Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 669

Grants—programs—transportation, Highways and roads, Taxes, Motor vehicles.

Issued on: July 14, 2010.
Victor M. Mendez, Administrator.

In consideration of the foregoing, the FHWA amends part 669 of Title 23, Code of Federal Regulations, as follows:

PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX

1. The authority citation for part 669 is revised to read as follows:

Authority: 23 U.S.C. 141(c) and 315; 49 CFR 1.48(b).

2. Revise § 669.7 to read as follows:

§ 669.7 Certification requirement.

The Governor of each State, or his or her designee, shall certify to the FHWA before January 1 of each year that it is obtaining proof-of-payment of the heavy vehicle use tax as a condition of registration in accordance with 23 U.S.C. 141(c). The certification shall cover the 12-month period ending September 30, except for the certification due on January 1, 2011, which shall cover the 4-month period from June 1, 2010 to September 30, 2010.

§ 669.9 [Amended]

3. In § 669.9, amend paragraphs (b), and (c) by removing the words “23 U.S.C. 141(d)” and adding in its place the words “23 U.S.C. 141(c)” in each place it appears.

§ 669.11 [Amended]

4. Amend § 669.11 by removing the word “July” and adding in its place the word “January”.

5. Revise § 669.13 to read as follows:

§ 669.13 Effect of failure to certify or to adequately obtain proof-of-payment.

If a State fails to certify as required by this regulation or if the Secretary of Transportation determines that a State is not adequately obtaining proof-of-payment of the heavy vehicle use tax as a condition of registration notwithstanding the State’s certification, Federal-aid highway funds apportioned to the State under 23 U.S.C. 104(b)(4) for the next fiscal year shall be reduced in an amount up to 25 percent as determined by the Secretary.

6. Revise § 669.15 to read as follows:

§ 669.15 Procedure for the reduction of funds.

(a) Each fiscal year, each State determined to be in nonconformity with the requirements of this part will be advised of the funds expected to be withheld from apportionment in accordance with § 669.13 and 23 U.S.C. 141(c), as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than 90 days prior to final apportionment.

(b) A State that received a notice in accordance with paragraph (a) of this section may within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in conformity with this Part. Documentation shall be submitted to the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(c) Each fiscal year, each State determined to be in nonconformity with the requirements of this part and 23 U.S.C. 141(c), based on FHWA’s final determination, will receive notice of the funds being withheld from apportionment pursuant to section 669.3 and 23 U.S.C. 141(c), as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

7. Amend § 669.15 as follows:

a. Amend paragraphs (a) and (b) by removing the words “23 U.S.C. 104(b)(5)” and adding in its place the words “23 U.S.C. 104(b)(4)” in each place it appears; and

b. Amend paragraph (c) by removing the word “Secretary’s”.

8. Revise § 669.21 to read as follows:

§ 669.21 Procedure for evaluating State compliance.

The FHWA shall periodically review the State’s procedures for complying with 23 U.S.C. 141(c), including an inspection of supporting documentation and records. In those States where a branch office of the State, a local jurisdiction, or a private entity is providing services to register motor vehicles including vehicles subject to HVUT, the State shall be responsible for ensuring that these entities comply with the requirements of this part concerning the collection and retention of evidence of payment of the HVUT as a condition of registration for vehicles subject to such tax and develop adequate procedures to maintain such compliance. The State or other responsible entity shall retain a copy of the report from IRB Schedule 1 (Form 2290), or an acceptable substitute prescribed by 26 CFR Part 41 sec. 41.6001–2 for a period of 1 year for purposes of evaluating State compliance with 23 U.S.C. 141(c) by the FHWA. The State may develop a software system to maintain copies or images of this proof-of-payment.

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special arrangements should be made for deliveries of boxed information.

Instructions: Identify your comments as relating to Docket ID No. EPA–R01–RCRA–0561. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at http://www.regulations.gov. Including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or claimed to be other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The http://www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm.

