legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 14, 2001, for this rule. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Immediate Effective Date

As noted earlier, EPA is making this rule effective immediately. This rule adopts amendments which are purely technical, in that they implement the Court's mandate. Comment on such changes is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reason, there is good cause to make the rule effective immediately pursuant to 5 U.S.C. 553(d)(3).

List of Subjects

40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: May 8, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

2. Section 63.1206 is amended by revising paragraph (a)(1), removing paragraph (a)(2), and redesignating paragraph (a)(3) as (a)(2) to read as follows:

§ 63.1206 When and how must sources comply with the standards and operating requirements?

(a) * * * (1) *Compliance date for existing sources.* You must comply with the standards of this subpart no later than September 30, 2002 unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

* * * * *

§ 63.1209 [Amended]

3. Section 63.1209 is amended by removing and reserving paragraphs (m)(1)(ii) and (iii).

§ 63.1210 [Amended]

4. Section 63.1210 is amended as follows:

a. In the table to paragraph (a)(1) by removing the entry ''63.1210(b) and (c)''; and

b. By removing paragraph (b) and (c) and redesignating paragraph (d) as (b).

§ 63.1211 [Amended]

5. Section 63.1211 is amended by removing paragraph (b) and redesignating paragraphs (c) through (e), as (b) through (d) respectively.

§ 63.1212 [Removed and Reserved]

6. Section 63.1212 is removed and reserved.

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

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

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

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

§ 270.42 Permit modifications at the request of the permittee.

* * * * *

(j) * * *

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that was in effect prior to May 14, 2001, (See 40 CFR Part 63 Revised as of July 1, 2000) in order to request a permit modification under this section.

* * * * *

[FR Doc. 01–12043 Filed 5–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6950–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida, (Tyco), formerly Advanced Quick Circuits, L.P., to exclude (or ''delist'') a certain hazardous waste from the list of hazardous wastes under RCRA regulation. Tyco generates the petitioned waste by treating liquid waste from Tyco's printed circuit board manufacturing processes. The waste so generated is a wastewater treatment sludge that meets the definition of F006. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency has concluded that Tyco's petitioned waste will not adversely affect human health and the environment. This action responds to Tyco's petition to delist this waste on a ''generator-specific'' basis from the hazardous waste lists, and to public

comments on the proposed rule. In response to comments received on the proposed rule, the delisting levels in this final rule are based, in part, on the EPACML model, rather than the generic levels for high temperature metal recovery residues. In accordance with the conditions specified in this final rule, the petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

EFFECTIVE DATE: This rule is effective on May 14, 2001.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–99–01-TycoF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the Florida Department of Environmental protection, please see below.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact Judy Sophianopoulos, RCRA Enforcement and Compliance Branch, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. Questions may also be e-mailed to Ms. Sophianopoulos at *sophianopoulos.judy@epa.gov.* You may also contact Janine Kraemer, Central District Office, Florida Department of Environmental Protection (FDEP), 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803–3767. If you wish to copy documents at FDEP, please contact Ms. Kraemer for copying procedures and costs.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request made by a hazardous waste generator to exclude one or more of his/her wastes from the lists of RCRA-regulated hazardous wastes in §§ 261.31, 261.32, and 261.33 of Title 40 of the Code of Federal Regulations (40 CFR 261.31, 261.32, and 261.33). The regulatory requirements for a delisting petition are in 40 CFR 260.20 and 260.22. EPA, Region 6 has prepared a guidance manual, *Region 6 Guidance Manual for the Petitioner*[1], which is recommended by EPA Headquarters in Washington, D.C. and all EPA Regions.

B. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.,* ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3). Discarded commercial chemical product wastes which meet the listing criteria are listed in § 261.33(e) and (f).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. *Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992, 57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. The mixture and

[1] This manual may be down-loaded from Region 6's Web Site at the following URL address: http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm

derived-from rules are codified in 40 CFR 261.3 (b)(2) and (c)(2)(i). EPA plans to address waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

C. What Is the History of This Rulemaking?

Tyco manufactures printed circuit boards, and is seeking a delisting for the sludge generated by treating liquid wastes from its electroplating operations. This waste meets the listing definition of F006 in 40 CFR Section 261.31[2]

Tyco petitioned the Administrator, on August 26, 1998, to exclude this F006 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. In accordance with the delegation of delisting authority, the Administrator transmitted the petition to EPA, Region 4, and on September 11, 1998, Tyco submitted the petition to EPA, Region 4.

