

POSTAL SERVICE

39 CFR Part 233

Inspection Service Authority

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule revises portions of the Postal Service regulations on Inspection Service authority to include the criteria listed in the Department of Justice regulations pertaining to petitions for remission and mitigation, to clarify the time for filing a Petition for Remission or Mitigation of Forfeiture, and to describe more accurately the purpose of the Petition for Restoration of Proceeds of Sale.

EFFECTIVE DATE: July 23, 1992.

FOR FURTHER INFORMATION CONTACT:
Fred I. Rosenberg, (202) 268-5477.

SUPPLEMENTARY INFORMATION: Section 233.7(j)(2) is revised to clearly outline the information that must be included in a Petition for Remission or Mitigation. The revision includes criteria for remission listed in 28 CFR 9.5. In addition, the last sentence of paragraph (j)(2) has been deleted.

The first sentence of § 233.7(j)(4) is amended to substitute the word "should" for the word "must." There is no requirement that a Petition for Remission or Mitigation be filed within 30 days from the date of the personal notice letter or within 30 days from the date of publication. A Petition for Remission or Mitigation may be filed at any time prior to disposition of the property by the Postal Service. After the property has been disposed of, a Petition for Restoration of Proceeds of Sale or for the appraised value of the forfeited property (when the forfeited property has been retained or delivered for official use of a government agency) may be filed.

The second sentence of paragraph (j)(4) is amended to more accurately describe the exact purpose of the Petition for Restoration of Proceeds of Sale.

List of Subjects in 39 CFR Part 233

Crime, Forfeiture, Postal Service.

In consideration of the foregoing, 39 CFR part 233 is amended as set forth below.

PART 233—[AMENDED]

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401-3422; 18 U.S.C. 981, 1956, 1957, 2254; 21 U.S.C. 881.

2. Section 233.7 is amended by revising paragraphs (j)(2) and (4) to read as follows:

§ 233.7 Forfeiture authority and procedures.

(j) * * *

(2)(i) All such Petitions must include, at a minimum, the following:

(A) A complete description of the property, including model and serial numbers, if any;

(B) The date and place of seizure;

(C) The Petitioner's interest in the property, which must be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(D) Any facts and circumstances, established by satisfactory proof, relied upon by the Petitioner to justify the granting of the Petition.

(ii) The Postal official in charge of the decision (determining official) shall not consider whether the evidence is sufficient to support the forfeiture but shall presume a valid forfeiture.

(iii) *Remission.* The determining official shall not remit a forfeiture unless the petitioner establishes:

(A) That petitioner has a valid, good faith interest in the seized property as owner or otherwise; and

(B) That petitioner had no knowledge that the property in which petitioner claims an interest was or would be involved in any violation of the law; and

(C) That petitioner had no knowledge of the particular violation which subjected the property to seizure and forfeiture; and

(D) That petitioner had no knowledge that the user of the property had any record for violating laws of the U.S. or of any State for a related crime; and

(E) That petitioner had taken all reasonable steps to prevent the illegal use of the property.

(iv) *Mitigation.* In addition to having the discretionary authority to grant relief by way of complete remission of forfeiture, the determining official may, in the exercise of discretion, mitigate forfeitures of seized property. This authority may be exercised in those cases where the petitioner has not met the minimum conditions precedent to remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the determining official, complete relief is not warranted. Mitigation shall take the form of a

money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner, and shall be deposited as an amount realized from forfeiture in accordance with 39 U.S.C. 2003(b)(7).

(4) A Petition for Remission or Mitigation of forfeiture should be filed within thirty days from the date of the personal notice letter or within thirty days from the date of publication notice. After property is disposed of, a Petition for Remission or Mitigation of forfeiture will no longer be accepted; thereafter, a Petition for Restoration of Proceeds of Sale, or for the appraised value of the forfeited property, when the property has been retained or delivered for official use by a government agency, may be filed. Such Petition shall be filed within ninety days of the sale of the property, or within ninety days of the date the property is placed in official use.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-17400 Filed 7-22-92; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-4157-5]

California; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of California for final authorization.

SUMMARY: California has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed California's application and has reached a final determination that California's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to California to operate its program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: Final authorization for California shall be effective at 1 p.m. on August 1, 1992.

FOR FURTHER INFORMATION CONTACT: Deirdre Nurre, H-2-3, Program Development Section, EPA, 75 Hawthorne St., San Francisco, CA 94105; (415) 744-2106.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)).

On December 20, 1991, California submitted an official application for final authorization to administer the RCRA program. On May 1, 1992, EPA published a tentative determination announcing its intent to grant California final authorization. Further background on the tentative decision to grant authorization appears at Vol. 57, No. 85, FR 18827 to 18829, May 1, 1992.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application. On May 27, 1992, EPA published a notice extending the public comment period and rescheduling the public hearing. The public hearing was held on June 15, 1992.

B. Comments/Responses

EPA received one oral comment, supplemented in writing, and twenty (20) letters containing written comments during the public comment period. Some of the letters expressed support for EPA's tentative determination. The significant issues raised by the commenters and EPA's responses are summarized below.

