600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

[Renumber 1.3 and 1.4 as 1.4 and 1.5, respectively, and add new 1.3 to read as follows:]

1.3 Mailing Currency

1.3.1 General

Currency (*i.e.,* coins), Federal Reserve notes or other bank notes is mailable under any class of mail except where prohibited by standards.

1.3.2 Insurance

Except for philatelic items and numismatic coins under 609.4.1g, eligible classes of mail containing currency may be insured with a maximum indemnity of $15.00.

1.3.3 Registered Mail

Except under 1.3.4, eligible classes of mail containing currency may use Registered Mail service with included insurance payable at full value up to the applicable limit. (see 503.2.2.1).

1.3.4 Mailing Cash Deposits

The following standards apply for sending commercial cash deposits over $500.00:

a. Mailers must use Registered Mail service under 503.2.1.6.

b. Mailers must not use any USPS-provided packaging.

* * * * *

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–01214 Filed 1–20–23; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2022–0781; FRL–10238–01–Region 6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant an exclusion from the list of hazardous wastes to ExxonMobil Baytown Refinery (EMBR or Petitioner) located in Baytown, Texas. This action responds to a petition to exclude (or ''delist'') up to 2,409 cubic yards per year of API separator sludge—from the list of federal hazardous wastes when disposed of in a Subtitle D Landfill. Resource Conservation Recovery Act (RCRA). The EPA is proposing to grant the petition based on an evaluation of waste-specific information provided by Petitioner.

DATES: Comments on this proposed exclusion must be received by February 22, 2023.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: shah.harry@epa.gov.*

Instructions: The EPA must receive your comments by February 22, 2023. Direct your comments to Docket ID Number EPA–R06–RCRA–2022–0781. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The Federal *regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *regulations.gov,* your email 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, the EPA recommends that you include your name and other contact information in the body of your comment with any CBI you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

You can view and copy the delisting petition and associated publicly available docket materials either through *www.regulations.gov* or at: EPA, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. The EPA facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. The EPA recommend that you telephone Harry Shah, at (214) 665–6457, before visiting the Region 6 office. Interested persons wanting to examine these documents should make an appointment with the office.

FOR FURTHER INFORMATION CONTACT: Harry Shah, (214) 665–6457, *shah.harry@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. The EPA encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview Information

The EPA is proposing to grant a May 2021 petition (''K051 Delisting Petition'') request submitted by EMBR in Baytown, Texas to exclude (or ''delist'') up to 2,409 cubic yards per year K051 API separator sludge from the list of federal hazardous waste set forth in 40 CFR 261.3 (hereinafter, all sectional references are to 40 CFR unless otherwise indicated) for offsite disposal. The Petitioner claims that the petitioned wastes do not meet the criteria for which the EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous. Based on our review described in Section III, the EPA propose to approve the petition request, and allow the delisted waste to be disposed in a Subtitle D landfill. A copy of the May 2021 petition is located in the docket to this proposal action.

II. Background

A. What is the history of the delisting program?

The EPA published an amended list of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and codifies the list in §§ 261.31 and 261.32.

The EPA lists the Petitioner's wastes as hazardous because: (1) the wastes typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) the wastes meet the criteria for listing contained in §§ 261.11(a)(2) or (3), or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under §§ 261.3(a)(2)(iv) or (c)(2)(i), known as the ''mixture'' or ''derived-from'' rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these part 261 regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that the EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to the EPA or an authorized state to exclude wastes from the list of hazardous wastes. The facility petitions the EPA because it does not consider the waste as hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which the EPA lists a waste are in 40 CFR part 261 and further explained in the background documents for the listed waste in the April 1988 publication of the ''Proposed Best Demonstrated Available Technology (BDAT) Background Document for Petroleum Refining Treatability Group (K048, K049, K050, K051, K052)'' (*https://nepis.epa.gov/Exe/ZyNET.exe/2000ERGU.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1986+Thru+1990&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C86thru90%5CTxt%5C00000002%5C2000ERGU.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL*).

In addition, under 40 CFR 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if the EPA has ''delisted'' the waste.