Docket: EPA has established a docket for this action under Docket ID No. EPA–R01–RCRA–0561. All documents in the docket are listed on the http://www.regulations.gov Web site. Although it may be listed in the index, some information might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through http://www.regulations.gov or in hard copy at the following two locations: (i) EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109–3912; by appointment only; tel: (617) 918–1900; and (ii) Rhode Island Department of Environmental Management, 235 Promenade St., Providence, RI 02908–5767, by appointment only through the Office of Technical and Customer Assistance, tel: (401) 222–6822.

FOR FURTHER INFORMATION CONTACT:
Robin Biscia, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–01), EPA New England—Region 1, 5 Post Office Square, Suite 100, mail code OSRR 07–1, Boston, MA 02109–3912; telephone number: (617) 918–1642; fax number: (617) 918–0642, e-mail address: biscia.robin@epa.gov.

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, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. 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 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions have we made in this rule?

We have concluded that Rhode Island’s application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Rhode Island final authorization to operate its hazardous waste program with the changes described in the authorization application. Rhode Island’s Department of Environmental Management (RIDEM) has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program covered by its revised program application, subject to the limitations of 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 take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such requirements and prohibitions in Rhode Island, including issuing permits, until the State is granted authorization to do so. In particular, the EPA will continue to implement the Land Disposal Restrictions (LDR) requirements in 40 CFR part 268, the RCRA air emission control requirements in 40 CFR part 264, subparts AA, BB and CC, and 40 CFR part 265, subparts AA, BB and CC, and the Boilers and Industrial Furnaces (BIF) requirements in 40 CFR part 266, subpart H, because Rhode Island has not yet sought and obtained authorization for those requirements. Regulated entities in Rhode Island must comply with these directly administered EPA requirements, in addition to the State hazardous waste requirements. While there currently are no facilities in Rhode Island subject to the BIF requirements, there are many facilities in Rhode Island (including some generators as well as treatment, storage and disposal facilities) subject to the LDR and AA, BB and CC requirements.

C. What is the effect of today’s authorization decision?

The effect of this decision is that a facility in Rhode Island subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Rhode Island has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, authority to:

• Perform inspections, and require monitoring, tests, analyses or reports
• Enforce RCRA requirements and suspend or revoke permits
• Take enforcement actions

This action does not impose additional requirements on the regulated community because the regulations for which Rhode Island is being authorized by today’s action are already effective under State law, and are not changed by today’s action.

D. Why wasn’t there a proposed rule before today’s rule?

EPA did not publish a proposal before today’s Immediate Final Rule because we view this as a routine program change and do not expect adverse comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today’s Federal Register we are publishing a separate document that proposes to authorize the State program changes. That proposed rule will serve as the basis for later issuing a final rule, in the event that there is an objection to this Immediate Final Rule, and we
therefore need to withdraw this Immediate Final Rule and respond to the objection before issuing a new final rule.

In addition to the matters covered by this Immediate Final rule, the State is seeking authorization for the zinc fertilizer rule (checklist 200). Because we think that there may be adverse comments that oppose the Federal authorization of the State for this rule, we are not including the authorization of the zinc fertilizer rule within this Immediate Final rule. Rather, we are proposing to authorize Rhode Island for the zinc fertilizer rule in today’s proposed rule. Any approval of Rhode Island to implement the zinc fertilizer rule will occur only through a later separate final rule, which will be issued only after considering any public comments.

E. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization (other than relating to the zinc fertilizer rule), we will withdraw this rule by publishing a document in the Federal Register before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule based upon this proposed rule that also appears in today’s Federal Register. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

If we receive adverse comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The Federal Register withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Rhode Island previously been authorized for?

Rhode Island initially received final Authorization on January 30, 1986, effective January 31, 1986 (51 FR 3780) to implement its base hazardous waste management program. We granted authorization for changes to their program on March 12, 1990, effective March 26, 1990 (55 FR 9128), March 6, 1992, effective May 5, 1992 (57 FR 8089), effective December 1, 1992 (57 FR 45574), August 9, 2002, effective October 8, 2002 (67 FR 51765), and December 11, 2007, effective February 11, 2008 (72 FR 70229).

