US EPA ARCHIVE DOCUMENT

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[FR Doc. 04–4985 Filed 3–9–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7634–3]

Idaho: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Idaho applied to the United States Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). On August 1, 2003, EPA published a proposed rule to authorize the changes and opened a public comment period. The comment period closed on September 15, 2003. Today, EPA has decided that these revisions to the Idaho hazardous waste management program satisfy all of the requirements necessary to qualify for final authorization and is authorizing these revisions to Idaho's authorized hazardous waste management program in today's final rule.

EFFECTIVE DATE: Final authorization for the revisions to the hazardous waste program in Idaho shall be effective at 1 p.m. e.s.t. on March 10, 2004.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, WCM–122, U.S. EPA Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, Washington, 98101, phone (206) 553–0256.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under RCRA section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Idaho's hazardous waste management program received final authorization effective on April 9, 1990 (55 FR 11015, March 29, 1990). EPA also granted authorization for revisions to Idaho's program effective on June 5, 1992 (57 FR 11580, April 6, 1992), on August 10, 1992 (57 FR 24757, June 11, 1992), on June 11, 1995 (60 FR 18549, April 12, 1995), on January 19, 1999 (63 FR 56086, October 21, 1998), and most recently on July 1, 2002 (67 FR 44069, July 1, 2002).

Today's final rule addresses a program revision application that Idaho submitted to EPA on June 6, 2003, in accordance with 40 CFR 271.21, seeking authorization of changes to the State program. On August 1, 2003, EPA published a proposed rule announcing its intent to grant Idaho final authorization for revisions to Idaho's hazardous waste program and provided a period of time for the receipt of public comments. The proposed rule can be found at 68 FR 45192.

B. What Were the Comments to EPA's Proposed Rule?

EPA received one adverse comment letter during the comment period on the proposed rule. The comment letter was submitted by the Environmental Defense Institute, Keep Yellowstone Nuclear Free and David B. McCoy, collectively the commentors. EPA has taken into consideration the comments relating to the authorization of revisions to the Idaho hazardous waste management program in taking today's action. The issues raised by the commentors for purposes of this revision authorization and EPA's responses follow below.

The commentors raised issues in the following areas: (1) The commentors asserted that EPA is obligated to delay issuing a final rule for authorization of these revisions to the Idaho hazardous waste management program until completion of an EPA Office of Inspector General (IG) investigation based on a petition submitted to the Office of Inspector General on August 8, 2000; (2) the commentors asserted that Idaho's intent to move forward with the closure plan for two high level radioactive waste (HLW) and mixed waste tanks at the Idaho National Engineering and Environmental Laboratory (INEEL) violates the recent U.S. District Court ruling in *Natural Resources Defense Council, et al.* v. *Spencer Abraham (NRDC* v. *Abraham),* Case No. 01–CV–413 (July 3, 2003) and requires EPA intervention to ensure enforcement of the applicable law, in particular with respect to RCRA ''mixed waste;'' (3) the commentors asserted that the Tank Farm Facility (TFF) ''closure plan is in violation of RCRA since the DOE/ID has no INEEL RCRA Part B Permit;'' and (4) the commentors asserted that the Waste Calcine Facility (WCF) at the INEEL was improperly closed under RCRA because the facility closed with RCRA mixed waste and HLW in place. While these comments focused on a single facility in Idaho and the decisions made by DEQ regarding that facility, the commentors, both in the comment letter and in the numerous attachments thereto, implied that DEQ's actions at this facility had program-wide implications.

In preparing its response to these comments, EPA reviewed, among other documents, the comments and their attachments, the available files on the particular permits and units, including the WCF and the TFF, and the recent ruling in *NRDC* v. *Abraham,* as well as the joint amicus brief submitted by the States of Idaho, Washington, Oregon and South Carolina, and the Memorandum of Points and Authorities filed on March 6, 2003 by the United States Department of Justice on behalf of the Department of Energy. The administrative record compiled for this final rule can be located by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

With respect to the first comment on the proposed rule, EPA does not agree that it is obligated to delay this action until completion of an IG investigation.[1] The revisions to authorized hazardous waste programs are addressed in the regulations at 40 CFR 271.21. Program revisions are approved or disapproved by the Administrator based on the requirements of 40 CFR part 271 and the Resource Conservation and Recovery Act, as amended, (Act). *See* 40 CFR 271.21(b)(2). The Administrator has the discretion, among other things, to decline to approve a program revision as well as to withdraw approval of an authorized state program for cause. For purposes of today's action, EPA has determined, based on the administrative