1. *Comment:* EPA received numerous comments relating to the transportation of hazardous waste in light of the new standard for preemption of State regulation of hazardous waste transportation under the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The comments generally asserted that some portion of the State's regulations governing transportation of waste were inconsistent with and should be preempted by federal law. Specific issues included the State's requirements

on the use of a cover manifest form, the reporting of spills, transfer facilities, vehicle inspection and marking, extremely hazardous waste, and the State's use of fees.

Response: The Hazardous Materials Transportation Uniform Safety Act of 1990 amended the Hazardous Materials Transportation Act (HMTA), by adding a new subsection which preempted many State and local regulations of hazardous materials transportation if the State and local regulations were not substantively the same as the federal regulation of the subject. The Department of Transportation's (DOT) final regulation explaining the relevant standard stated that "'substantively the same' means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis*, changes are permitted." 49 CFR 107.202. DOT has stated that "substantively the same" does not mean "identical." 57 FR at 20425. DOT cited legislative history which explained that "the state law must have the same effect as the Federal law." *Id.*

The regulations also established a procedure whereby any person affected by a requirement may apply for a determination as to whether the requirement is preempted and a procedure whereby a State could apply for a waiver of the preemption.

Although EPA has considered each of the specific comments raised with respect to this standard to determine whether the requirement renders the State program "inconsistent" with the Federal program (including regulations governing tracking of hazardous waste), EPA does not believe that it is appropriate to use the authorization process to make the specific determinations of inconsistency where the DOT has established procedures both for establishing inconsistency and providing waivers from preemption. The "inconsistency" is not related to RCRA authorities, but to another statute. A possible issue of preemption under the HMTUSA would not affect the program's eligibility for RCRA authorization.

2. *Comment:* Several commenters stated that the requirement of California Health and Safety Code Section 25160, which requires the use of a manifest cover form when hazardous waste is shipped out of California to a state which requires the use of its own manifest form is preempted by the Hazardous Materials Transportation Act.

Response: The form referred to by the commenters is a half-page form which repeats certain information contained

on a portion of the California uniform manifest. Although EPA lacks authority to resolve preemption issues under the Hazardous Materials Transportation Act, as amended, it notes that RCRA rules also prohibit other forms from traveling with the uniform national hazardous waste manifest. See, for example, 40 CFR 271.10(f). The State, however, has assured EPA that the cover form need not accompany the manifest and hazardous waste shipment. Rather, the generator may simply submit the cover form to the State agency.

3. *Comment:* Several commenters stated that California's regulations on the management of extremely hazardous waste impose additional burdens on transporters inconsistent with the HMTA.

Response: EPA has reviewed the regulations identified by the commenters. The regulations do not appear to impose any additional paperwork or other restrictions on the transportation of hazardous waste. This issue is not a "consistency" issue for RCRA. There may be a preemption issue under the HMTUSA. However, it does not affect the eligibility of the program for RCRA authorization.

4. *Comment:* Several commenters complained of the regulation of hazardous waste transportation by the California Public Utilities Commission (CPUC).

Response: The commenters did not identify any specific action of the CPUC which is inconsistent with federal law or with authorization of the Department of Toxic Substances Control (DTSC) to operate the RCRA program. This issue is not a "consistency" issue for RCRA. There may be a preemption issue under the HMTUSA. However, it does not affect the eligibility of the program for authorization.

5. *Comment:* One commenter stated that the description of regulation of hazardous waste transportation contained in the California application "appears" to be incomplete. It also stated that the California application is incomplete because it does not discuss proposed regulations.

Response: Since the proposed regulations have not yet been adopted and are not part of the existing program for which the State is seeking authorization, EPA does not agree that the failure to discuss this matter affects the completeness of the State's application.

6. *Comment:* One commenter inquired "whether or not USEPA * * * intends to grant authority to California to adopt regulations affecting waste

transportation, which are far in excess of the USEPA and USDOT requirements?" (emphasis omitted). The commenter appeared to be objecting principally to the proposed requirement that transfer stations require permits.

Response: EPA agrees that a regulation preempted by any other Federal law is invalid. At this time, however, the regulations referenced by the commenter have not been adopted and are not part of the State's application. It also appears likely that any permit requirement for facilities not regulated under RCRA would be viewed as "broader in scope" and, therefore, not part of the authorized program. In the event the State adopts regulations which the commenter believes are inconsistent with the Hazardous Materials Transportation Act, the commenter has available the option of seeking an advisory inconsistency ruling from the Department of Transportation, which has jurisdiction over such matters.

7. *Comment:* One commenter stated that the State's requirement for a written report to be filed within 10 days of any incident which results in a spill or release of hazardous waste to the environment is inconsistent with the federal standard which requires that written reports be filed with the DOT within 30 days of the release of any quantity of hazardous waste during transportation.