G. What changes are we authorizing with today’s action?

On June 17, 2010, EPA received Rhode Island’s complete program revision application dated June 15, 2010 seeking authorization for its changes in accordance with 40 CFR 271.21. The RCRA program revisions for which Rhode Island’s revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we grant Rhode Island authorization for the program changes identified below. Note, the Federal requirements are identified by their checklist (CL) number and/or rule descriptions followed by the corresponding state regulatory analog (“Rule”) from Rhode Island’s Rules and Regulations for Hazardous Waste Management in effect on June 7, 2010.

First, we are authorizing State regulations which are analogous to the Federal regulations governing Treatment, Storage and Disposal Facilities (TSDFs) in 40 CFR parts 264, 270 and 124 (July 1, 2008). As analogs to 40 CFR part 264 (July 1, 2008), we are authorizing Rule 2.2 B., Rule 2.2 F, and Rule 8.0—including all of Rule 8.1, except for the following provision which has been determined to be broader in scope: Rule 8.1 A.4. As analogs to 40 CFR part 270 (July 1, 2008), we are authorizing Rule 2.2 B., Rule 2.2 I., Rule 7.0 A., and all of Rule 7.0 B. except for the following provisions which have been determined to be broader in scope: Rule 7.0 B.7. Insofar as it regulates circuit boards subject to the Federal scrap metal exemption; and Rule 7.0 B.16. As analogs to 40 CFR part 124 (July 1, 2008), we are authorizing Rule 2.2 B., Rule 2.2 K., and Rule 7.0 C.

Second, we are authorizing State regulations which are analogous to the Federal regulations governing interim status TSDFs in 40 CFR part 265 (July 1, 2008). As analogs to 40 CFR part 265 (July 1, 2008), we are authorizing Rule 2.2 B. and 2.2 G.


We are now making an immediate final decision, subject to reconsideration only if we receive written comments that oppose this action, that Rhode Island’s hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we grant Rhode Island authorization for the program changes identified below. Note, the Federal requirements are identified by their checklist (CL) number and/or rule descriptions followed by the corresponding state regulatory analog (“Rule”) from Rhode Island’s Rules and Regulations for Hazardous Waste Management as in effect on June 7, 2010.
13.5 I, 13.5 N, 15.1 B, 15.1 C, 15.2 A, 15.3, 15.3 F(3), 15.3 Table 1, 15.7, 15.7 G(2)(b), 15.7 G(2)(d), 15.7 H(1), 15.8 L, 15.8 Q, 15.8 Q(1), 15.7 Q(8)(c), 15.8 Q(6)(d), 15.8 S, 15.8 S(5), 15.8 W(1)(b), 15.8(1)(b), 15.8 Z and 15.9 B(1); CL 216—Exclusion of Oil-Bearing Secondary Materials Processed in a Gassification System to Produce Synthesis Gas, 73 FR 57, Jan. 22, 2008; Rule 2.2 C; CL 218—F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes, 73 FR 31756, June 4, 2008; Rule 2.2 C; Consolidated Checklist for the Treatability Studies Exemption, covering CL 49, 53 FR 27290, July 19, 1988 and CL 129, 59 FR 8362, Feb. 18, 1994; Rules 2.2 C and 2.2 C.3; Consolidated Checklist for Bevill Exclusion for Mining Wastes, covering CL 53, 53 FR 35412, Sept. 13, 1988, CL 65, 54 FR 36592, Sept. 1, 1989, CL 71, 55 FR 2322, Jan. 23, 1990, CL 90, 56 FR 27300, June 13, 1991 and CL 167E, 63 FR 28556, May 26, 1998: Rules 2.2 C, 2.2 D, and 3.0—definition of “hazardous waste”, except for 2.2 C.12 regarding the State’s regulation of coal ash, which is broader in scope.