[1] Nor did the IG reach such a conclusion in the Final Evaluation Report ''Review of EPA's Response to Petition Seeking Withdrawal of Authorization for Idaho's Hazardous Waste Program,'' Report No. 2004–P–00006, February 5, 2004. The IG did conclude that ''Region 10 generally relied on appropriate regulatory requirements and standards in reaching its conclusion that evidence did not exist to commence proceedings to withdraw the State of Idaho's authority to run its RCRA Hazardous Waste program.''

record, that authorizing these revisions to Idaho's hazardous waste management program meets the requirements for authorization and continues to ensure that the authorized program in Idaho can meet the requirements for permitting, enforcement, and environmental protection at the INEEL facility and throughout the State of Idaho. The revisions in today's final rule include the rules in Idaho that add all delegable federal hazardous waste rules promulgated between July 1, 1998, and July 1, 2001 (with the exception of parts of the post closure rule), to the already existing hazardous waste program.

EPA does not agree with the second assertion made by the commentors. The commentors asserted that Idaho's intent to move forward with the closure plan for HLW tanks at the INEEL violated the recent U.S. District Court ruling in *NRDC* v. *Abraham,* Case No. 01–CV–413 (July 3, 2003), and requires EPA intervention to ensure enforcement of the applicable law, in particular with respect to RCRA ''mixed waste.'' The tanks which are of issue are tanks WM–182 and WM–183 located within the TFF at the INEEL. The tanks are subject to RCRA and the Department of Energy's (DOE) authority under the Atomic Energy Act (AEA), as DOE maintains, or to the Nuclear Waste Policy Act (NWPA), as the District Court concluded. The U.S. Department of Justice, on behalf of DOE, has appealed the *NRDC* v. *Abraham* decision to the Ninth Circuit Court of Appeals.

The commentors failed to distinguish the RCRA ''mixed waste'' authority and its application to the tanks from those radioactive solid waste issues which may be the subject of the NWPA or the AEA. The State of Idaho joined the States of Oregon, South Carolina and Washington in an amicus brief to the Court to discuss the complex issues involved in the case of *NRDC* v. *Abraham*. The joint brief argued from the States' perspective that the DOE had to apply the definition of HLW under the NWPA to determine whether radioactive solid waste met the definition of HLW. The ruling, which the United States appealed, held that DOE did not have discretion to dispose of HLW in other than the type of repository required by the NWPA and that a DOE order, which set a DOE policy to make decisions on how to classify radiological waste, conflicted with the NWPA and was invalid.

The Idaho Department of Environmental Quality (IDEQ) explained to the commentors by letter dated July 29, 2003, that the ruling might have implications for how DOE addresses the HLW in the tanks:

> Judge Winmill's decision did not issue any form of injunctive relief but advised instead that DOE should not take actions inconsistent with the decision. It may be possible for DOE to proceed with its planned RCRA closure at Tanks WM–182 and WM–183 without violating any part of Judge Winmill's order (*e.g.* if no HLW as defined by the NWPA is contained in the tanks). If on the other-hand, it is apparent that DOE will be unable to complete a portion of the RCRA closure plan due to the legal constraints of the NWPA, the Department will ask DOE to submit an amendment to the plan that provides for complete RCRA closure, while meeting other appropriate legal requirements. In the interim, nothing in Judge Winmill's decision prevents DOE from moving forward with the emptying and cleaning of other tanks and other closure activities.

It is clear that Idaho understands the difference between the state's authority over RCRA ''mixed waste,'' the hazardous waste component of which is addressed by the RCRA-authorized hazardous waste program in Idaho, and ''HLW,'' the radiological component of which may be subject to the AEA, as DOE maintains, or to the NWPA, as the District Court concluded. Idaho is carrying out its responsibilities under the authorized hazardous waste program for ''mixed waste.'' EPA's direct intervention in this matter, which the commentors request, is not called for at this time.

The commentors' third assertion was that the closure of two HLW tanks at INEEL is in violation of RCRA since the DOE/ID has no INEEL RCRA Part B Permit. EPA does not agree that the closure of the first two of eleven Tank Farm Facility (TFF) tanks without a permit violates RCRA. Interim status units are allowed to close pursuant to a closure plan approved in accordance with the Federal regulations at 40 CFR part 265 subpart G, incorporated by reference and authorized in the Idaho hazardous waste program at IDAPA 58.01.05.009.