Response: The regulation cited by the commenter is not part of the authorized program. Instead the specific requirement in 22 CCR 66263.41(h) relates solely to certain wastes not generally covered by RCRA requirements. DTSC regulations for reporting releases of RCRA hazardous waste are found in 22 CCR 66263.30 and are identical in all pertinent respects to the provisions of 40 CFR 263.30.

8. *Comment:* One commenter objected to the State regulations governing transfer facilities, noting that the State requires a permit for transfer facilities engaging in "break and bulk" activities or which hold hazardous waste for over 144 hours, suggesting that the permit requirement for these activities is a "prohibition" on these activities.

Response: The greater stringency of the State's program is not precluded by RCRA; if there is a preemption issue under HHTA, it should be resolved under the procedures governing such determinations. EPA does not agree that a permit requirement for some transfer facilities is a "prohibition" on these activities. EPA regulations limit the exemption from substantive and permitting regulations for transfer facilities to those facilities which hold

hazardous waste less than ten days. 40 CFR 263.12.

9. *Comment:* One commenter objected to the State requirement that the California Highway Patrol conduct an annual inspection of vehicles and containers used to ship hazardous waste in the State. The commenter noted that the inspection requirement is identical to the federal annual highway vehicle inspection program found at 49 CFR 396.17. The commenter states that insofar as California attempts to enforce the inspection requirement against vehicles which have already been inspected under section 396.17, the DTSC requirements violate the Motor Carrier Safety Act. The commenter also argues that the requirement is a "candidate" for preemption under the Hazardous Materials Transportation Act.

Response: If there is an issue of possible preemption by other Federal laws, that issue does not affect the RCRA authorization standards. The vehicle inspection program of the California Highway Patrol is not part of the authorized program.

10. *Comment:* One commenter stated that the State's requirements for inspecting and marking bulk containers that transport hazardous waste should be preempted under the HMTA.

Response: If there is an issue of possible preemption by other Federal laws, that issue does not affect the RCRA authorization standards. The container inspection program is not part of the authorized program.

11. *Comment:* One commenter argued that the State manifest differs from federal regulation because the State "regulates down to zero generation," so that all waste shipped requires a manifest.

Response: The State is not altering the manifest form by this requirement; it is expanding the class of waste that requires a manifest to be shipped. RCRA allows a State to adopt and enforce requirements which are more stringent and to operate a program broader in scope than is the case under federal requirements. 40 CFR 271.1(i). The State does not exempt conditionally exempt or other small quantity generators from the basic requirements of hazardous waste regulation. This regulatory decision by the State is allowed by federal law and is not inconsistent with the federal manifest program.

12. *Comment:* One commenter argued that the State manifest differs from federal regulation because the State identifies many wastes as hazardous which are not regulated as hazardous under RCRA.

Response: RCRA allows a State to adopt and enforce requirements which are more stringent and to operate a program broader in scope than is the case under federal requirements. 40 CFR 271.1(i). The State's decision to regulate additional hazardous wastes is allowed by federal law and is not inconsistent with the federal manifest program.

13. *Comment:* One commenter noted that the State requires that a motor carrier of hazardous waste must obtain authority from DTSC, but that RCRA itself does not require such an approval. The commenter concedes that "the HMTA recognizes that states may have legitimate needs to permit and register transporters of hazardous materials," but notes further that "upwards of 30 states impose requirements on transporters of hazardous waste."

Response: The requirement for transporters to obtain DTSC approval is broader in scope than RCRA and is not a part of the authorized program. The RCRA authorization process examines the adequacy and consistency of the State's authorities to implement RCRA; if there are preemption issues under other Federal laws, they do not affect the State's RCRA authorization. In addition, EPA does not believe that an individual State's authorization application is the appropriate forum to resolve problems which clearly affect a large number of states. As the commenter recognizes, a process is already in place intended to address the problem pursuant to the HMTUSA.

14. *Comment:* One commenter complained regarding alleged inequities in the collection of fees from motor carriers by DTSC and other State agencies.

Response: The collection of fees by the State is not part of the authorized program.

15. *Comment:* One commenter opposed authorization because of difficulties in siting new commercial hazardous waste incinerators. In addition to its own recent experience, the commenter referred to two other cases. In general, the commenter believes that the environmental review process conducted by local agencies in making land use decisions acts as a bar to the siting such facilities.

Response: EPA has reviewed the cases cited by the commenter and does not agree that they demonstrate that the State's processes act as a bar to siting new facilities. In one of the cases cited, the Vernon incinerator, the DTSC issued a hazardous waste facility permit. In both of the other cases, there were admitted deficiencies in the environmental review conducted by the

lead agency. In addition, RCRA is not intended to supplant the land use decisions of local authorities. EPA agrees that siting new facilities is a difficult task but is unable to conclude that the local land use decisionmaking process in California is unique in this regard.

16. *Comment:* One commenter argues that under Health and Safety Code § 25162, DTSC requires that California hazardous wastes shipped to another state must be managed at a hazardous waste treatment, storage, and disposal site even if the waste would not otherwise be regulated as hazardous in the receiving state. The commenter states that this requirement poses "an unambiguous restraint on the interstate movement" of such wastes.