Seventh, we are authorizing the State for miscellaneous changes it has made to its previously authorized program rules as follows (note, the analogous state provisions follow the general areas of 40 CFR to which the changes relate): 40 CFR 262.34(d) and 261.5—conditional exemptions for small quantity generators and conditionally exempt small quantity generators; additional State Rules providing that Rhode Island is more stringent: 2.2 C.14, 2.2 D.2, 7.0 B.4, 7.0 B.20.8 8.1 A.1, 2.2 C.7, 2.2 D.3, and additional/changed citations in Rule 3.0—hazardous waste definition and Rule 5.0—introduction; 40 CFR 262.10(f) and 262.70—conditional exemption for farmers: Rules providing that Rhode Island is more stringent: 2.2 D.1, 2.2 D.5, 5.0—introduction, 7.0 B.4 and 8.1 A.1, 40 CFR 261.4(a)(14)—conditional exemption for shredded circuit boards being recycled: Rules providing that Rhode Island is more stringent: 2.2 C.8 and 13.2; 40 CFR 264.1(d) and 270.1(c)(1)(i)—permit by rule requirements for injection wells: Rules providing that Rhode Island is more stringent: 7.0 B.4, 7.0 B.78, and 8.1 A.1; 40 CFR 264.1(c) and 270.1(c)(1)(iii)—permit by rule requirements for ocean disposal: Rules providing that Rhode Island is more stringent: 7.0 B.4, 7.0 B.78 and 8.1 A.1; Various Federal regulations reducing requirements for performance track facilities: Rules providing that Rhode Island is more stringent in not reducing requirements for performance track facilities: 2.2 C.4, 2.2 F.5, 2. A.7, 8.1 A.17, 8.1 A.45 and 8.1 A.64; 40 CFR 263.12—temporary storage by transporters: more stringent State regulations in Rule 6.14, except for the Rule 6.14 G application fee requirement which is broader in scope; 40 CFR 263.174, as incorporated by reference by 262.34—inspection requirement for container areas; Rule 5.2 A., including more stringent State requirement incorporating by reference 40 CFR 265.15(d), thus requiring that generators keep inspection logs; 40 CFR 270.1(c)(2)(v) and 264.1(c)(10)—wastewater treatment unit exemption: Rules 7.0 B.8 and 8.1 A.6—incorporation by reference of Federal provisions and all of the (equivalent or more stringent) state additional language within those Rules in parts 7.0 B(8)(a) and 8.1 A(6)(a), 7.0 B(8)(b) and 8.1 A(6)(b), 7.0 B(8)(c) and 8.1 A(6)(c), 7.0 B(8)(e) and 8.1 A(6)(e), and the language at the end of both Rules, and also including the restriction of the exemption to facilities with “on site” discharges in parts 7.0 B(8)(d) and 8.1 A.6(d), except for the rest of parts 7.0 B(8)(d) and 8.1 A.6(d), and the last sentence of both Rules, regarding zero discharge units, regarding which action is deferred. Note also: other (more stringent) State requirements relating to designating agents to sign manifests, non-adoption of reduced permitting requirements and other more minor changes, already have been authorized in the first through third paragraphs above, and thus need not be authorized here.

Finally, we are authorizing the Rhode Island regulations which update the State’s regulations by incorporating by reference the EPA RCRA regulations through July 1, 2008 (and the U.S. DOT regulations referenced in the EPA regulations through October 1, 2008) [previously the State had incorporated by reference Federal requirements only through 2004]: Regarding 40 CFR parts 260—265, 266 (except for subpart H), 272, 273 and 124: Rules 2.2 A, 2.2 B, and the Rule 3.0 definitions of 40 CFR to which the changes relate); 40 CFR 262.34(c) and 49 CFR (as applying through 2004); also regarding 40 CFR parts 260 and 261: Rule 2.2 C; also regarding 40 CFR part 262: Rule 2.2 D., also regarding 40 CFR part 263: Rule 2.2 E., also regarding 40 CFR part 266: Rule 2.2 H., also regarding 40 CFR part 273: Rule 2.2 J. For the updated authorizations relating to Treatment, Storage and Disposal Facilities—40 CFR parts 264, 265, 270 and 274, see the first and second paragraph above.