The commentors' final assertion was that the WCF at the INEEL facility improperly closed under RCRA because the facility closed with RCRA mixed waste and HLW in place rendering the facility a ''permanent disposal site'' for high-level radioactive waste and mixed hazardous transuranic waste. The WCF was closed in accordance with a closure plan approved by IDEQ pursuant to 40 CFR part 265 subpart G. The WCF closure plan called for capping the WCF with a concrete cap. A draft partial post-closure permit for the WCF was provided to the public for review and comment on May 23, 2003, and a final partial post-closure permit was issued for WCF and became effective on October 16, 2003. The concrete cap was a component of the post-closure permit. The commentors' allegation relates to the policy challenged in *NRDC* v. *Abraham.* The resolution of this issue does not reside in the RCRA statute or regulations and cannot be resolved in this authorization. Regardless of the ultimate resolution of the DOE policy challenged in *NRDC* v. *Abraham,* the comment on the WCF is insufficient as a basis upon which to decide the merits of authorizing this revision to the Idaho program. The revision and the program as a whole meet the requirements for authorization.

C. What Decisions Have We Made in This Rule?

EPA has made a final determination that Idaho's revisions to the Idaho authorized hazardous waste program meet all of the statutory and regulatory requirements established by RCRA for authorization. Therefore, EPA is authorizing the revisions to the Idaho hazardous waste program and authorizing the State of Idaho to operate its hazardous waste program as described in the revision authorization application. Idaho's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA).

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA are implemented by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Idaho, including issuing permits or portions of permits, until the State is authorized to do so.

D. What Will Be the Effect of Today's Action?

The effect of today's action is that a facility in Idaho subject to RCRA must comply with the authorized State program requirements and with any applicable Federally-issued requirement, such as, for example, the federal HSWA provisions for which the State is not authorized, and RCRA requirements that are not supplanted by authorized State-issued requirements, in order to comply with RCRA. Idaho has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this final rule. EPA continues to have independent

enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections; require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable federally-issued statutes and regulations; suspend, modify or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This final action approving these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho's program is being authorized are already effective under State law.

E. What Rules Are We Authorizing With Today's Action?

On June 6, 2003, Idaho submitted a complete program revision application, seeking authorization for all delegable Federal hazardous waste regulations codified as of July 1, 2001, as incorporated by reference in IDAPA 58.01.05.(002)–(016) and 58.01.05.997, except specific portions of the post closure rule noted in the paragraphs below.[2] EPA has determined that the revisions to Idaho's hazardous waste program satisfy all of the requirements necessary for final authorization, and EPA is authorizing the state's changes.

In this final rule, Idaho is receiving partial authorization for the Post Closure Rule promulgated on October 22, 1998 (63 FR 56710). Idaho is not receiving authorization for 40 CFR 270.1(c)(7), Enforceable documents for post-closure care; 40 CFR 265.121, Post-closure requirements for facilities that obtain enforceable documents in lieu of post-closure permits; 40 CFR 265.110(c), and 40 CFR 265.118(c)(4). These provisions are described in the Post Closure rule preamble at 63 FR 56712 section a., Post-closure care under alternatives to permits.

Idaho is not receiving authorization for the clause ''* * * or in an enforceable document (as defined in 270.1(c)(7))'' in the following sections which are incorporated by reference into Idaho's hazardous waste program: 40 CFR 264.90(e), 264.90(f), 264.110(c), 264.112(b)(8), 264.112(c)(2)(iv), 264.118(b)(4), 264.118(d)(2)(iv), 264.140(d), 265.90(f), 265.110(d), 265.112(b)(8), 265.118(c)(5), 265.140(d), 270.1(c) introduction, and 270.28.

F. Who Handles Permits After This Authorization Takes Effect?

Idaho will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits or portions of permits issued by EPA prior to final authorization of this revision will continue to be administered by EPA until the effective date of the issuance, re-issuance after modification, or denial of a State RCRA permit or until the permit otherwise expires or is revoked, and until EPA takes action on its permit or portion of permit. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit or portion of permit. EPA will continue to issue permits or portions of permits for HSWA requirements for which Idaho is not yet authorized.

G. What Is Codification and Is EPA Codifying Idaho's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State's authorized rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart F for codification of Idaho's program at a later date.