The hazardous constituents of concern for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Tyco petitioned the EPA to exclude its F006 waste because Tyco does not believe that the waste meets the criteria of the listing.

Tyco claims that its F006 waste is not hazardous because the constituents of concern are either present at low concentrations, or do not leach out of the waste at significant concentrations. Tyco also believes that this waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). As a result of the EPA's evaluation of Tyco's petition, the Agency proposed to grant a delisting to Tyco, on August 8, 2000. See 65 FR 48434–48444, August 8, 2000 for details. Today's rulemaking addresses public comments received on the proposed rule and finalizes the proposed decision to grant Tyco's petition for delisting.

II. Summary of Delisting Petition Submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, FL (Tyco), Melbourne, Florida

A. What Waste Did Tyco Petition EPA To Delist?

Tyco petitioned EPA, Region 4, on September 11, 1998, to exclude a maximum annual weight of 300 tons of its F006 waste, on a generator-specific basis, from the lists of hazardous wastes in subpart D of 40 CFR part 261. Tyco operates two electroplating operations on John Rodes Boulevard in Melbourne, Florida, that electroplate copper, tin/lead, nickel, and gold in the process of manufacturing printed circuit boards. The sludge generated by treatment of the wastewater from these operations meets the listing definition of F006 in § 261.31.

B. What Information Did Tyco Submit To Support This Petition?

In support of its petition, Tyco submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste and the manufacturing steps that contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for process materials; (3) quantities of petitioned waste generated each year from 1983 through 1997; (4) results of analysis for water, metals, cyanide, sulfide, and oil and grease in the waste; (5) results of the analysis of waste leachate obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311[3]) for metals; (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity; (7) results for total analysis of metals; and (8) results of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, analysis of the waste to determine long-term resistance to leaching.

The hazardous constituents of concern for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Tyco petitioned the EPA to exclude its F006 waste because Tyco does not believe that the waste meets the criteria of the listing.

Tyco submitted to the EPA analytical data on nine samples of its F006 waste collected during a six-month period. Based on this information, EPA identified the following constituents of concern: barium, cadmium, chromium, cyanide, lead, and nickel. The maximum reported concentrations of the toxicity characteristic (TC) metals, barium, cadmium, chromium, and lead in the TCLP extracts of the samples were below the TC regulatory levels. The maximum reported concentration of cyanide was below the generic exclusion level for high temperature metal recovery (HTMR) residues in 40 CFR 261.3(c)(2)(ii)(C)(*1*). Nickel was undetected in the TCLP extract at a detection level of 0.50 milligrams per liter, and the maximum reported concentration of nickel in unextracted samples was 2,100 milligrams per kilogram. See the proposed rule, 65 FR 48434–48444, August 8, 2000, for a detailed discussion of the information submitted by Tyco. EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before or after granting a delisting. Section 3007 of RCRA gives EPA the authority to conduct inspections to determine if a delisted waste is meeting the delisting conditions.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

For reasons stated in both the proposal and this final rule, EPA believes that Tyco's petitioned waste should be excluded from hazardous waste control. EPA, therefore, is granting a final generator-specific exclusion to Tyco, of Melbourne, Florida, for a maximum annual generation rate of 590 cubic yards of the waste described in its petition as EPA Hazardous Waste Number F006. This waste is required to undergo verification

[2] ''Wastewater sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.''

[3] ''SW–846'' means EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Methods in this publication are referred to in today's final rule as ''SW–846,'' followed by the appropriate method number.

testing before being considered as excluded from Subtitle C regulation. Requirements for waste to be land disposed or smelted have been included in this exclusion. The exclusion applies only to the waste as described in Tyco's petition, dated August 1998.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation. See 40 CFR part 260, appendix I. Tyco's preferred method of waste management is to send its excluded waste to a smelter for metal recovery.