In addition to today’s authorizations, we previously authorized Rhode Island Rule 15.01 E as being equivalent to the Federal exemption for used oil filters in 40 CFR 261.4(b)(13). See 72 FR 70229, 70231, 70233 (Dec. 11, 2007). However, we inadvertently failed to credit Rhode Island for having met the requirements of Checklists 104 and 107 regarding oil used filters at that time. We are today confirming that by adopting Rule 15.01 E, Rhode Island has met the Federal requirements addressed by those two Checklists.

Some State provisions may be authorized more than once, as the same State regulation may address different Federal requirements. Whether a State provision is authorized once or is authorized more than once, the effect is the same in making the provision part of the Federally authorized program and subject to Federal enforcement. Today’s final authorization of new State regulations and regulation changes is in addition to the previous authorizations of State regulations. All previously authorized State regulations remain part of the authorized program.

H. Where are the revised State rules different from the Federal rules?

The most significant differences between the State rules being authorized and the Federal rules as of July 1, 2008, are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Also, EPA is not reopening its previous authorization decisions regarding Rhode Island. Previous determinations regarding whether particular Rhode Island provisions are “more stringent,” or “broader in scope,” or different but “equivalent” are described in the prior rulemaking actions listed in Section F., above, rather than here. Members of the regulated community are advised to read the complete regulations, along with this Federal Register document and the previous Federal Register documents, to ensure that they understand all of the requirements with which they will need to comply.

In addition to the differences between the State regulations and the Federal regulations as of July 1, 2008, described in items 1 through 3, below, the State rules are different from the current (2010) Federal rules in that the State has not adopted the EPA’s Definition of Solid Waste (DSW) Rule, which took effect at the Federal level on December 29, 2008. Since today’s authorization of the State regulations addresses Federal requirements only through July 1, 2008, and since the EPA currently is considering whether to revise the DSW Rule, this authorization rulemaking
does not address the extent to which not adopting the DSW makes particular State requirements more stringent versus broader in scope. Rather, consideration of this matter is deferred.

Also, as part of its current update of its regulations, Rhode Island has amended the language regarding the Federal exemption for wastewater treatment units (WWTUs) in 40 CFR 270.1(c)(2)(v) and 264.1(g)(6), rather than simply incorporating these Federal provisions by reference. See Rules 7.0 B.8. and 8.1 A.6. One of the amendments is in Rule 7.0 B.8.(d) and 8.1 A.6.(d), where the State is specifying that its WWTU exemption applies only when a unit has a “current ongoing discharge to surface waters or the sewers” subject to regulation under section 402 or 307 of the Clean Water Act, and the State’s water act. Thus the State is limiting the exemption to units which currently are discharging to the water, as opposed to zero discharge units which discharge to the air. The State regulations further specify that “zero discharge units such as evaporators are not covered by this exemption, but rather must comply with the RCRA requirements for generators or Treatment Storage and Disposal Facilities, as applicable, in addition to any requirements specified in any permit issued by the Department’s Office of Water Resources or a Publicly Owned Treatment Works.” Also, as part of this amendment, at the end of Rules 7.0 B.8. and 8.1 A.6., the State regulations specify that since zero discharge units are not exempted from the State’s RCRA regulations, “the hazardous waste requirements apply both to any hazardous wastewaters and any hazardous sludges, when either is generated.” For example, this means that all hazardous wastewaters being sent to a zero discharge unit must be stored in accordance with hazardous waste requirements, and counted as hazardous wastes, and that the zero discharge unit itself must meet State hazardous waste requirements (tank standards), rather than the facility only having to handle hazardous wastes as hazardous wastes when they leave the zero discharge unit.

Whether this particular State amendment is different but equivalent to the Federal regulations, or more stringent, or broader in scope, depends upon how the Federal exemption is interpreted. How to interpret the Federal exemption currently is under review. Thus, consideration of this matter is deferred. EPA Region I will address in a future authorization rulemaking action whether this amendment should be authorized as equivalent to (or more stringent than) the Federal regulations, or should be classified as broader in scope.

