the U.S. Small Business Association.[4,5]

As mentioned in the cost analysis section, the highest total cost of the public participation requirements is estimated to be $14,000 per facility This cost includes setting up an information repository translating public notices, and interpreting public meetings. Annualized over ten years at a discount rate of 7%, the cost for a facility as the high end of the cost range, would be $1,900 per year.

This $1,900 per year may have a significant impact on a small entity if it is greater than five percent of the total cost of production. Thus a facility whose total cost of production is less than $37,000 may be significantly impacted. It is highly unlikely that the cost of production would be this low for a RCRA hazardous waste facility. Total sales for "small entity" BIFs range from $1.3 million to $87.3 million for the individual facilities and $19.1 million to $513 million for the parent companies.[6]

[3] Hazardous Waste TSDF—Regulatory Impact Analysis for Proposed RCRA Air Emission Standards, Final Review Draft, USEPA, Office of Air and Radiation, August 1989. "Small entity" was defined as a company whose uniform annual sales cutoff is equal to $3.5 million.

[4] 13 CFR part 121.

[5] Employment, sales, industry category, and parent company information was obtained from on-line searches of Dun & Bradstreet and the American Business Directory. In addition to the fourteen BIFs that were identified as potentially small entities, another four did not have enough information to make a determination.

[6] Ibid.

Costs of production would presumably be in the same order of magnitude. Thus EPA has determined that there are no significant impacts on small entities from this provision of the proposed rule and that alternative regulatory approaches are not necessary

2. Small Entity Impacts of Revised Requirements for "Data in Lieu of" a Trial Burn

The universe of facilities potentially affected by the revised requirements for "data in lieu of" a trial burn include interim-status BIFs that would have used the "data in lieu of" exemption, but because of the revised requirements of the proposed rule, would now not be allowed to do so. As mentioned above, 14 of the 159 interim status BIFs are owned by companies that are potentially "small entities."

As mentioned in the cost analysis section, the revised requirements for "data in lieu of" a trial burn have a potential direct incremental cost of $0 to $500,000 per affected facility or an annualized cost of $0 to $47,000 per facility (over ten years at 7% discount rate, assuming costs occur in year one). The high end of the cost range would be caused by trial burn costs that are imposed due to tightening of the "data in lieu of" requirement. Because total sales for "small entity" BIFs range from $1.3 million to $87.3 million for the individual facilities and $19.1 million to $513 million for the parent companies,[7] the costs of the "data in lieu of" requirement are less than 5% of total sales for any one facility and therefore not likely to significantly impact small entities.

Furthermore, the "data in lieu of" requirement is not a new requirement, but simply a codification of current policy Currently, this requirement can only be applied at facilities with multiple units. Such facilities are not likely to be small entities; therefore a tightening of the "data in lieu of" requirement would not affect small entities. Thus EPA does not expect the revised requirements for "data in lieu of" a trial burn to impact small entities.

3. Small Entity Impacts of Requirements Following a Trial Burn Failure

The universe of facilities potentially affected by the requirements following a trial burn failure include interim-status BIFs that fail their trial burn for one or more condition. As mentioned above, 14 of the 159 interim status BIFs are owned by companies that are potentially "small entities." As explained in the cost analysis section, EPA does not expect there to be any major incremental costs to those facilities that fail a trial burn and, therefore, does not expect the proposed rule requirements to have any significant impacts on small entities.

D. Enhancing the Intergovernmental Partnership

Executive Order 12875 on enhancing the intergovernmental partnership charges federal agencies to establish meaningful consultation and collaboration with State and local governments on matters that affect them. In most cases, State governments are the level of government that regulates hazardous waste. In developing this proposed rule, therefore, EPA has consulted with State officials. EPA had five states (representing various parts of the country e.g., east, south, center, and west) participate in the workgroup process for this proposed rule. These states reviewed and provided feedback on the draft proposal over a period of eight months. In addition, these states participated in monthly workgroup meetings via conference call. Their participation and immediate feedback in the workgroup process added considerable value to the draft proposal.