B. What Are the Terms of This Exclusion?

In the rule proposed on August 8, 2000, EPA requested public comment on which of the following possible methods should be used to set delisting levels for the petitioned waste (see 65 FR 48436, August 8, 2000):

(1) Delisting levels based on the EPACML model;

(2) Delisting levels equal to either the Universal Treatment Standards (UTS) levels of the Land Disposal Restrictions (LDR) regulations in 40 CFR part 268 or the generic exclusion levels for residues from treatment of F006 by High Temperature Metal Recovery (HTMR), in 40 CFR 261.3(c)(2)(ii)(C)(*1*), whichever yields the lower value;

(3) Setting limits on total concentrations of constituents in the waste of 20,000 milligrams per kilogram (mg/kg) for nickel, and 500 mg/kg of each of the metals, barium, cadmium, chromium, and lead;

(4) Use of the MEP to evaluate the long-term resistance of the waste to leaching in a landfill; and

(5) Delisting levels for waste that will be sent to a smelter for metal recovery, calculated in accordance with EPA's Human Health Risk Assessment Protocol (HHRAP) for combustion risk assessment or set equal to the same delisting levels as for land disposal, with the additional requirement that the smelting facility be in compliance with a permit issued under the authority of the Clean Air Act.

After considering all public comments on the proposed rule, EPA is granting Tyco, in today's final rule, an exclusion from the lists of hazardous wastes in subpart D of 40 CFR part 261, for its petitioned waste, whether disposed in a Subtitle D landfill or smelted for metal recovery. Tyco must meet all of the following delisting conditions in order for this exclusion to be valid:

(1) Delisting levels, in mg/l in the TCLP extract of the waste, based on the EPACML model, of 100 for Barium; 0.5 for Cadmium; 5.0 for Chromium; 20 for Cyanide; 1.5 for Lead; and 73 for Nickel;

(2) Delisting levels based on total concentrations, in milligrams of constituent per kilogram of unextracted waste, of 2,000 for Barium; 500 for Cadmium; 1,000 for Chromium; 200 for Cyanide (Total, not Amenable); 2,000 for Lead; and 20,000 for Nickel; and

(3) Recordkeeping and certification requirements for waste to be smelted for metal recovery, which include records in the facility files, available for inspection by EPA or the State of Florida, that contain names, addresses, telephone numbers, and contact persons for smelters; amounts of waste smelted; certification that smelters are subject to regulatory controls on discharges to air, water, and land; and analytical data on smelted wastes to demonstrate compliance with conditions (1) and (2).

EPA believes that the limits on total concentrations in condition (2) above are protective of human health and the environment. In response to public comment, EPA set higher limits on total concentrations in today's final rule than in the proposed rule, because EPA agrees with the commenter that MEP analysis of the petitioned waste indicated long-term resistance to leaching (see 65 FR 48439, August 8, 2000). EPA also believes that these limits are realistic, attainable values for wastewater treatment sludges that contain metals and cyanide. The limit for cyanide was chosen so that the waste could not exhibit the reactivity characteristic for cyanide by exceeding the interim guidance for reactive cyanide of 250 mg/kg of releasable hydrogen cyanide (SW–846, Chapter Seven, Section 7.3.3.)

In response to public comments, EPA is promulgating the recordkeeping and certification requirements for waste to be smelted, in today's final rule, instead of the proposed risk assessment in accordance with HHRAP or the proposed requirement for a permit under the Clean Air Act. EPA is retaining the proposed requirement that waste to be smelted meet the same delisting levels as waste to be landfilled.

Table 1, Appendix IX of part 261 has been amended to add the three delisting conditions described above, to retain the verification and data submission requirements of the proposed rule (see 65 FR 48442–48443, August 8, 2000), to delete delisting levels based on the generic exclusion levels for metal recovery in 40 CFR 261.3(c)(2)(ii)(C)(*1*), and to delete the requirement for a risk assessment based on EPA's Human Health Risk Assessment Protocol for combustion facilities. Thus, EPA is retaining in today's final rule to exclude Tyco's petitioned waste Conditions (2), (4), (5), (6), and (7) in Table 1, Appendix IX of part 261 of the proposed rule, and is changing proposed Conditions (1), (3) and (8), in response to public comments, as described in the three preceding paragraphs.

C. When Is the Delisting Effective?

This rule is effective on May 14, 2001. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication.