Response: EPA has reviewed the cited statute and does not agree with the commenter's interpretation of the law. The cited provision also allows shipment of the waste to a facility if "The facility is authorized by the state in which it is located, pursuant to the applicable laws or regulations of that state, to accept the transported hazardous waste for transfer, handling, recycling, storage, treatment, or disposal." Health and Safety Code § 25162(a)(2). Thus, if the receiving state, allowed the waste to be received at a Subtitle D facility, the California statute would allow the disposal of the waste there, "pursuant to the applicable laws or regulations of that state." This requirement is consistent with EPA's "designated facility" definition at 40 CFR 260.10.

C. Decision

After reviewing the public comments and the administrative record, I conclude that California's application meets all of the requirements necessary to qualify for final authorization for the Federal RCRA program in effect as of July 8, 1984; for non-HSWA revision Clusters I, II, III, IV, V, and VI; and for HSWA cluster I and HSWA cluster II with the exception of Organic Air Emission Standards for Process Vents and Equipment Leaks (Rule Code 79). Accordingly, California is granted final authorization to operate its program as revised and approved herein in lieu of the Federal RCRA program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984 (HSWA)).

California has not sought the authority to operate the RCRA program on any Indian lands and is not authorized by the Federal government to operate the RCRA program on Indian lands. This authority remains with EPA.

California now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. California also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008 and 3013 and 7003 of RCRA.

In several respects, California's regulation of hazardous waste is broader in scope than federal regulation. Unlike more stringent provisions which are enforceable by EPA as part of the authorized program, EPA may not enforce State provisions which are broader in scope. California "broader in scope" provisions fall principally in two categories: California regulates hazardous wastes which are not regulated under the Federal program, and California requires permits for certain classes of units which are exempt from regulation under federal law.

Hazardous wastes regulated under California but not federal law include certain non-aqueous corrosives (see 22 CCR 66261.22(a)(3 and 4)) and solid wastes which meet additional California characteristics for hazardous waste (see 22 CCR 6261.24(a)(2)(A & B) (toxicity standards for which there is no federal counterpart) and 22 CCR 66261.24(a)(3-8) (threshold standards)). In addition, California regulates used oil as hazardous waste (see Health and Safety Code §§ 25250, *et seq.*), and regulates certain wastes exempt under 40 CFR 261.6(a)(3).

A significant area in which the State permit program is broader in scope is the State requirement of permits for recycling units exempt from permitting under federal regulations. California does not recognize the federal exclusions from the permit requirement for small quantity generators, totally enclosed treatment units and wastewater treatment units (40 CFR 270.1(c)(iii-v)).

D. Effect of HSWA on California's Authorization

As stated above, California's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA to RCRA. Prior to that date, a State with final authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal

requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect immediately in all States regardless of their authorization status. EPA is directed to carry out those requirements and prohibitions. In authorized States, EPA implements the HSWA requirements or prohibitions, including the issuance of full or partial permits, until the State is granted authorization to do so. States must still adopt HSWA-related provisions as State law to retain final authorization.

As a result of HSWA, there will be a dual State/Federal regulatory program in California. To the extent the authorized program is unaffected by HSWA, the State program will operate in lieu of the Federal program. (Please note that all permits issued by EPA prior to the State being granted final authorization will continue in force until the effective date of the State's issuance or denial of a State RCRA permit, or the permit otherwise expires or is revoked.) To the extent HSWA-related requirements are in effect, EPA will administer and enforce those portions of the HSWA in California until the State receives the authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once California is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time, the State will assist EPA's implementation of HSWA under a Cooperative Agreement.

Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect under State law; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a FR notice which explains in detail HSWA and its effect on authorized States. That notice was published at 50 FR 28702-28788, July 15, 1985.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of California's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice 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: July 13, 1992.

Daniel W. McGovern,
Regional Administrator.

[FR Doc. 92-17404 Filed 7-22-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2740

[AA-320-4212-02 24 1A; Circular No. 2638]

RIN 1004-AA73

Recreation and Public Purposes Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends existing regulations to implement the Recreation and Public Purposes Amendment Act of 1988 (Public Law 100-648) (hereafter referred to as the Act). This Act amended section 3 of the Act of June 14, 1926 to provide special procedures for conveyances of public lands for solid waste disposal or related purposes. The Act authorizes the Secretary of the Interior to make permanent conveyances, without the standard reverter provision, of public lands when such lands are to be used for the express purpose of solid waste disposal or for any other purpose which may result in or include the disposal,

placement, or release of any hazardous substance. This is a departure from the present requirement that the United States retain a reversionary interest in lands conveyed under the Recreation and Public Purposes Act.

EFFECTIVE DATE: 60 legislative days from date of publication.

ADDRESSES: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jim Paugh (202) 208-4200.