EPA contacted additional states in an effort to receive their specific feedback on general permitting and public involvement techniques. Additionally EPA solicited state input during a session of the 3rd Annual RCRA Public Involvement National Conference, in which 16 state representatives participated. The state participants provided numerous helpful suggestions and ideas.

In addition, the Agency utilized existing State groups, such as the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), to solicit input on the proposed rule at various stages in the development process. Also, State personnel at the Commissioner level provided input to EPA at bi-monthly meetings of the EPA-State Task Force on Hazardous Waste Management. Through early involvement in both vehicles, state representatives made valuable contributions to the regulatory development process.

E. 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.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1688.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency· 401 M St., SW., Washington, DC 20460, or by calling (202) 260–2740.

This collection of information is estimated to have a public reporting burden varying from 203.45 to 1,230.50 hours per response, with an average of 716.98 hours per response, and to require 34.10 hours per recordkeeper over the three year period covered by the ICR. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Hazardous Waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Hazardous Waste, Reporting and recordkeeping requirements, Permit application requirements, Permit modification procedures, Waste treatment and disposal.

Dated: May 20, 1994.

Carol M. Browner,

Administrator.

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

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*, Clean Water Act, 33 U.S.C. 1251 *et seq.*. and Clean Air Act, 42 U.S.C. 7401 *et seq.*

[7] Ibid.

2. Subpart B is added to read as follows:

Subpart B—Specific Procedures Applicable to RCRA Permits

Sec.
124.30 Equitable Public Participation
124.31 Public participation requirements at pre-application.
124.32 Public notice requirements at application stage
124.33 Information repository.

Subpart B—Specific Procedures Applicable to RCRA Permits

§ 124.30 Equitable public participation.

The applicant and the Director shall make all reasonable efforts when conducting public information activities, such as public briefings, meetings, hearings, and dissemination of notices and fact sheets, to ensure that all segments of the population have an equal opportunity to participate in the permitting process. Reasonable efforts include disseminating multilingual public notices and fact sheets, and providing an interpreter at public meetings and hearings, where the affected community contains a significant non-English speaking population.

§ 124.31 Public participation requirements at pre-application.

(a) Prior to the initial submission of a Part B RCRA permit application for a facility the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities in sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility and the implications for human health and the environment. The applicant shall give an overview of the facility in as much detail as possible, such as identifying the type of facility the location of the facility the general processes involved, the types of wastes generated and managed, and implementation of waste minimization and pollution control measures.

(b) A stenographic or electronic record shall be made of the meeting, along with a list of attendees and their addresses. The record, list of attendees, and copies of any written comments or materials submitted at the meeting, shall be submitted as part of the permit application.

(c) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting in a manner that is likely to reach all affected members of the community The applicant must provide documentation of this notice in the permit application.

(1) Public notice shall be given in the following manner:

(i) The notice shall be published in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility and in each adjacent county or jurisdiction, if applicable. In situations where the geographic area of a host jurisdiction or adjacent jurisdictions is very large (hundreds of square miles), the newspaper notice shall cover a reasonable radius from the facility The notice must be published as a display advertisement. The advertisement shall appear in a place within the newspaper calculated to give the general public effective notice; it must be of sufficient size to be seen easily by the reader.

(ii) The applicant must post a notice on a clearly marked sign on the proposed or existing facility property The sign should be large enough so that the wording is readable from the facility boundary. It is not necessary to display a map on the required posted sign on the facility property.

(iii) The notice must be broadcast on at least one local radio station.

(2) The notices required under paragraph (c)(1) of this section must include:

(i) The date, time, and location of the meeting.

(ii) A brief description of the purpose of the meeting.

(iii) A brief description of the facility and proposed operations, including a map (e.g., a sketched or copied street map) of the facility location. Notices sent to people on the mailing list must show the facility map on the front page of the notice.

(iv) A statement that encourages people who need special access (e.g., disabled) to participate in the meeting to provide at least a 72-hour advance notice of their needs to the facility.

(d) The requirements of this section do not apply to permit modifications under § 270.42 of this chapter, permit renewals under § 270.51 of this chapter, or applications that are submitted for the sole purpose of conducting post-closure activities at a facility

§ 124.32 Public notice requirements at application stage.