It should be emphasized that any decision regarding whether to Federally authorize this amendment affects only whether it can be Federally enforced. The State regulations are in effect now and are enforceable under State law. Thus all regulated entities in Rhode Island must comply with them now. In particular, as specified in the State regulations, even those entities that have water permits covering their zero discharge units must also comply with the State hazardous waste requirements (if they have hazardous wastewaters or sludges). Persons with questions about how to comply with these new State requirements are encouraged to contact the RIDEM directly. The other amendments that the State has made to the Federal WWTU exemption language are being authorized now, as explained in item 3, below.


There are aspects of the Rhode Island program which are more stringent than the Federal program. All of these more stringent requirements are, or will become, part of the Federally enforceable RCRA program when authorized by the EPA and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements include the following:

First, as determined in our 2002 rulemaking action, Rhode Island is more stringent with regard to the regulation of Federal small quantity generators (SQGs) and Federal conditionally exempt small quantity generators (CESQGs). This is because Rhode Island regulates all hazardous waste generators using its full RCRA generator (LQG level) regulations, with some exceptions. Consistent with our 2002 rulemaking which authorized the basic Rhode Island regulations governing SQGs and CESQGs as more stringent, the EPA is today determining that certain recently added revisions to the Rhode Island regulations which reference these more stringent requirements are “more stringent.” EPA is not reopening our 2002 determination to authorize the basic Rhode Island regulations governing SQGs and CESQGs as more stringent.

Second, Rhode Island regulates farmers disposing of used pesticides under its universal waste rule. This is more stringent than the EPA approach of exempting farmers from most RCRA requirements so long as the conditions in 40 CFR 262.70 are met.

Third, Rhode Island has not adopted the Federal conditional exemption in 40 CFR 261.4(a)(14) for shredded circuit boards being recycled. Instead, Rhode Island is regulating shredded circuit boards being recycled under its universal waste rule requirements for used electronics. This also is more stringent.

Fourth, Rhode Island does not allow the disposal of hazardous wastes through injection wells or the ocean disposal of hazardous wastes. This is more stringent than the EPA approach of allowing such disposals under RCRA permit-by-rule requirements.

Fifth, Rhode Island never adopted special regulations for Performance Track facilities. This is more stringent than the EPA regulations which have allowed special standards regarding some requirements for performance track facilities. It also should be noted that the EPA recently has terminated the performance track program. Thus Rhode Island’s approach actually is now equivalent to the current EPA approach, rather than more stringent.

Sixth, Rhode Island regulates, more strictly and extensively than EPA, temporary storage of wastes by transporters and temporary transfer and storage facilities. Under the Federal regulations, temporary storage by transporters is allowed subject to the conditions that the hazardous wastes be stored in containers and for no more than 10 days. Rhode Island is imposing additional requirements including more detailed storage requirements, closure plans and financial assurance requirements, and a requirement to obtain State authorization for temporary transfer and storage facilities. Also, Rhode Island is setting a 72-hour plus Sundays and holidays time limit on storage, as opposed to the Federal 10-day time limit. The State requirements all are more stringent, other than the State application fee requirement which is broader in scope—see below.

Seventh, Rhode Island amended its regulation 5.2 A. in 2001 to specify that generators must keep inspection logs (in accordance with 265.15(d)), in addition to meeting the minimum Federal requirement for generators (specified in 264.174, as incorporated by reference by 262.34) of doing container area inspections. This inspection log requirement is more stringent. In our 2002 authorization rulemaking, EPA authorized all of Rule 5.0 including this amendment, with respect to Federal SQGs and CESQGs. We are today again reauthorizing Rule 5.0 removing the 2001 amendment to make clear that the requirement to keep an inspection log
also is Federally enforceable in the case of Federal LQGs.

Eighth, Rhode Island specifies in its regulations 5.9 and 8.1 A.24 that generators and TSDFs, respectively, must submit to the State the names and signatures of all agents authorized to sign the hazardous waste manifest. These State requirements build on the Federal requirements regarding properly filling out the manifest, and thus are more stringent.

Ninth, Rhode Island does not allow standardized RCRA permits, research, development and demonstration (RD & D) permits and land treatment demonstration permits. Instead, Rhode Island requires full RCRA permits where the Federal regulations would allow these kinds of permits. This is more stringent.