These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, Tyco must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

EPA received public comments on the proposed rule published in 65 FR 48434–48444, August 8, 2000, from (1) the International Precious Metals Institute (IPMI) and (2) Delphi Automotive Systems (DAS). EPA commends and appreciates the thoughtful comments submitted by IPMI and DAS.

B. Comments and Responses From EPA

Comment: IPMI stated that Tyco's sludge is a feedstock for copper and precious metal reclamation, rather than a material that is disposed of, and that EPA's proposal to delist the sludge is appropriate, because ''it facilitates the efficient and environmentally sound recovery of precious metals.'' However, EPA's proposal to use Universal Treatment Standards or generic exclusion limits for high temperature metal recovery (HTMR) residues as delisting levels is inappropriate. Delisting levels calculated on the basis of the EPACML model are very conservative and protective, particularly since they have been validated with the Multiple Extraction Procedure (MEP). HTMR levels are unnecessarily stringent, because the petitioned sludge ''has not, at the point of generation, been subjected to any HTMR processes.''

Response: EPA believes that IPMI's point is well taken, and the final delisting levels in Appendix IX of part 261 are based, in part, on the EPACML model. See section III.A. and B. of today's preamble. EPA also agrees with the commenter that the MEP evaluation of Tyco's sludge supports the delisting decision and that Tyco's preferred method of waste management for the petitioned sludge is metal recovery rather than land disposal.

Comment: IPMI disagrees with both of EPA's proposed methods of setting delisting levels for petitioned waste that will be sent to a smelter for metal recovery. Regarding proposed Method I, IPMI sees no reason why sludge to be smelted should have to meet the same delisting levels as landfilled sludge and disagrees with the Method I requirement that the smelter be permitted under the Clean Air Act. IPMI stated that precious metal recovery from secondary materials ''has been carried on for millennia,'' and the majority of sludges generated in the United States are smelted in other countries. IPMI believes that smelters should be and are well regulated in developed countries, and that the requirement for a Clean Air Act Permit would prohibit unduly the participation of foreign countries in the smelting business.

Response: EPA appreciates IPMI's concerns regarding requirements for waste to be smelted. However, EPA believes that it is reasonable and that the Agency has an obligation to set conditions a waste must meet in order to be excluded from regulation as a listed hazardous waste under RCRA. EPA believes that the conditions described in Section III.A. and B. of today's preamble will be protective of human health and the environment, whether the waste is smelted for metal recovery or disposed in a Subtitle D landfill, and will not be unduly burdensome to Tyco. The requirement in proposed Method I for a Clean Air Act permit in addition to the same delisting levels as waste to be landfilled has been amended, in response to this commenter, with the recordkeeping and certification requirements described in today's preamble Section III.A. and B.

Comment: IPMI agrees that analysis of feedstocks, exposure, and risk are applicable criteria for granting an air permit to a smelter. However, IPMI believes that the requirement for a risk assessment of smelting Tyco's sludge in accordance with EPA's HHRAP is inappropriate and unnecessary. The commenter asserts that Tyco's sludge has only one of the seven categories of compounds of potential concern in the HHRAP, in that it contains toxic metals. IPMI points out that these concentrations are quite small, and that the toxic metals in Tyco's sludge are common constituents of copper ore. IPMI also notes that Tyco's sludge could meet the requirements for a variance from being a solid waste, pursuant to 40 CFR 260.30, when it is to be smelted for metal recovery, and that there are no risk assessment requirements for smelters of such materials.

Regarding chromium, IPMI states that the HHRAP is concerned with hexavalent, rather than trivalent, chromium, which Tyco does not use in its production processes. IPMI notes that Tyco's analytical data indicate very low concentrations of total chromium.

Response: EPA agrees that human health and the environment can be protected, in this case, without requiring a risk assessment in accordance with the HHRAP. EPA believes that the delisting conditions of today's final rule are protective of human health and the environment. As discussed in today's preamble Section III.A. and B., Tyco's sludge, whether smelted or landfilled, must meet limits on concentrations of toxic constituents both in the TCLP extract of the waste and in the unextracted waste. In addition, Tyco must meet verification, recordkeeping, and certification requirements.