(a) Notification at application submittal. (1) The Director shall provide public notice as cited in § 124.10(c)(1)(ix), that a Part B permit application has been submitted to the Agency, and is available for review The requirements of this section apply to permit renewals under § 270.51 of this chapter as well as to original applications.

(2) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the permitting agency's contact office, and a mailing address to which comments and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) Location where copies of the permit application and any supporting documents can be viewed and copied;

(v) Brief description of the facility and proposed operations, including a map (i.e., sketched or copied street map) of the facility location. Notices sent to people on the mailing list must show the facility map on the front page of the notice; and

(vi) The date the application was submitted.

(b) Concurrent with the notice required under § 124.32(a) of this subpart, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the permitted facility or at the permitting agency's office. For facilities establishing an information repository pursuant to proposed §§ 124.33 or 270.30(l)(12) of this chapter, the applicant shall place a copy of the permit application or modification request, and any supporting documents in the information repository

(c) The requirements of this section do not apply to permit modifications under § 270.42 of this chapter, and/or applications that are submitted for the sole purpose of conducting post-closure activities at a facility.

§ 124.33 Information repository.

(a) At any time during the application process for a RCRA permit, the Director may require the applicant to establish and maintain an information repository The purpose of this provision is to make accessible to interested persons documents, reports and other public information developed pursuant to activities required under 40 CFR parts 124, 264, and 270. (See § 270.30(l)(12) of this chapter for similar provisions relating to the information repository during the life of a permit.)

(b) The information repository shall contain all documents, reports, data, and other information deemed sufficient by the Director for public understanding

of the plans, activities, and operations of any hazardous waste facility that is operating or seeking a permit.

(c) The information repository shall be located and maintained at a location chosen by the facility that is within reasonable distance of the facility, and within a structure with suitable public access, such as a county library courthouse, or local government building. However, if the Director determines the location unsuitable, the Director may specify a more appropriate location. The repository shall be open to the public during reasonable hours, or accessible by appointment. The information repository shall be located to provide reasonable access to a photocopy machine or alternative means for people to obtain copies of documents at reasonable cost.

(d) The Director shall specify requirements for informing the public about the information repository At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(e) Information regarding opportunities and procedures for public involvement, including the opportunity to be put on the facility mailing list, shall be made available at the repository.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director, unless existing State regulations require the State to maintain the information repository.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927 6939, and 6974.

2. Section 270.2 is amended by adding, in alphabetical order, a definition for "Combustion unit," and by revising the definition for "Facility mailing list" to read as follows:

§ 270.2 Definitions.

* * * * *

Combustion unit means any unit that meets the definition of an incinerator, a boiler, or an industrial furnace in § 260.10 of this chapter.

* * * * *

Facility mailing list means the mailing list for a facility maintained by EPA or the State in accordance with 40 CFR 124.10(c)(1)(ix).

* * * * *

3. Section 270.19 is amended by revising paragraphs (b) and (d) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(b) Submit a trial burn plan with the initial part B application including all required determinations, in accordance with §§ 270.62 or 270.74; or

* * * * *

(d) The Director shall approve a permit application for an incinerator without a trial burn if he finds that:

(1) The wastes are sufficiently similar;

(2) The incinerator units are virtually identical and are located at the same facility; and

(3) The data from other trial burns are adequate to specify (under § 264.345 of this chapter) operating conditions that will ensure that the performance standards in § 264.343 of this chapter will be met by the incinerator.

* * * * *

4. Section 270.22 is amended by revising paragraph (a)(6) to read as follows:

§ 270.22 Specific Part B information requirements for boilers and industrial furnaces burning hazardous waste.