C. What factors must the EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in 40 CFR 260.22(a) and 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA must consider any factors (including additional constituents) aside from those for which the EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

D. Environmental Justice Evaluation

To better meet the EPA's ''responsibilities related to the protection of public health and the environment, the EPA has developed an environmental justice (EJ) mapping and screening tool called EJ Screen'' that reports values as a percentile when compared to a state or the nation. ''It is based on nationally consistent data and an approach that combines environmental and demographic indicators in maps and reports,'' (*https://www.epa.gov/ejscreen*). The EPA is providing analysis of environmental justice associated with this action. The EPA are doing so for the purpose of providing information to the public, not as a basis of our final action.

The EPA utilized EJ Screen to evaluate potential environmental justice concerns in communities at one-, three-, and five-mile radiuses around the Baytown facility. The EPA considers the potential for EJ concerns in a community when one or more of the 12 EJ indices is at or above the 80th percentile when compared to the rest of the USA. At the one-mile radial measurement, all 12 EJ indices exceeded the 80th percentile, at the three-mile measurement, 11 out of the 12 EJ indices exceeded the 80th percentile, and at the five-mile radial measurement, four EJ indices exceeded the 80th percentile. This information is provided in Table 1. More information on EJ Screen, including an explanation of the 12 EJ indices can be found at *www.epa.gov/ejscreen/what-ejscreen.*

TABLE 1—EJ INDICES AT ONE-, THREE-, AND FIVE-MILE RADIUSES AROUND THE FACILITY

EJ Index (USA percentile)	1 Mile radius around the facility	3 Mile radius around the facility	5 Mile radius around the facility
EJ Index for Particulate Matter 2.5	86	81	74
EJ Index for Ozone	82	77	72
EJ Index for 2017 Diesel Particulate Matter	86	82	77
EJ Index for 2017 Air Toxics Cancer Risk	95	89	79
EJ Index for 2017 Air Toxics Respiratory HI	88	82	75
EJ Index for Traffic Proximity	83	81	78
EJ Index for Lead Paint	84	82	79
EJ Index for Superfund Proximity	87	87	84
EJ Index for RMP Facility Proximity	97	94	88
EJ Index for Hazardous Waste Proximity	86	81	74
EJ Index for Underground Storage Tanks	86	85	81
EJ Index for Wastewater Discharge	90	87	85

III. The EPA's Evaluation of the Waste Information and Data

A. What waste did the Petitioner petition the EPA to delist?

In May 2021, EMBR petitioned the EPA to exclude from the list of hazardous wastes contained in § 261.31, API separator sludge (K051) generated from its facility located in Baytown, Texas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, EMBR requested that the EPA grant a standard exclusion for 2,409 cubic yards per year of the API separator sludge for offsite disposal.

B. How did the Petitioner generate the waste?

Industrial wastewaters generated at the facility are mainly routed through three sewer systems (west, central and east). Industrial wastewater from the Baytown Chemical Plant and the Baytown Olefins plant are routed through the west sewer, ultimately discharging into Preseparator 14. Industrial wastewater from refinery process units and the Demineralization Plant are routed through the central sewer, ultimately discharging into Preseparator 13; industrial wastewaters from refinery process units, the Sour Water Strippers, Wastewater Strippers and the Velasco Street ditch are routed through the east sewer and ultimately discharge into Preseparator 15. The wastewater then travels through the stormwater diversion box, through a lift station, to API Separator 12, Wastewater Oxidation Unit (WOU), wastewater lagoons, and ultimately to the Houston Ship Channel. The API separator also receives industrial wastewater in the form of treated effluent from the Sanitary Treatment Plant. The API separator allows for gravitational separation of phases (oil, water, and solids) during residence time in the unit. Free oil is skimmed off for reprocessing; whereas, settled sludge (solids) are first pumped to Solids Removal Unit 1 and then sent off-site to a Thermal Desorption Unit or for off-site disposal as a listed hazardous waste.

C. How did the Petitioner sample and analyze the petitioned waste?

A total of four (1 sample per month for 4 months) acceptable sample results were provided by the Petitioner to support the petition. The EPA considered all 4 samples of the API separator sludge and the disposal scenario of the landfill was modeled using the Delisting Risk Assessment Software. The worst-case scenario of the constituents' concentrations for the K051 sludge were used as input in the model to determine if it would meet the hazardous waste criteria for which it was listed. The maximum total and leachate concentrations for the inorganic and organic constituents which were found in the analytical data provided by Petitioner are presented in Table 2.