With respect to chromium, EPA takes the conservative position that any chromium present is hexavalent, and calculates delisting levels accordingly.

Comment: Delphi Automotive Systems (DAS) recommends using the EPACML model for delisting levels, instead of either the Universal Treatment Standards (UTS) of the Land Disposal Restrictions (LDR) regulations or generic exclusion levels for high temperature metal recovery (HTMR) residues. DAS believes that the EPACML model is appropriately conservative and is risk-based, rather than technology-based as the UTS and HTMR values are.

Response: After consideration of DAS's comment and discussion, Tyco's analytical profile for the petitioned sludge, and the Multiple Extraction Procedure (MEP) data indicating long-term resistance to leaching, EPA agrees with the commenter that the appropriate method of calculating delisting levels in the waste leachate is the EPACML model. (See today's preamble Section III.A and B.)

Comment: DAS believes that it would be burdensome to require the MEP for all delisting petitions, due mainly to the cost of this analytical method. DAS believes that EPA should address any concerns that the MEP addresses by requiring disposal in a landfill that is in compliance with EPA Criteria for Municipal Solid Waste Landfills.

Response: Each delisting petition is evaluated individually, and requiring the MEP for one petition does not mean that it will automatically be required for all. However, the MEP is useful as a measure of long-term resistance to leaching from a landfill, which is usually a concern of the general public. EPA agrees that it can require that delisted waste be disposed in a Subtitle D landfill, but believes that it is more protective of human health and the environment to calculate delisting levels

based on a distribution of landfill properties, rather than on one specific landfill. The MEP is useful, in that it simulates what would happen even if all a landfill's controls failed.

Comment: DAS does not agree with EPA's proposal to set limits on total concentrations of constituents of concern in Tyco's unextracted waste. DAS states that the delisting levels in the TCLP extract, based on the EPACML model, are conservative and adequate, particularly since Tyco's constituents of concern are all non-volatile metals.

Response: EPA agrees that the commenter's point is well taken. However, EPA is setting limits on total concentrations of constituents of concern in today's final rule, which EPA believes are protective of human health and the environment and which address concerns of the general public about delisted waste. After considering comments from DAS and IPMI, EPA has raised the proposed limits on total concentrations, as shown in today's preamble Section III.B, to values EPA believes are realistic and attainable for wastewater treatment sludges that contain metals and cyanide. The limit for cyanide was chosen so that the waste could not exhibit the reactivity characteristic for cyanide by exceeding the interim guidance for reactive cyanide of 250 mg/kg of releasable hydrogen cyanide (SW–846, Chapter Seven, Section 7.3.3.)

Comment: DAS ''welcomes the Agency's consideration for establishing site specific limits for a smelter,'' but does not agree with the proposal to do a risk assessment for all constituents in accordance with the HHRAP. DAS states that Clean Air Act requirements for smelters should be adequate to address risk from most waste constituents, but also states that the HHRAP might be appropriate for constituents that are not usually present in raw materials for smelters. DAS believes the Agency should use specific language in the delisting final rule ''to direct how a delisted waste should be managed, specifically smelter, in this instance.''

Response: EPA has taken into account DAS's comments about delisting levels for waste sent to a smelter, and is finalizing recordkeeping and certification requirements as a delisting condition to be met, in addition to limits on constituent concentrations in the TCLP extract of the petitioned waste and on total constituent concentrations in the unextracted waste. See today's preamble Section III.B. and Waste Description and Conditions (1), (3), and (8) of Table 1, Appendix IX, part 261.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule 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 levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

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

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and Recordkeeping requirements.

Dated: February 26, 2001.