(a) * * *

(6) *Data in lieu of a trial burn.* The owner or operator may seek a waiver from the trial burn requirements to demonstrate conformance with §§ 266.104 through 266.107 of this chapter and § 270.66 by providing the information required by § 270.66 from previous compliance testing of the device in conformance with § 266.103 of this chapter, or from compliance testing or trial or operational burns of boilers or industrial furnaces with a virtually identical design at the same facility burning similar hazardous wastes under virtually identical conditions. If data from a virtually identical device is used to support a trial burn waiver request, the design and operating information required by § 270.66 must be provided for both the virtually identical device and the device to which the data are to be applied, and a comparison of the design and operating information must be provided. The Director shall approve a permit application without a trial burn if he finds that the hazardous wastes are sufficiently similar, the devices are virtually identical in design and at the same facility the operating conditions are virtually identical, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under § 266.102 of this chapter) operating conditions that will ensure conformance with § 266.102(c) of this chapter. In addition, the following information shall be submitted:

* * * * *

5. Section 270.30 is amended by adding paragraph (m) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(m) *Information repository.* The Director may require the permittee to establish an information repository for a permit if the Director determines that there is significant public interest in the permitted facility. The information repository will be governed by the provisions in § 124.33(b) through (f) of this chapter.

* * * * *

6. Section 270.42 is amended by revising paragraph (d)(1) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(d) *Other modifications.* (1) In the case of modifications not explicitly listed in Appendix I of this section, the permittee may submit to the Agency a request for a determination by the Director on a Class 1, 2, or 3 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the Agency with the necessary information to support the requested classification.

* * * * *

7 Section 270.42, Appendix I is amended by redesignating item L.8. as L.9, revising item L.7 and adding a new item L.8 and note at the end of Appendix I to read as follows:

Appendix I to § 270.42—Classification of Permit Modification

Modification	Class
L. Incinerators, Boilers, and Industrial Furnaces:	

Modification	Class
7 Shakedown:	
a. Modification of permit conditions applicable during the shakedown period for determining operational readiness after construction, with prior approval of the Director	[1] 1
b. Authonzation of an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with prior approval of the Director	[1] 1
8. Trial Burn:	
a. Changes in the approved trial burn plan for conducting an initial trial burn, provided the change is minor and has received the prior approval of the Director	[1] 1
b. Changes in the approved trial burn plan for conducting an initial trial burn, if the change is not minor	2
c. Changes in the approved trial burn plan to conduct additional trial burn testing under revised conditions if the unit has not met one or more conditions of a previous trial burn	2
d. Modification of permit conditions applicable during the post-trial burn period, with prior approval of the Director	[1] 1
e. Changes in the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Director	[1] 1

[1] Class 1 modification requiring prior Agency approval.

Note: Permittees should use the procedures in 270.42(d) if a proposed modification is not listed in this Appendix.

8. In § 270.62, paragraphs (b)(6) through (10) are redesignated as paragraphs (b)(7) through (11), and new paragraph (b)(6) is added to read as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *

(6) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn.

(i) This notice must be mailed within a reasonable time period before the scheduled trial burn.

(ii) This notice must contain:

(A) Name and telephone number of applicant's contact person;

(B) Name and telephone number of the permitting authority contact office;

(C) Location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting authority

* * * * *

9. In § 270.62, paragraph (d) is removed.

10. In § 270.66, paragraphs (d) (3) through (5) are redesignated as paragraphs (d) (4) through (6), and new paragraph (d)(3) is added to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(d) * * *

(3) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn.

(i) This notice must be mailed within a reasonable time period before the trial burn.

(ii) This notice must contain:

(A) Name and telephone number of applicant's contact person;

(B) Name and telephone number of the permitting authority contact office;

(C) Location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting authority.

* * * * *

11. In § 270.66, paragraph (g) is removed.

12. Section 270.74 is added to read as follows:

§ 270.74 Trial burn requirements for interim status combustion units.

(a) Submission of the trial burn plan for interim status incinerators. For the purpose of determining feasibility of compliance with the performance standards of § 264.343 and establishing adequate operating conditions under § 264.345, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan with Part B of the permit application in accordance with § 270.19(b) and 270.62(b)(2).

(1) Applicants submitting other information as specified in 270.19(c) are exempt from the requirement to conduct a trial burn if the Director approves the permit application in accordance with the criteria in § 270.19(d).

(2) Applicants submitting information under § 270.19(a) are exempt from compliance with §§ 264.343 and 264.345 of this chapter and, therefore, are exempt from the requirement to conduct a trial burn.