H. How Does Today's Action Affect Indian Country (18 U.S.C. Section 1151) in Idaho?

EPA's decision to authorize the Idaho hazardous waste program does not include any land that is, or becomes after the date of this authorization, ''Indian Country,'' as defined in 18 U.S.C. 1151. This includes: (1) All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho; (2) any land held in trust by the U.S. for an Indian tribe; and (3) any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over ''Indian Country'' as defined in 18 U.S.C. 1151.

I. Statutory and Executive Order Reviews

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4,1993), the Agency must determine whether the regulatory action is ''significant'', and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OPM. Since this final rule does not establish or modify any information or record-keeping requirements for the regulated community, it is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR

[2] Sections of the Federal hazardous waste program are not delegable to the states. These sections are 40 CFR part 262, subparts E, F, & H; 40 CFR 268.5; 40 CFR 268.42(b); 40 CFR 268.44(a)–(g); and 40 CFR 268.6. Authority for implementing the provisions contained in these sections remains with EPA.

part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant impact on small entities because the final rule will only have the effect of authorizing pre-existing requirements under State law. After considering the economic impacts of today's proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

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

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This rule addresses the authorization of pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

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

This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve ''technical standards'' as defined by the NTTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as

appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this rule addresses authorizing pre-existing State rules and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

11. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5. U.S.C. 804(2). This rule will be effective on the date the rule is published in the **Federal Register**.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 3, 2004.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 04–5368 Filed 3–9–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45, DA 03–4070]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) updates line counts and other input data used in the Commission's forward-looking economic cost model for purposes of calculating and targeting non-rural high-cost support beginning January 1, 2004. The Bureau denies a petition filed by the Maine Public Utilities Commission and the Vermont Public Service Board (Joint Commenters) seeking reconsideration of the Bureau's 2002 *Line Counts Update Order.*

ADDRESSES: The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Order and Order on Reconsideration in CC Docket No. 96–45, DA 03–4070 released December 24, 2003.

I. Introduction

1. The Bureau, consistent with action taken in the past, updates line counts and other input data used in the Commission's forward-looking economic cost model for purposes of calculating and targeting non-rural high-cost support beginning January 1, 2004. In the Order on Reconsideration, the Bureau denies a petition filed by the Maine Public Utilities Commission and the Vermont Public Service Board (Joint Commenters) seeking reconsideration of the Bureau's *2002 Line Counts Update Order,* 67 FR 3118, January 23, 2002.

II. Discussion

A. Switched Line Count Updates

2. Consistent with the framework adopted in the *Twentieth Reconsideration Order,* 65 FR 26513, May 8, 2000, and the *2001 and 2002 Line Counts Update Orders,* 65 FR 81759, December 27, 2000 and 67 FR 3118, January 23, 2002, we conclude that the cost model should use year-end 2002 line counts filed July 31, 2003, as input values for purposes of estimating average forward-looking costs and determining support for non-rural carriers beginning January 1, 2004. We will adjust support amounts every quarter to reflect the lines reported by non-rural carriers. In addition, we will allocate switched lines to the classes of service used in the model by dividing year-end 2002 lines into business lines, residential lines, payphone lines, and single-line business lines for each wire center in the same proportion as the lines filed pursuant to the *1999 Data Request.*

3. We disagree with BellSouth that line counts should not be updated unless the Bureau also updates road and customer location data. Updated line count data are readily available, whereas updated road and customer location data are not. As we have explained in the past, line count data must be updated to reflect cost changes and economies of scale associated with changes in line counts, consistent with the Commission's forward-looking cost criteria established in the *First Report and Order,* 67 FR 41862, June 20, 1997. Line count data also should be updated to avoid increasing the lag between such data and the quarterly line count data used to adjust non-rural high-cost support amounts. We are not persuaded that updating line counts is inappropriate because it may fail to reflect certain costs associated with serving new customer locations. The model's use of road surrogate data to determine customer locations ensures that the structure costs associated with serving new customer locations are reflected in model cost estimates unless such locations are along new roads. BellSouth contends that recent switched line decreases and new housing growth in its service territory undermine the assumption that most new lines are either placed at existing customer locations or along existing cable routes, but it submits no data in support of this contention. Switched lines nationwide decreased by 3.3 percent in 2002, and Commission data indicate that households increased by approximately one percent. Based on these data, we cannot conclude that the trends identified by BellSouth justify not updating line count data. On balance, we find that updating line count data is the best approach for estimating forward-looking costs and determining non-rural high-cost support amounts for 2004.

4. We also disagree with AT&T's argument that we should use projected