SUPPLEMENTARY INFORMATION: The Act, which became effective on November 10, 1988, terminated authority for the Secretary of the Interior to lease public land for solid waste disposal purposes. It specifically authorizes the Secretary to: (1) Convey public land by patent for new solid waste disposal sites with a limited reverter, (2) convert existing leases into patents without a reverter provision, and (3) remove the reverter provision from existing patents.

Because of Federal liabilities associated with leased sites, it is the policy of the Bureau of Land Management (BLM) to work with local communities to patent public lands for new disposal sites. Existing leased sites would be closed and retained in Federal ownership. If, however, the community expresses an interest in obtaining a patent to an existing site and no new disposal sites are available, the authorized officer may convey the site, but only after all the requirements contained in this final rule have been met and with approval of the Director, BLM. Implementation of this rule will enable State and local governments that are in need of sanitary landfills to acquire sites at low cost. It would also reduce the potential for indiscriminate dumping of solid waste and hazardous substances on public land, and place primary responsibility for oversight and maintenance with the States and the Environmental Protection Agency (EPA)—entities that have the authority, staffs, and necessary expertise to regulate solid waste disposal facilities.

On November 29, 1991, the BLM published a proposed rule in the *Federal Register* (56 FR 61104), with a 30-day comment period. The rule incorporated provisions by which the authorized officer may convey public land for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may include the disposal, placement, or release of any hazardous substance. Included in the proposed rule were requirements that pertained to: land use planning, land

classification, compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), site investigation and State certification, and patent provisions. The proposed rule also made reference to the final EPA regulations that were published in the *Federal Register* (56 FR 50978) on October 9, 1991. These regulations established criteria for municipal solid waste landfills including location restrictions, facility design and operations, groundwater monitoring, corrective action measures, conditions for closure and post-closure use, and requirements for financial responsibility.

In response to the proposed rule published on November 29, 1991, the BLM received comments from 19 sources including: 1 individual, 1 business, 1 industry association, and 16 Governmental entities.

The comments relating directly to the proposed rule and the corresponding responses are discussed as follows. Editorial and grammatical corrections have been made as necessary.

General Comments

Three commenters questioned the BLM policy of retaining leased sites in Federal ownership and asked why the conveyance of existing sites will only be considered if no new disposal sites are available. The BLM has been advised by the Office of the Solicitor, Department of the Interior, that the United States is potentially liable for any problems that may occur at existing sanitary landfills under lease or at leased landfills that would be conveyed out of Federal ownership. Therefore, to minimize Federal liabilities, the BLM would prefer to close and retain the leased sites in Federal ownership and work with local governments in patenting new disposal sites.

One commenter asked if the proposed rule applied to landfills on National Forest lands. The Act and its implementing regulations apply only to public lands administered by the Department of the Interior.

One commenter requested clarification of the terms "hazardous substances" and "household hazardous waste". The BLM did not use the latter term in the proposed rule. The Act specifically authorizes the disposal of solid waste including hazardous substances. The definitions of these terms are found in EPA regulations 40 CFR 261.2 and 302.3, respectively. Household waste, as defined under 40 CFR 261.4, is a component of solid waste and is authorized for disposal under the Act. Neither the Act nor the current regulations specifically authorize the

disposal of permanent or long-term hazardous wastes as defined under 40 CFR 261.3. However, some hazardous wastes such as lawn care and gardening products, discarded paints, and household cleaners are commonly deposited with household wastes or have been deposited from conditionally exempt small quantity generators, as provided for in 40 CFR 261.5. Generally, such wastes would not be found in concentrations sufficient to threaten human health and the environment.

One commenter expressed concern that the proposed rule could apply to oil and gas drilling and production pits. The Recreation and Public Purposes Act only grants authority to the Secretary of the Interior to convey public lands for recreational and public purposes. Qualified applicants under the Act include Federal and State agencies, county and city governments, and nonprofit corporations and associations. The provisions of this rule only pertain to solid waste disposal sites including municipal landfills that would be owned and operated by governmental entities. The provisions of this rule would apply to oil and gas operations only to the extent that exploration and production wastes are disposed at municipal landfills and such wastes qualify as solid wastes or hazardous substances as defined under 40 CFR 261.2 and 302.3, respectively.

Specific Comments

Price

One commenter stated that the provision in § 2741.8(d) that disallows any adjustment in the sale price of public land for inclusion of the limited reverter was confusing and that the existing provisions under § 2741.8 adequately address the pricing requirements. The BLM agrees with the commenter and the provision is removed from the rule.

Site Investigation

One commenter expressed opposition to § 2743.3(a)(3) which requires the lessees to reimburse the Federal Government for the costs of investigating existing sites prior to their transfer out of Federal ownership. Since lessees are the primary beneficiaries of obtaining a patent to existing sites, BLM considers the cost reimbursement provision to be reasonable. In the event that investigative costs place an undue hardship on local governments, the BLM may provide financial assistance.