Richard D. Green,

Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX to part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Tyco Printed Circuit Group, Melbourne Division.	Melbourne, Florida	Wastewater treatment sludge (EPA Hazardous Waste No. F006) that Tyco Printed Circuit Group, Melbourne Division (Tyco) generates by treating wastewater from its circuit board manufacturing plant located on John Rodes Blvd. in Melbourne, Florida. This is a conditional exclusion for up to 590 cubic yards of waste (hereinafter referred to as ''Tyco Sludge'') that will be generated each year and disposed in a Subtitle D landfill or shipped to a smelter for metal recovery after May 14, 2001. Tyco must demonstrate that the following conditions are met for the exclusion to be valid. (Please see Condition (8) for certification and recordkeeping requirements that must be met in order for the exclusion to be valid for waste that is sent to a smelter for metal recovery.) (1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR Parts 260–270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Tyco Sludge meet the delisting levels in Condition (3). (A) *Initial Verification Testing:* Tyco must collect and analyze a representative sample of every batch, for eight sequential batches of Tyco sludge generated in its wastewater treatment system after May 14, 2001. A batch is the Tyco Sludge generated during one day of wastewater treatment. Tyco must analyze for the constituents listed in Condition (3). A minimum of four composite samples must be collected as representative of each batch. Tyco must report analytical test data, including quality control information, no later than 60 days after generating the first batch of Tyco Sludge to be disposed in accordance with the delisting Conditions (1) through (7). (B) *Subsequent Verification Testing:* If the initial verification testing in Condition (1)(A) is successful, i.e., delisting levels of condition (3) are met for all of the eight initial batches, Tyco must test a minimum of 5% of the Tyco Sludge generated each year. Tyco must collect and analyze at least one composite sample representative of that 5%. The composite must be made up of representative samples collected from each batch included in the 5%. Tyco may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are non-hazardous. (2) *Waste Holding and Handling:* Tyco must store as hazardous all Tyco Sludge generated until verification testing as specified in Condition (1)(A) or (1)(B), as appropriate, is completed and valid analyses demonstrate that Condition (3) is satisfied. If the levels of constituents measured in the samples of Tyco Sludge do not exceed the levels set forth in Condition (3), then the Tyco Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set forth in Condition (3), the batch of Tyco Sludge generated during the time period corresponding to this sample must be retreated until it meets the delisting levels set forth in Condition (3), or managed and disposed of in accordance with Subtitle C of RCRA. (3) *Delisting Levels:* All leachable concentrations for these metals and cyanide must not exceed the following levels (ppm): Barium—100; Cadmium—0.5; Chromium—5.0; Cyanide—20, Lead—1.5; and Nickel—73. These metal and cyanide concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. The total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. The total concentrations of metals in the waste, not the waste leachate, must not exceed the following levels (ppm): Barium—2,000; Cadmium—500; Chromium—1,000; Lead—2,000; and Nickel—20,000. (4) *Changes in Operating Conditions:* Tyco must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are necessary (e.g., use of new chemicals not specified in the petition). EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Tyco in writing that the Tyco sludge must be managed as hazardous waste F006, pending receipt and evaluation of a new delisting petition. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Tyco, in writing, that Tyco must repeat Condition (1)(A) to verify that the Tyco Sludge continues to meet Condition (3) delisting levels.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* Data obtained in accordance with Condition (1)(A) must be submitted to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. This notification is due no later than 60 days after generating the first batch of Tyco Sludge to be disposed in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (1) must be compiled, summarized, and maintained by Tyco for a minimum of three years, and must be furnished upon request by EPA or the State of Florida, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's void exclusion. (6) *Reopener Language:* (A) If, anytime after disposal or shipment to a smelter of the delisted waste, Tyco possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Tyco must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (1)(B), does not meet the delisting requirements of Condition (3), Tyco must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Tyco with an opportunity to present information as to why the proposed action is not necessary. Tyco shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from Tyco, as described in paragraph (6)(D) or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately. (7) *Notification Requirements:* Tyco must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(8) *Recordkeeping and Certification Requirements for Waste to be Smelted for Metal Recovery:* Tyco must maintain in its facility files, and make available for inspection by EPA and the Florida Department of Environmental Protection (FDEP), records that include the name, address, telephone number, and contact person of each smelting facility used by Tyco for its delisted waste, quantities of waste shipped, analytical data for demonstrating that the delisting levels of Condition (3) are met, and a certification that the smelter(s) is(are) subject to regulatory controls on discharges to air, water, and land. The certification statement must be signed by a responsible official and contain the following language: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the smelter(s) used for Tyco's delisted waste is(are) subject to regulatory controls on discharges to air, water, and land. As the company official having supervisory responsibility for plant operations, I certify that to the best of my knowledge this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's void exclusion.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified 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: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations 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 Acting Executive Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

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

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

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

The Acting Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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.