Tenth, there are other more minor differences between the Federal and State programs, where the State is being more stringent. In particular, the State has various more stringent provisions relating to the technical standards for TSDFs. These more stringent provisions are listed in the Checklists submitted by the State, which are part of the administrative record. Examples of these more stringent provisions are discussed in the memorandum entitled “More Stringent and Broader in Scope Determinations Made in 2010 Rhode Island RCRA Program Authorization,” which also has been placed in the administrative record.


There also are aspects of the Rhode Island program which are broader in scope than the Federal program. The State requirements (or portions of State requirements) which are broader in scope are not considered to be part of the Federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources in Rhode Island. These broader-in-scope provisions include the following:

First, Rhode Island regulates as hazardous wastes certain PCB wastes that are regulated at the Federal level under the Toxic Substances Control Act (TSCA) rather than RCRA. As determined in our 2002 rulemaking action, these State regulations are broader in scope. The State recently has adopted regulations (i) specifying that it does not exempt PCB incineration facilities from its RCRA permit requirement and (ii) granting an exemption from certain hazardous waste transportation requirements to certain utilities handling the PCB wastes.

Consistent with our 2002 authorization decision that the State’s regulations covering PCB wastes generally are broader in scope, we are today classifying these new regulations as broader in scope.

Second, EPA unconditionally exempts from hazardous waste regulation scrap metal being recycled. In guidance, EPA has classified intact circuit boards as scrap metal, when they do not contain mercury switches, mercury relays, nickel-cadmium batteries or lithium batteries. Rhode Island has decided to regulate circuit boards, as used electronics under its universal waste rule, even when EPA excludes them from regulation under the scrap metal exemption. To the extent that the State is regulating circuit boards that the EPA does not regulate, this is broader in scope.

Third, the State is regulating as hazardous wastes both ‘coal ash’ and petroleum-contaminated media and debris. These are currently excluded from Federal RCRA regulation, although the EPA is now considering whether to regulate ‘coal ash’ as a Federal hazardous waste. Thus these State regulations (currently) are broader in scope.

Fourth, manufactured gas plant (MGP) waste is excluded from the TCLP testing requirement and thus in effect excluded from hazardous waste regulation, by Federal regulation 261.24. While also excluding MGP waste when certain conditions are met, Rhode Island is continuing to regulate this waste stream when those conditions are not met. This State regulation also is broader in scope.

Fifth, Rhode Island generally follows the Federal RCRA exemption for wastewater treatment units (WWTUs) in 40 CFR 264.1(f)(2)(v) and 40 CFR 264.1(g)(6), rather than simply incorporating these Federal provisions by reference. See Rules 7.0 B.8. and 8.1 A.6. As explained above, the decision regarding how to classify and whether to authorize the Rhode Island amendment regarding zero discharge units is being deferred. As explained below, the other Rhode Island amendments are different from but equivalent to the Federal regulations. In Rule 7.0 B.8.(a) and 8.1 A.6.(a), the State specifies that for purposes of its RCRA regulations, WWTUs are defined as units that are handling hazardous wastes. The State’s language is equivalent to a portion of the Federal definition of WWTU in 40 CFR 260.10.

In Rule 7.0 B.8.(b) and 8.1 A.6.(b), the State specifies that WWTUs may only be used to legitimately treat wastewaters as defined at 47 FR 4706 (Feb. 2, 1982). The State regulations further specify that the disposal of concentrated wastes down the drain into WWTUs is prohibited. In the above 1982 Federal Register document incorporated by reference by the State regulations, the EPA also has interpreted the WWTU exemption as not allowing for the dumping of concentrated wastes down
the drain (into WWTUs). Thus, this State amendment also is equivalent to the Federal regulations (as interpreted). In Rule 7.0 B.8.(c) and 8.1 A.6.(c), the State specifies that the WWTU exemption applies only to tank systems, and not to wastewaters when stored or transported in containers. For example, if a company generates a hazardous wastewater and stores it in containers before pouring the wastewaters from the containers into a wastewater treatment tank, the container storage will be regulated by RCRA. This also is equivalent to the Federal regulations, which also limit the WWTU exemption to tanks and tank systems. See 40 CFR 260.10.