With regard to the requirement under § 2743.3(a)(3)(iv), one commenter requested clarification as to the standards and responsibility for costs

associated with the analysis of soil, water, and air. The commenter also recommended that the regulations be more flexible by allowing local agencies to determine the need for analysis. This provision of the regulations requires that an "appropriate" analysis of soil, water, and air be completed as part of the site investigation. The use of the term "appropriate" is intended to allow the BLM authorized officer flexibility in determining the level and standards of investigation, in consultation with EPA, State and local government officials. The requirements and associated costs for investigating leased disposal sites may vary depending on site-specific factors such as climate, topography, geologic strata, soil types, surface and ground water characteristics, and the type and amount of waste materials deposited at the site.

The same commenter requested clarification as to the applicability of EPA regulations governing solid waste disposal in relationship to this rule and the site investigation requirement specified under § 2743.3(a)(3)(iv). The EPA regulations apply to all new, existing, and lateral expansion of solid waste landfills that receive waste on or after October 9, 1993. This would include existing landfills that are leased or disposal sites that are conveyed under the authority of the Recreation and Public Purposes Act. If the landfill units stop taking waste on or before October 9, 1991, the EPA requirements do not apply. If the units receive waste after October 9, 1991, but stop taking waste before October 9, 1993, the landfills are exempt from all EPA requirements except the final cover requirements specified under 40 CFR 258.60(a) or (b). Small landfill owners or operators that dispose of less than 20 tons of municipal waste per day, based on an annual average, are exempt from EPA design, ground-water monitoring, and corrective action requirements so long as there is no evidence of ground-water contamination from the landfill and the unit serves: (1) A community where surface transportation is interrupted for at least three consecutive months preventing access to a regional waste management facility, or (2) a community that has no practical waste management alternative, and the landfill is located in an area that receives no more than 25 inches of precipitation a year. These exemptions do not apply to this rule. The BLM will require that site investigations be conducted on all existing and new disposal sites prior to the conveyance of public lands out of Federal ownership.

Two commenters recommended that the degree of threat should be specified

in § 2743.3(a)(4), (a)(5), and (b) by revising the language to read " * * * contents of the disposal site do not pose a significant threat to human health and environment." The use of "significant" is subjective and how the term will be applied and interpreted would vary among site investigators and reviewers. Therefore, this suggestion was not adopted.

State Certification

Several comments were received on the provisions in §§ 2743.2(a)(7) and 2743.3(a)(5) of the rule which require State certification of investigative findings. One commenter recommended that conveyances of public land for solid waste disposal proceed without State agency involvement because the certification was unnecessary and cost prohibitive. Because of the concern for public health and in light of the recently promulgated regulations by EPA that direct the States to conduct their own solid waste program in accordance with new Federal guidelines, the certification prior to the transfer of public lands to local governments is reasonable and of benefit to the States and Federal Government in terms of reducing Federal and State liabilities in the event of future contamination disputes.

Another commenter recommended that the BLM should obtain State input in establishing the conditions of the site investigation and that financial assistance be provided in support of State certifications due to increased work outputs. As stated earlier in the preamble, the BLM fully intends to seek State input in determining the standards of investigation and may provide financial assistance to local governments if the costs of investigation pose an undue hardship. However, the rule does not provide for appropriation of Federal funds to support States in their review of investigative findings and certifications thereof.

A third commenter stated that the Federal Government has no authority to require the States to review the investigation reports and produce a certification of any kind, except in cases where the Federal Government conditions the payment of Federal funds to State agencies upon the performance of such tasks. The BLM considers the certification to be a discretionary action on the part of the States. Sections 2743.2(a)(7) and 2743.3(a)(5) of the rule were amended to clarify that it is the applicant's responsibility to obtain the certification.

One commenter stated that § 2745.3(a)(5) implied a concurrent State investigation. There is no intent to have

the State conduct a separate investigation. This provision and the provision under § 2743.2(a)(7) require that State agencies certify that they have reviewed documents submitted as part of the site investigation and concur with the BLM authorized officer as to the assessment concerning hazardous substances.

One commenter suggested that § 2743.3(a)(5) of the rule establish a 60-day time limit for the States to provide certification of investigative findings. The BLM would prefer to establish the review periods on an informal basis because the time necessary to review and certify the investigative reports may vary depending on the amount of technical data, environmental analyses, and support documentation completed for an existing site. Therefore, this suggestion was not adopted.

Patent Provisions

In reference to § 2743.2-1(b) of the rule, one commenter stated that the State should have a hold harmless provision in place. This provision is subject to State law and not appropriate for inclusion into Federal patents.

One commenter stated that the investigation "as of the date of patent" specified in §§ 2743.2-1(c) and 2743.3-1(c) was good in theory but not practical in terms of obtaining a State certification on the same day as the patent is issued. The BLM agrees with this assessment and the provisions are removed from the rule.

Three commenters stated that the 5-year limitation specified in § 2743.2-1(d) was unrealistic because most landfills are designed for a longer period of time due to the high costs of design, environmental evaluations, construction, and permitting. The intent of the Act is to allow local governments to obtain a tract of public land that is of sufficient size to accommodate their landfill needs for periods longer than 5 years. The BLM has tied the 5-year statutory limitation to the plan and schedule of development. Additional guidance on the application of this provision will be provided to the BLM's authorized officers via internal manuals.