TABLE 2—MAXIMUM TOTAL AND TCLP CONCENTRATIONS

Chemical name	Maximum total concentration (mg/kg)	Maximum TCLP concentration (mg/l)
Acenaphthene	6.7	0.0015
Acenapthylene	1.6	0.0003
Aniline (benzeneamine)	3.1	0.0014
Anthracene	7.5	0.0003
Antimony	0.968	0.0296
Arsenic	3.81	0.0362
Barium	82.4	0.397
Benz(a)anthracene	0.56	0.0003
Benzene	0.21	0.012
Benzo(a)pyrene	0.37	0.0004
Benzo(b)fluoranthene	0.46	0.0004
Benzo(ghi)perylene	0.24	0.0003
Benzo(k)fluoranthene	0.34	0.0007
Beryllium	0.542	0.002
Bis(2-ethylhexyl)phthalate	0.53	0.0008
Cadmium	0.592	0.002
Chromium (III) (Chromic Ion)	27.5	0.121
Chrysene	0.91	0.0008
Cobalt	3.22	0.0134

TABLE 2—MAXIMUM TOTAL AND TCLP CONCENTRATIONS—Continued

Chemical name	Maximum total concentration (mg/kg)	Maximum TCLP concentration (mg/l)
Copper	50.2	0.0723
Cresol m-	21	0.17
Cresol o-	5.6	0.066
Cresol p-	21	0.17
DDD	0.043	2.00E–05
DDE	0.043	2.00E–05
DDT p,p′-	0.03	2.20E–05
Dibenzofuran	13	0.0004
Dimethylphenol, 2,4-	3.7	0.028
Endosulfan (Endosulfan I and II, mixture)	0.104	3.00E–05
Endrin	0.061	3.00E–05
Ethylbenzene	1.1	0.011
Fluoranthene	2.5	0.0004
Fluorene	20	0.0011
HCH, alpha- (Hexachlorocyclohexane alpha-BHC)	0.25	1.00E–05
HCH, beta- (Hexachlorocyclohexane beta-BHC)	0.045	1.00E–05
Heptachlor	0.00097	1.00E–05
Heptachlor epoxide	0.013	1.00E–05
Indeno (1,2,3-cd) pyrene	0.2	0.0006
Lead	59.6	0.329
Mercury (Fish Pathway Only)	0.445	0.000162
Mercury (Total)	0.445	0.000162
Methylnapthalene 2-	52	0.0093
Naphthalene	46	0.0098
Naphthaquinone 1,4-	3.5	0.0006
Nickel	264	1.04
Phenanthrene	44	0.0014
Phenol	8.3	0.03
Pyrene	4.9	0.0003
Selenium	1.75	0.0193
Silver	0.0265	0.00211
Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8-	4.31E–07	8.62E–06
Thallium	0.213	0.00298
Tin	2.95	0.015
Toluene	1.1	0.026
Vanadium	600	12.7
Xylenes (total)	5.9	0.071
Zinc	398	1.15

D. What factors did the EPA consider in deciding whether to propose to grant the delisting petition?

In reviewing this petition, the EPA considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* § 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4). The EPA evaluated the petitioned wastes against the listing criteria and factors cited in §§ 261.11(a)(2) and (3).

In addition to the criteria in 40 CFR 260.22(a), 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA also considered factors (including additional constituents) other than those for which the EPA listed the waste to determine if these additional factors could cause the waste to be hazardous (*See* the background documents).

Our proposed decision to grant the May 2021 petition to delist the waste from the Petitioner's facility in Baytown, Texas is based on our evaluation of the wastes for factors or criteria which could cause the waste to be hazardous. These factors included: (1) whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. *See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

E. How did the EPA evaluate the risk of delisting this waste?

For this proposed delisting determination, the EPA evaluated the risk that the waste would be disposed of as a non-hazardous waste in a landfill. The EPA considered transport of waste constituents through groundwater, surface water and air. The EPA evaluated the Petitioner's analysis of the petitioned waste using the Delisting Risk Assessment Software (DRAS) to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat to human health and the environment. The DRAS software and associated documentation can be found at *www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras.*

To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors derived from the EPA's Composite Model for leachate migration with transformation products. From a release to groundwater, the DRAS considers routes of exposure to a human receptor through ingestion of contaminated groundwater, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into storm water run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child. The technical support document and the user's guide to DRAS are available at *https://www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras.*

F. What did the EPA conclude?

Petitioner stated in its petition that the petitioned waste meets the criteria of K051 for which the EPA listed it. Petitioner also stated that no additional constituents or factors could cause the waste to be hazardous. Petitioner also stated that disposal in a landfill will not adversely impact human health and the environment. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 3001(f) of RCRA, 42 U.S.C. 6921(f), and CFR 260.22 (d)(1)–(4). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the Petitioner that the petitioned waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would propose to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet the listing criteria and thus, should not be a listed waste. The EPA's proposed decision to delist the waste from Petitioner's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Baytown, Texas facility, and that is contained in the Petition and attachments, all of which are included in the docket to this action.