In Rule 7.0 B.8.(d) and 8.1 A.6.(d), the State specifies that for facilities sending their hazardous wastewaters to surface waters or the sewers, the exemption applies only when the discharge point is “on site.” Thus, for example, if a generator plans to truck hazardous wastewaters to a POTW, it must handle them with the generator requirements while on site, and must ship them under manifest. EPA has interpreted the Federal WWTU exemption in this same way. Thus, this State amendment is equivalent to the EPA regulations (as interpreted).

In Rule 7.0 B.8.(e) and 8.1 A.6.(e), the State specifies that the WWTU exemption applies only to those units that have been specifically described in a water permit application (e.g., in a schematic diagram) and specifically referenced in a water permit as being part of the facilities subject to water program regulation. Under the Federal regulations, the exemption similarly is limited to those units that are part of wastewater treatment facilities that are subject to regulation under section 402 or 307(b) of the Clean Water Act. The State amendment is designed to ensure that companies are including under the exemption only units that legitimately are part of their wastewater treatment facilities. Thus, the State amendment helps to ensure that there is compliance with the Federal provision. Thus, the State amendment is equivalent to (or more stringent than) the Federal provision, as opposed to being broader in scope.

Finally, the State regulations specify at the end of Rules 7.0 B.8. and 8.1 A.6. that any hazardous wastes generated from a WWTU must be managed in accordance with the State’s hazardous waste requirements, once it leaves the exempt WWTU, e.g., when a sludge is stored in containers on site. This also is consistent with the way in which the Federal regulations have been interpreted. Thus this State provision also is equivalent to the Federal regulations (as interpreted).

Another way in which the Rhode Island regulations are different from but equivalent to the Federal regulations relates to the regulation of universal wastes. In addition to the batteries, pesticides, mercury containing equipment and mercury containing lamps (fluorescent bulbs) regulated by the EPA as universal wastes, Rhode Island is regulating used electronics (including cathode ray tubes and circuit boards) and silver-containing photo fixing solutions as universal wastes. Except when applied to materials that are not Federal hazardous wastes—see discussions under item 2, above, these Rhode Island regulations are equivalent to the Federal regulations rather than being broader in scope. Exempt as described under item 2 above, Rhode Island is regulating materials that also are regulated by the EPA in the hazardous waste program. The EPA also believes that such State regulations are not less stringent than the EPA regulations. Although Rhode Island is regulating as universal wastes some materials that are regulated as full hazardous wastes under the Federal regulations, Rhode Island has the authority as an authorized State to classify appropriate materials as universal wastes, subject to having appropriate State management standards. Just as the EPA may add additional wastes to its universal waste rule through the Petition Process set forth in 40 CFR part 273, subpart G, an authorized State may add additional universal wastes to its universal waste rule through an equivalent process. EPA Region I has reviewed the State’s proposals to include used electronics and silver-containing photo fixing solutions as universal wastes, and agrees that these wastestreams are appropriate for inclusion as universal wastes and that Rhode Island has adopted appropriate protective management standards for these wastes.

I. How does today’s action affect Indian country (18 U.S.C. 115) in Rhode Island?

Rhode Island is not authorized to carryout its hazardous waste program in Indian country within the State which includes the land of the Narragansett Indian Tribe. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

J. Who handles permits after the authorization takes effect?

Rhode Island will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer and enforce any RCRA and HSWA (Hazardous and Solid Waste Act) permits or portions of permits which it has issued in Rhode Island prior to the effective date of this authorization until the State incorporates the terms and conditions of the Federal permits into the State RCRA permits. EPA will not issue any more new permits, or new portions of permits, for the provisions listed in this document above after the effective date of this authorization. EPA will continue to implement and issue permits for any HSWA requirements for which Rhode Island is not yet authorized.

K. What is codification and is EPA codifying Rhode Island’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. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart UU for this authorization of Rhode Island’s program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action (RCRA State Authorization) from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993); therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various
DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs 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).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESS: The final BFEs 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 table below.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) kevin.long@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

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. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60. Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12898, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12898.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.