Upon publication of this document in the *Federal Register*, the Bureau of Land Management will submit copies of this final rule to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives. Section 4(a) of the Act allows the committees 60 legislative days to review the rulemaking.

The principal authors of this final rule are Mike Ford of the Division of Lands and Realty, BLM Washington Office

(WO), and Mike Pool of the Division of Legislation and Regulatory Management (WO), with assistance from the Office of the Solicitor, Department of the Interior.

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, this rule will not cause a taking of private property under Executive Order 12630.

List of Subjects in 43 CFR Part 2740

Intergovernmental relations, Public lands—sale, Recreation and recreation areas, Reporting and recordkeeping requirements.

Under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), part 2740, Group 2700, subchapter B, chapter II of title 43 of the Code of Federal Regulations is amended as follows:

Dated: June 5, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

1. The authority citation for part 2740 is revised to read as follows:

Authority: 43 U.S.C. 869 *et seq.*, 43 U.S.C. 1701 *et seq.*, and 31 U.S.C. 9701.

Subpart 2740—Recreation and Public Purposes Act: General

2. Section 2740.0-3 is amended by adding paragraph (c) to read as follows:

§ 2740.0-3 Authority.

(c) Section 3 of the Act of June 14, 1926, as amended by the Recreation and Public Purposes Amendment Act of 1988, authorizes the Secretary of the Interior to convey public lands for the purpose of solid waste disposal or for any other purpose which may result in or include the disposal, placement, or release of any hazardous substance, with special provisions relating to reversion of such lands to the United States.

3. Section 2740.0-5 is amended by adding paragraphs (f) and (g) to read as follows:

§ 2740.0-5 Definitions.

(f) *Hazardous substance* means any substance designated pursuant to Environmental Protection Agency regulations at 40 CFR part 302.

(g) *Solid waste* means any material as defined under Environmental Protection Agency regulations at 40 CFR part 261.

4. Section 2740.0-6(a) is amended by removing the period at the end of the last sentence and adding a comma and phrase to read as follows:

§ 2740.0-6 Policy.

(a) * * * except for conveyances under subpart 2743 of this title.

5. Section 2740.0-7 is amended by adding paragraph (d) to read as follows:

§ 2740.0-7 Cross references.

(d) Requirements and procedures for conveyance of land under the Recreation and Public Purposes Act for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may result in or include the disposal, placement, or release of any hazardous substance are contained in subpart 2743 of this chapter.

5a. Section 2740.0-9 is added to read as follows:

§ 2740.0-9 Information collection.

The collection of information contained in part 2740 of Group 2700 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0012. This information will be used to determine the suitability of public lands for lease and/or disposal to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes. Responses are required to obtain benefits in accordance with the Recreation and Public Purposes Act.

Public reporting burden for this information is estimated to average 47 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of Information Resources Management (770), Bureau of Land Management, 1849 C Street NW., Washington, DC 20240; and the Paperwork Reduction Project (1004-0012), Office of Management and Budget, Washington, DC 20503.

Subpart 2741—Recreation and Public Purposes Act: Requirements**§ 2741.5 [Amended]**

6. Section 2741.5 is amended by removing existing paragraph (i) and redesignating paragraph (j) as new paragraph (i).

7. Part 2740 is amended by adding subpart 2743 to read as follows:

Subpart 2743—Recreation and Public Purposes Act: Solid Waste Disposal

Sec.

2743.1 Applicable regulations.

2743.2 New disposal sites.

2743.2-1 Patent provisions for new disposal sites.

2743.3 Leased disposal sites.

2743.3-1 Patent provisions for leased disposal sites.

2743.4 Patented disposal sites.

Subpart 2743—Recreation and Public Purposes Act: Solid Waste Disposal**§ 2743.1 Applicable regulations.**

Unless the requested action falls within the provision of § 2743.2(b), applications filed or actions taken under this subpart shall be subject to all the requirements set forth in subpart 2741 of this chapter except §§ 2741.6 and 2741.9.

§ 2743.2 New disposal sites.

(a) Public lands may be conveyed for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may include the disposal, placement, or release of any hazardous substance subject to the following provisions:

(1) The applicant shall furnish a copy of the application, plan of development, and any other information concerning the proposed use to all Federal and State agencies with responsibility for enforcement of laws applicable to lands used for the disposal, placement, or release of solid waste or any hazardous substance. The applicant shall include proof of this notification in the application filed with the authorized officer;

(2) The proposed use covered by an application shall be consistent with the land use planning provisions contained in part 1600 of this title, and in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371) and any other Federal and State laws and regulations applicable to the disposal of solid wastes and hazardous substances;

(3) Conveyance shall be made only of lands classified for sale pursuant to the procedures and criteria in part 2400 of this title;

(4) The applicant shall warrant that it will indemnify and hold the United

States harmless against any liability that may arise out of any violation of Federal or State law in connection with the use of the lands;

(5) The authorized officer shall investigate the lands covered by an application to determine whether or not any hazardous substance is present. The authorized officer will require full reimbursement from the applicant for the costs of the investigation. The authorized officer may, in his or her discretion, make an exception to the requirement of full reimbursement if the applicant demonstrates that such costs would result in undue hardship. The investigation shall include but not be limited to:

(i) A review of available records related to the history and use of the land;

(ii) A visual inspection of the property; and

(iii) An appropriate analysis of the soil, water and air associated with the area;

(6) The investigation conducted under paragraph (a)(5) of this section must disclose no hazardous substances and there is a reasonable basis to believe that no such substances are present; and

(7) The applicant shall present certification from the State agency or agencies responsible for environmental protection and enforcement that they have reviewed all records, inspection reports, studies, and other materials produced or considered in the course of the investigation and that based on these documents, such agency or agencies agree with the authorized officer that no hazardous substances are present on the property.

(b) The authorized officer shall not convey public lands covered by an application if hazardous substances are known to be present.

(c) The authorized officer shall retain as permanent records all environmental analyses and appropriate documentation, investigation reports, State certifications, and other materials produced or considered in determining the suitability of public lands for conveyance under this section.

§ 2743.2-1 Patent provisions for new disposal sites.

For new disposal sites, each patent will provide that:

(a) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances;

(b) The patentee shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws;

(c) Except as provided in paragraph (e) of this section, the land conveyed under § 2743.2 of this part shall revert to the United States unless substantially used in accordance with an approved plan and schedule of development on or before the date five years after the date of conveyance;

(d) If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and the approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon; and

(e) No portion of the land covered by such patent shall under any circumstance revert to the United States if such portion has been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance.

§ 2743.3 Leased disposal sites.

(a) Upon request by or with the concurrence of the lessee, and only with the express approval of the Director, Bureau of Land Management, the authorized officer may issue a patent for those lands covered by a lease, or portion thereof, issued on or before November 9, 1988, that have been or will be used, as specified in the plan of development, for solid waste disposal or for any other purpose that the authorized officer determines may result in or include the disposal, placement, or release of any hazardous substance, subject to the following provisions:

(1) All conveyances shall be consistent with the land use planning provisions contained in part 1600 of this title, and in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371) and any other Federal and State laws and regulations applicable to the disposal of solid wastes and hazardous substances;

(2) Conveyances shall be made only of lands classified for sale pursuant to the procedures and criteria in part 2400 of this title.

(3) The authorized officer shall investigate the lands to be included in the patent to determine whether they are contaminated with hazardous substances. The authorized officer will require full reimbursement from the lessee for the costs of the investigation. The authorized officer may, in his or her discretion, make an exception to the requirement of full reimbursement if the

applicant demonstrates that such costs would result in undue hardship. The investigation shall include but not be limited to the following:

(i) A review of all records and inspection reports on file with the Bureau of Land Management, State, and local agencies relating to the history and use of the lands covered by a lease and any violations and enforcement problems that occurred during the term of the lease;

(ii) Consultation with the lessee and users of the landfill concerning site management and a review of all reports and logs pertaining to the type and amount of solid waste deposited at the landfill;

(iii) A visual inspection of the leased site; and

(iv) An appropriate analysis of the soil, water and air associated with the area;

(4) The investigation conducted under paragraph (a)(3) of this section must establish that the involved lands contain only those quantities and types of hazardous substances consistent with household wastes, or wastes from conditionally exempt small quantity generators (40 CFR 261.5), and there is a reasonable basis to believe that the contents of the leased disposal site do not threaten human health and the environment; and

(5) The applicant shall present certification from the State agency or agencies responsible for environmental protection and enforcement that they have reviewed all records, inspection reports, studies, and other materials produced or considered in the course of the investigation and that based on these documents, such agency or agencies agree with the authorized officer that the contents of the leased disposal site in question do not threaten human health and the environment.

(b) The authorized officer shall not convey lands identified in paragraph (a) of this section if the investigation concludes that the lands contain hazardous substances at concentrations that threaten human health and the environment.

(c) The authorized officer shall retain as permanent records all environmental analyses and appropriate documentation, investigation reports, State certifications, and other materials produced or considered in determining the suitability of public lands for conveyance under this section.

§ 2743.3-1 Patent provisions for leased disposal sites.

Each patent for a leased disposal site will provide that:

(a) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances;

(b) The patentee shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws; and

(c) No portion of the land covered by such patent shall under any circumstance revert to the United States.

§ 2743.4 Patented disposal sites.

(a) Upon request by or with the concurrence of the patentee, the authorized officer may renounce the reversionary interests of the United States in land conveyed on or before November 9, 1988, and rescind any portion of any patent or other instrument of conveyance inconsistent with the renunciation upon a determination that such land has been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance.

(b) If the patentee elects not to accept the renunciation of the reversionary interests, the provisions contained in §§ 2741.6 and 2741.9 shall continue to apply.

[FR Doc. 92-17309 Filed 7-22-92; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each

community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT:

William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the *Federal Register*.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.