(b) Submission of the trial burn plan for interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of §§ 266.104 through 266.107 of this chapter and establishing adequate operating conditions under § 266.102 of this chapter, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of § 266.103 of this chapter must prepare and submit a trial burn plan with Part B of the permit application in accordance with §§ 270.22(a) and 270.66(c) or submit other information in accordance with § 270.22(a)(6).

(c) At combustion facilities—approval of the trial burn plan and conducting the trial burn. (1) The applicant must receive approval for the trial burn plan by the Director before performing a trial burn.

(2) The Director shall review and make a determination on the trial burn plan in accordance with §§ 270.62(b)(3) through (b)(5) for incinerators, or § 270.66(d)(2) for boilers and industrial furnaces.

(3) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and

local government as specified in 40 CFR 124.10(c)(1)(x) announcing that the Director has reviewed the draft trial burn plan and has tentatively decided to approve it.

(i) This notice must be mailed within a reasonable time period before the trial burn.

(ii) This notice must contain:

(A) Name and telephone number of applicant's contact person;

(B) Name and telephone number of the permitting authority contact office;

(C) Location where the draft trial burn plan and any supporting documents can be viewed and copied; and

(D) A schedule of required activities prior to permit issuance, including when the permitting authority is expecting to give its approval of the plan, and the time periods during which the trial burn would be conducted.

(4) When a trial burn plan is approved, the Director will specify a time period prior to permit issuance during which the trial burn must be conducted.

(5) The applicant shall perform a trial burn in accordance with the approved trial burn plan, and must make the required determinations, submissions, and certifications in accordance with §§ 270.62(b)(6) through (b)(9) for incinerators, or §§ 270.66(d)(3) through (d)(5), and 270.66(f) for boilers and industrial furnaces. Trial burn results must be submitted prior to issuance of a draft permit.

(6) Upon completion of the trial burn, combustion units must comply with the performance standards of § 264.343 of this chapter (for incinerators), or §§ 266.104 through 266.107 of this chapter (for BIFs), along with all other applicable interim status standards. Compliance shall be demonstrated and determined based on the results of the trial burn, as follows. The owner or operator may only operate the combustion unit under conditions that passed and were demonstrated to meet the performance standards, and only if the successful trial burn data is sufficient to set all applicable operating conditions during the post-trial burn period. If any results of a trial burn for a combustion unit show non-compliance with any set of performance standards, the owner or operator must immediately cease operating under the condition(s) that resulted in non-compliance, and notify the Director. In order to continue operating when results of the trial burn show non-compliance with any performance standards under any set of conditions, the owner or operator must submit to the Director, with the trial burn results, a description of the conditions under which it is operating, and a preliminary explanation of how the conditions were determined to be sufficient to ensure that the unit functions within the performance standards. After reviewing the trial burn data and the preliminary demonstration submitted by the owner or operator, the Director may further restrict operating conditions as necessary to assure that the unit is operated within the performance standards.

(7) If the trial burn results indicate that any performance standards in § 264.343 of this chapter for incinerators, or §§ 266.104 through 266.107 of this chapter for boilers and industrial furnaces, have not been met, the facility may submit a request to conduct an additional trial burn.

(i) The request to conduct an additional trial burn must include:

(A) An explanation of the reasons for the previous trial burn failure; and

(B) A revised trial burn plan submitted under paragraph (a) or (b) of this section which contains substantive changes to address the reasons for the previous trial burn failure.

(ii) The revised trial burn plan must be approved by the Director according to the requirements of paragraphs (c)(1) through (c)(4) of this section. The Director may approve the request to conduct an additional trial burn only if the requirements of this section have been satisfactorily met.

(iii) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(x) announcing that the Director has reviewed the draft revised trial burn plan and has tentatively decided to approve it.

(iv) This notice must be given within a reasonable time period, and in accordance with § 270.74(c)(3)(A) through (D).

(8) If the trial burn results indicate that compliance with the performance standards in § 264.343 of this chapter for incinerators, or §§ 266.104 through 266.107 of this chapter for boilers and industrial furnaces, was not achieved, and thus, operating conditions cannot be developed under § 264.345 of this chapter for incinerators, or § 266.103 of this chapter for boilers and industrial furnaces, the Director may, pursuant to the procedures in Part 124 of this chapter, deny the permit application for the combustion unit.

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