IV. Conditions for Exclusion

A. How will the Petitioner manage the waste if it is delisted?

If the petitioned wastes are delisted as proposed, the Petitioner must dispose of them in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

B. What are the maximum allowable concentrations of hazardous constituents in the waste?

The EPA notes that in some instances the maximum allowable total constituent concentrations provided by the DRAS model exceed 100% of the waste—these DRAS results are an artifact of the risk calculations that do not have physical meaning. In instances where DRAS predicts a maximum constituent greater than 100 percent of the waste (that is, greater than 1,000,000 mg/kg or mg/L, respectively, for total and TCLP concentrations), the EPA is not proposing to require the Petitioner to perform sampling and analysis for that constituent and sampling type (total or TCLP).

C. How frequently must the Petitioner test the waste?

The testing approach for this waste stream will be conducted annually during the second calendar quarter. Petitioner must conduct annual sampling and analysis as described in the delisting sampling and analysis plan and ensure that the wastes do not exceed the delisting parameters. If any measured constituent concentration exceeds the delisting levels set forth in Table 2, ExxonMobil must collect an additional representative sample within 10 business days of being made aware of the exceedance and test it expeditiously for the constituent(s) which exceeded delisting levels in the original annual sample. If compliance with the delisting parameters is demonstrated with analytical testing (TCLP analysis), the Petitioner may dispose of the API separator sludge as a non-hazardous waste. The annual amount of delisted sludge generated from the API Separator may not exceed 2,409 cubic yards. The annual sampling report shall include the volume of solids disposed of in the landfill, as well as annual testing event data. The petitioner should monitor and report increasing trends of constituents which will affect the overall compliance with the discharge permit.

D. What data must the Petitioner submit?

The Petitioner must submit the data obtained through verification testing to U.S. EPA Region 6, Office of Land, Chemicals and Redevelopment Division, 1201 Elm Street, Suite 500, M/C 6LCR–RP, Dallas, Texas 75270–2102, within 30 business days after receiving the final results from the laboratory. These results may be submitted electronically to Harry Shah, *shah.harry@epa.gov.* The Petitioner must make those records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

E. What happens if the Petitioner fails to meet the conditions of the exclusion?

If this Petitioner violates the terms and conditions established in the exclusion, the EPA may start procedures to withdraw the exclusion. Additionally, the terms of the exclusion provide that ''[a]ny waste volume for which representative composite sampling does not reflect full compliance with the exclusion criteria must continue to be managed as hazardous.''

If the testing of the waste does not demonstrate compliance with the delisting concentrations described in Section IV.C above, or other data (including but not limited to leachate data or groundwater monitoring data from the final land disposal facility) relevant to the delisted waste indicates that any constituent is at a concentration in waste above specified delisting verification concentrations in Table 2, the Petitioner must notify the EPA within 10 business days, or such later date as the EPA may agree to in writing, after receiving the final verification testing results from the laboratory or of first possessing or being made aware of other relevant data. The EPA may require the Petitioner to

conduct additional verification sampling to better define the particular volume of wastes within the affected unit that does not fully satisfy delisting criteria. For any volume of wastes for which the corresponding representative sample(s) do not reflect full compliance with delisting exclusion levels, the exclusion by its terms does not apply, and the waste must be managed as hazardous.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978*) et seq.* to reopen a delisting decision if the EPA receive new information indicating that the conditions of this exclusion have been violated or, are otherwise not being met.

F. What must the Petitioner do if the process changes?

Any process changes or additions implemented at Petitioner's facility which would significantly impact the constituent concentrations of the waste must be reported to the EPA in accordance with Condition VI. of the exclusion language.

V. When would the EPA finalize the proposed delisting exclusion?

HSWA specifically requires the EPA to provide notice and an opportunity for public comment before granting or denying a final exclusion. Thus, the EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments, including any at public hearings. Upon receipt and consideration of all comments, the EPA will publish its final determination as a final rule. Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with § 3010 of RCRA, as amended by HSWA.

VI. How would this action affect states?

Because the EPA is proposing to issue this exclusion under the federal RCRA delisting regulations, only states subject to federal RCRA delisting provisions will be affected. This exclusion may not be effective in states which have received authorization from the EPA to make their own delisting decisions.

RCRA allows states to impose more stringent regulatory requirements than RCRA's under § 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally-issued exclusion from taking effect in the state. The EPA urge Petitioners to contact the state regulatory authority to establish the status of its wastes under the state law.

The EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those states. If the Petitioner manages the wastes in any state with delisting authorization, the Petitioner must obtain delisting authorization or other determination from the receiving state before it can manage the waste as nonhazardous in that state.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is exempt from review by the Office of Management and Budget because it is a rule of particular applicability, not general applicability. The proposed action approves a delisting petition under RCRA for the petitioned waste at a particular facility.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This proposed action is not an Executive Order 13771 regulatory action because actions such as approval of delisting petitions under RCRA are exempted under Executive Order 13771

C. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it only applies to a particular facility.

D. Regulatory Flexibility Act

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

E. Unfunded Mandates Reform Act

This proposed action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. The action imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This proposed action does not have tribal implications as specified in Executive Order 13175. This proposed action applies only to a particular facility on non-tribal land. Thus, Executive Order 13175 does not apply to this action.

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

This proposed action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 13045 and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed action's health and risk assessments using the EPA's Delisting Risk Assessment Software (DRAS), which considers health and safety risks to children, are described in section III.E above. The technical support document and the user's guide for DRAS are included in the docket.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 13211.

J. National Technology Transfer and Advancement Act

This proposed action does not involve technical standards as described by the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

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

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement

of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies,'' (*https://www.epa.gov/environmentaljustice/learn-about-environmental-justice*).

The EPA believes that this proposed action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples. The EPA has determined that this proposed action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the petitioned wastes do not meet the criteria that determines what constitutes a hazardous waste and there are no additional constituents or factors which could cause the waste to be hazardous. The EPA's risk assessment, as described in section III.E above, did not identify risks from management of this material in an authorized, solid waste landfill (*e.g.,* RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.). Therefore, the EPA believes that any populations in proximity of the landfill(s) used by the Baytown facility should not be adversely affected by common waste management practices for this delisted waste.

L. Congressional Review Act

This proposed action is exempt from the Congressional Review Act (5 U.S.C. 801 *et seq.*) because it is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

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

Dated: January 9, 2023.

Ronald Crossland,

Director, Land, Chemicals and Redevelopment Division.

For the reasons set out in the preamble, the EPA proposes to amend 40 CFR part 261 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, 6924(y) and 6938.

■ 2. Amend Table 1 of Appendix IX to Part 261 by adding the entry for ''ExxonMobil Baytown Refinery–Baytown, TX'' in alphabetical order to read as follows:

Appendix IX to Part 261 Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

Facility	Address	Waste description
ExxonMobil Baytown Refinery.	Baytown, Texas	API Separator Sludge (the EPA Hazardous Waste No. K051) maximum delisted amount of 2,409 cubic yards per calendar year after (date rule finalized) and disposed in a Subtitle D landfill. ExxonMobil must implement a verification program that meets the following Paragraphs: (1) Delisting Levels: All leachable constituent concentrations must not exceed the following levels. The petitioner must use the method specified in 40 CFR 261.24 to measure constituents in the waste leachate (mg/L). API Separator Solids Leachate: Acenaphthene–33.1; Aniline–6.15; Anthracene–80.7; Antimony–0.381; Arsenic–0.0402; Barium–100; Benz(a) anthracene–1.59; Benzene–0.24; Benzo(a)pyrene–599; Benzo(b)fluoranthene–5100; Beryllium 0.445; Cadmium–0.337; Chromium (III)–5.0; Chrysene–159; Cobalt–0.84; Copper–27.4; Cresol (total)–200; Dibenzofuran–1.84; 2,4-Dimethylphenol–35.3; Endosulfan–11.2; Endrin–0.02; Ethylbenzene–2.45; Fluoranthrene–7.67; Fluorene–15.3; Beta HCH–0.0197; Heptachlor–0.008; Heptachlor epoxide–0.008; Lead–2.22; Mercury–0.2; 2-Methylnapthalene–2.26; Naphthalene–0.294; Nickel–42.1; Phenol–540; Pyrene–13.9; Selenium–1.0; Silver–5.0; TCDD–145; Thallium–0.0214; Toluene–47.1; Vanadium–12.9; Xylenes (total)–26.7; Zinc–614. (2) Waste Holding and Handling: (A) API Separator sludge must be tested annually to assure they have met the concentrations described in Paragraph (1). Solids that do not meet the concentrations in the original and retest representative sample must be disposed of as hazardous waste. (B) Levels of constituents measured in the samples of the solids that do not exceed the levels set forth in Paragraph (1) are non-hazardous. ExxonMobil can manage and dispose the non-hazardous API solids according to all applicable solid waste regulations. (C) ExxonMobil must maintain a record of the actual volume of the API solids to be disposed in the Subtitle D landfill according to the requirements in Paragraph (4). (3) Testing Requirements: (A) ExxonMobil must test a representative sample of the API separator sludge for all constituents listed in paragraph (1) at least once per calendar year. If any measured constituent concentration exceeds the delisting levels set forth in paragraph (1), ExxonMobil must collect an additional representative sample within 10 business days of being made aware of the exceedance and test it expeditiously for the constituent(s) which exceeded delisting levels in the original annual sample. (B) The annual testing report should include the total amount of delisted waste in cubic yards disposed during the calendar year. (4) Changes in Operating Conditions: If ExxonMobil significantly changes the process described in its petition or starts any processes that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify the EPA in writing during the annual report.

Facility	Address	Waste description
		(5) Data Submittals: ExxonMobil must submit the information described below. If ExxonMobil fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 5. ExxonMobil must: (A) Submit the data obtained through Paragraph 3 to the Chief, RCRA Permits & Solid Waste Section, Mail Code, (6LCR–RP) US EPA Region 6, 1201 Elm Street, Suite 500, Dallas, TX 75270 within the time specified. Data may be submitted via email to the technical contact for the delisting program. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when the EPA or the State of Texas request them for inspection. (D) Send along with all data, 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 in 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. If any of this information is determined by the 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 the 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 reliance on the void exclusion.'' (6) Reopener: (A) If, any time after disposal of the delisted waste, ExxonMobil possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 business days of first possessing or being made aware of that data. (B) If the annual or retest verification testing of the waste does not meet the delisting requirements in Paragraph 1, ExxonMobil must report the data, in writing, to the Division Director within 10 business days of first possessing or being made aware of that data. (C) If ExxonMobil fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA 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 the Division Director determines that the reported information does require EPA action, the Division Director will notify the facility, in writing, of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 business days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements: ExxonMobil must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which, or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. If ExxonMobil transports the excluded waste to or manages the waste in any state with delisting authorization, ExxonMobil must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state. (B) Update the one-time written notification if they ship the delisted waste to a different disposal facility. (C) Failure to provide the notification will result in a violation of the delisting variance and a possible revocation of the exclusion.

* * * * * * *

[FR Doc. 2023–00685 Filed 1–20–23; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 22–21; FCC 22–102; FR 122866]

Data Breach Reporting Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) begins the process to update and strengthen its data breach rule to provide greater protections to the public. We propose to expand the Commission's definition of ''breach'' to include inadvertent disclosures of customer information and seek comment on adopting a harm-based trigger for breach notifications. We also propose to require carriers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable after discovery of a breach. We also propose to eliminate the mandatory waiting period before notifying customers and instead require carriers to notify customers of CPNI breaches without unreasonable delay after discovery of a breach unless requested by law enforcement. We also propose to make changes to our TRS data breach reporting rule consistent with those we propose to our CPNI breach reporting rule.

DATES: Comments are due on or before February 22, 2023, and reply comments are due on or before March 24, 2023. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before March 24, 2023.

ADDRESSES: You may submit comments, identified by WC Docket No. 22–21, by any of the following methods:

- *Federal Communications Commission's Website: https://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicole On'gele, FCC, via email to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Kirkel, Competition Policy Division, Wireline Competition Bureau, at (202) 418–7958, *melissa.kirkel@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole On'gele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 22–21, adopted on December 29, 2022 and released on January 6, 2023. The full text of this document is available at *https://docs.fcc.gov/public/attachments/FCC-22-102A1.pdf.* To request materials in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530.

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

The proceeding this document initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize