Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276).

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wilflife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations may be some local impacts on subsistence users, but the program is not likely to significant restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the paperwork Reduction Act of 1995.

Other Requirements

The adjustment have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 501 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Department certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the measuring of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA—Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: May 28, 2002.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Kenneth E. Thompson,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 02–15735 Filed 6–20–02; 8:45 am]

BILLING CODE 3410–11–M; 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7235–1]

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 Nissan North America, Inc., Smyrna, Tennessee (Nissan), to exclude (or ''delist'') a certain hazardous waste from the lists of hazardous wastes. Nissan will generate the petitioned waste by treating wastewater from Nissan's automobile assembly plant in Smyrna, Tennessee when aluminum is one of the metals used to manufacture automobile bodies. The waste so generated is a wastewater treatment sludge that meets the definition of F019. Nissan petitioned EPA to grant a ''generator-specific'' delisting because Nissan believes that its F019 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Nissan, performed calculations, and determined

that the waste could be disposed in a landfill without harming human health and the environment. This action responds to Nissan's petition to delist this waste on a generator-specific basis from the hazardous waste lists, and to public comments on the proposed rule. EPA took into account all public comments on the proposed rule before setting the final delisting levels. Final delisting levels in the waste leachate are based on the EPA Composite Model for Leachate Migration with Transformation Products as used in EPA, Region 6's Delisting Risk Assessment Software. Today's rule also sets limits on the total concentration of each hazardous constituent in the waste. In accordance with the conditions specified in this final rule, Nissan's petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The petitioned waste remains subject to all applicable federal, state, and local requirements for nonhazardous waste.

EFFECTIVE DATE: This rule is effective on June 21, 2002.

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 R4–01–01–NissanF. 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 Tennessee Department of Environment and Conservation (TDEC), 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 Nina Vo, Tennessee Department of Environment and Conservation (TDEC), 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, (615) 532–9268. If you wish to copy documents at TDEC, please contact Ms. Vo 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 Sections 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

[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

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. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all 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 Sections 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?

Nissan manufactures light-duty vehicles, and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the vehicle bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only automobile bodies are manufactured. However, the wastewater treatment sludge generated at automobile manufacturing plants where aluminum is used as a component of automobile bodies, meets the listing definition of F019 in § 261.31.[2]

Nissan petitioned EPA, Region 4, on October 12, 2000, to exclude this F019 waste on a generator-specific basis from the lists of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not use either of these constituents in the manufacturing process. Therefore, Nissan does not believe that the waste meets the criteria of the listing.

Nissan claims that its F019 waste will not be hazardous because the constituents of concern for which F019 is listed will be present only at low concentrations and will not leach out of the waste at significant concentrations. Nissan also believes that this waste will not be hazardous for any other reason (i.e., there will be 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 Nissan's petition, the Agency proposed to grant a delisting to Nissan on November 19, 2001. See 66 FR 57918–57930, November 19, 2001, for details. Today's rulemaking addresses public comments received on the proposed rule and finalizes the proposed decision to grant Nissan's petition for delisting.

[2] ''Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.''

II. Summary of Delisting Petition Submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan)

A. What Waste Did Nissan Petition EPA To Delist?

Nissan petitioned EPA, Region 4, on October 12, 2000, to exclude a maximum annual weight of 2,000 tons (2,400 cubic yards) of its F019 waste, on an upfront, generator-specific basis, from the list of hazardous wastes in 40 CFR part 261, subpart D. The Nissan assembly plant in Smyrna, Tennessee, manufactures light-duty vehicles, and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the vehicle bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only automobile bodies are manufactured. However, the wastewater treatment sludge generated at automobile manufacturing plants where aluminum is used as a component of automobile bodies meets the listing definition of F019 in § 261.31.

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

In support of its petition, Nissan submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture vehicles; (3) the minimum and maximum annual amounts of wastewater treatment sludge typically generated, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis of the currently generated waste at the Nissan plant in Smyrna, Tennessee for the chemicals in Appendix IX of 40 CFR part 264: 17 metals; cyanide; 58 volatile organic compounds and 124 semi-volatile organic compounds; and, in addition to the Appendix IX list, hexavalent chromium; (5) results of analysis for those chemicals (i.e., Appendix IX list, hexavalent chromium) and fluoride in the leachate obtained from this waste by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311); (6) results of determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in this waste; (7) results of determinations of percent

solids; and (8) results of a dye tracer study and source inventory of Nissan's industrial wastewater system.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not believe that the waste meets the criteria of the listing.

Nissan submitted to the EPA analytical data from its plant in Smyrna, Tennessee. As described in the petition, samples of wastewater treatment sludge were collected from roll-off containers over a one-month period, in accordance with a sampling and analysis plan approved by EPA and the Tennessee Department of Environment and Conservation. 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 total cyanide in unextracted waste was 3.35 milligrams per kilogram (mg/kg), which is greater than the generic exclusion level of 1.8 mg/kg for high temperature metal recovery (HTMR) residues in 40 CFR 261.3(c)(2)(ii)(C)(1), and less than 590 mg/kg, the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) level, in 268.48. Chromium was undetected in the TCLP extract of any sample. Please see the proposed rule, 66 FR 57918–57930, November 19, 2001, for details on Nissan's analytical data, production process, and generation process for the petitioned waste. 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.

After reviewing the analytical data and information on processes and raw materials that Nissan submitted in the delisting petition, EPA developed a list containing the following constituents of concern: Arsenic, Barium, Cadmium, Chromium, Cyanide, Lead, Nickel, Silver, Vanadium, Zinc, Acetone, Bis-2-ethylhexyl phthalate, 2-Butanone, Isobutyl alcohol, 4-Methyl phenol, Di-n-octyl phthalate, Phenol, and Xylenes. EPA calculated delisting levels and risks for these constituents using Delisting Risk Assessment Software (DRAS),[3] developed by EPA, Region 6. The DRAS uses a new model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). Please see the proposed rule (66 FR 57918–57930, November 19, 2001) for details. EPA requested and received public comment on the proposed use of DRAS and EPACMTP for calculating delisting levels and risks for Nissan's petitioned waste.

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 Nissan's petitioned waste should be excluded from hazardous waste control. EPA, therefore, is granting a final generator-specific exclusion to Nissan North America, Inc., of Smyrna, Tennessee, for a maximum annual generation rate of 2,400 cubic yards of the waste described in its petition as EPA Hazardous Waste Number F019. This waste is required to undergo verification testing before being considered as excluded from Subtitle C regulation. Requirements for waste to be land disposed have been included in this exclusion. The exclusion applies only to the waste as described in Nissan's petition, dated October 2000.

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. Nonhazardous waste management is subject to all applicable federal, state, and local regulations.

B. What Are the Terms of This Exclusion?

In the rule proposed on November 19, 2001, EPA requested public comment on which of the following possible methods should be used to evaluate Nissan's delisting petition and set delisting levels for the petitioned waste (see 66 FR 57918–57930, November 19, 2001):

(1) Delisting levels based on the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP model) as used in EPA, Region 6's Delisting Risk Assessment Software (DRAS); (2) use of DRAS-calculated levels based on Safe Drinking Water Act Maximum Contaminant Levels (MCLs) if more conservative delisting levels would be obtained; (3) use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, to evaluate the long-term resistance of the waste to leaching in a landfill; (4) setting limits on total concentrations of constituents in the waste that are more conservative than results of calculations of constituent release from waste in a landfill to surface water and air, and release during waste transport; (5) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. See the proposed rule, 66 FR 57918–57930, November 19, 2001, for details of calculating delisting levels using these methods.

After considering all public comments on the proposed rule, EPA is granting Nissan, 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 when disposed in a Subtitle D[4] landfill. Nissan 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

[3] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdt.htm

2. Delisting Risk Assessment Software (DRAS) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm

3. DRAS Technical Support Document (DTSD) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm

4. DRAS Users Guide http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/uguide.pdf

Region 6 has made them available to the public, free of charge.

[4] The term, ''Subtitle D landfill,'' refers to a landfill that is licensed to land dispose nonhazardous wastes, that is, wastes that are not RCRA hazardous wastes. A Subtitle D landfill is subject to federal standards in 40 CFR parts 257 and 258 and to state and local regulations for nonhazardous wastes and nonhazardous waste landfills.

the DRAS EPACMTP model of 100.0[5] for Barium, 0.422[6] for Cadmium, 5.0 for Chromium, 10.1 for Cyanide, 5.0 for Lead, and 79.4 for Nickel; (2) the total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg; (3) the total concentrations, in mg/kg, of metals in the waste, not the waste leachate, must not exceed 20,000 for Barium, 500 for Cadmium, 1,000 for Chromium, 2,000 for Lead, and 20,000 for Nickel.

EPA did not propose delisting levels for cobalt, copper, silver, tin, vanadium, zinc, acetone, isobutyl alcohol, phenol, and xylenes, because the DRAS-calculated TCLP levels for these constituents are at least two orders of magnitude greater than the maximum reported concentrations in the TCLP leachate of the petitioned waste. EPA did not propose delisting levels for arsenic for the following reasons: (1) TCLP leachate concentration was non-detect; (2) total concentration in the unextracted waste was below the background soil concentration for most of Tennessee, below the national average background, and three orders of magnitude below the DRAS allowable total concentration; and (3) DRAS found no ecological risk at the maximum reported concentrations and a human cancer risk within the range of 10^{-4} to 10^{-6} assuming a TCLP concentration equal to one-half the reporting limit of the analytical laboratory. Therefore, today's final rule does not have delisting levels for arsenic, cobalt, copper, silver, tin, vanadium, zinc, acetone, isobutyl alcohol, phenol, and xylenes.

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 1 below. These levels promulgated in today's final rule are the same as the levels proposed in Table 3 of the proposed rule (66 FR 57918–57930, November 19, 2001). DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and calculated delisting and risk levels based on that pathway. For details, see the following **Federal Registers**: 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and the proposed rule for Nissan's petitioned waste, 66 FR 57918–57930, November 19, 2001.

TABLE 1.—SUMMARY OF DELISTING LEVELS FOR NISSAN'S PETITIONED WASTE

Constituent	DRAS–Calculated Delisting Level (mg/l TCLP)	Total Concentrations * (mg/kg in unextracted waste)
Inorganic Constituents		
Barium	**100.0	20,000
Cadmium	#0.422	500
Chromium	**5.0	1,000
Cyanide (Total, not Amenable)	#10.1	200
Lead	**5.0	2,000
Nickel	79.4	20,000
Organic Constituents		
Bis(2-ethylhexyl) phthalate	0.0787	
Di-n-octyl phthalate	0.0984	
4-Methylphenol	10	

*These total concentration levels are more conservative (less than) DRAS-calculated total concentration levels.

**DRAS-calculated delisting level was higher than the TC level; therefore, the delisting level was set at the TC level.

#DRAS-calculated delisting levels for cadmium and cyanide are based on MCLs.

After taking into account all public comments on the proposed rule, EPA is retaining in today's final rule to exclude Nissan's petitioned waste all conditions (Conditions (1) through (7)) in Table 1, Appendix IX of part 261 of the proposed rule (66 FR 57918–57930, November 19, 2001). The final delisting levels are the same as those proposed and are presented in Table 1 above.

C. When Is the Delisting Effective?

This rule is effective on June 21, 2002. 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, Nissan 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 66 FR 57918–57930, November 19, 2001, from (1) Alliance of Automobile Manufacturers, Washington, DC; (2) Nissan North America, Inc., Smyrna, Tennessee, (Nissan), the petitioner; (3) Alcoa, Inc., Pittsburgh, Pennsylvania; and (4) The Aluminum Association, Washington, DC. EPA commends and appreciates the thoughtful comments submitted by all of the commenters.

B. Comments and Responses From EPA

Comment: The Alliance of Automobile Manufacturers (Alliance) stated that it strongly supports the proposed delisting, and agrees that fate and transport models may be useful tools to evaluate delisting petitions. However, the Alliance believes that the F019 listing itself should be revised to exclude wastewater treatment sludges from automotive industry conversion

[5] Delisting levels cannot exceed the Toxicity Characteristic (TC) regulatory levels. Therefore, although the DRAS EPACMTP calculates higher concentrations (see the proposed rule, 66 FR 57918–57930, November 19, 2001, and Table 1, below), the delisting levels in the final rule are set at the TC levels for barium, chromium, and lead. In order for the waste to be delisted, concentrations in the TCLP extract of the waste must be less than the TC levels. See the regulatory definition of a TC waste in 40 CFR 261.24.

[6] Delisting levels for cadmium and cyanide are based on MCLs and are more conservative than calculations based on risk alone.

coating on aluminum when hexavalent chromium and cyanides are not used in the process.

Response: Today's final rule is site-specific and waste-specific; it applies only to Nissan's plant in Smyrna, Tennessee, and only to the petitioned waste. An exclusion of general applicability would require a separate rule-making, with more extensive data collection and risk analysis. EPA understands the Alliance's concern about the need for each auto company to submit a delisting petition. Please see 67 FR 10341–10353, March 7, 2002, for a proposal by EPA, Region 5, in a cooperative project with the State of Michigan, to address this concern.

Comment: The Alliance disagrees with EPA's proposed use of (1) the MEP to evaluate Nissan's delisting petition; (2) establishing delisting levels based on total concentrations; and (3) establishing delisting levels based on LDR treatment standards.

Response: (1) EPA has used MEP analysis of petitioned wastes in the past as a measure of the long-term resistance of the waste to leaching (see, for example, 47 FR 52687, Nov. 22, 1982; 61 FR 14696–14709, April 3, 1996; 65 FR 48436, August 8, 2000; and 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. As explained in the response to the Alliance's second comment, EPA has decided not to use the MEP to evaluate Nissan's petitioned waste. (2) The Alliance brings up some significant issues in this comment and makes some good points. However, EPA feels that the proposed limits on total concentrations are reasonable, given that the delisted waste will not be subject to regulation as a hazardous waste under RCRA Subtitle C. These limits will provide added reassurance to the public that management of the waste as nonhazardous will be protective of human health and the environment. EPA has decided not to use the MEP to evaluate Nissan's petitioned waste, but will set the following limits on total concentrations (in mg/kg) which are the same as those proposed: Barium: 20,000; Cadmium: 500; Chromium: 1,000; Cyanide (Total, not Amenable): 200; Lead: 2,000; and Nickel: 20,000. (3) EPA has decided not to set delisting levels based on LDR for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR Universal Treatment Standards (UTS) for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste as generated meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

Comment: The Alliance commented on the use of the EPACMTP and DRAS by saying that their use should be the subject of a separate rulemaking because they raise complex issues that EPA should not try to resolve in this delisting.

Response: Use of the EPACMTP and DRAS has been described in detail in 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000. TheDecember 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). For every delisting petition submitted to EPA, EPA proposes and requests comment on all available methods for evaluating the petition and setting delisting levels, including the EPACMTP and DRAS. Thus, these models, and future improvements, will be proposed for comment in every delisting rulemaking.

Comment: Nissan directed EPA's attention to the following typographical errors in the proposed rule (66 FR 57918–57930, November 19, 2001): (1) On page 57923, the Reactive Sulfide result for Sample NS–04a should be changed from 280U to 280; and the TCLP result for Tin in Sample NS–02a should be changed from 0.01U to 0.10U, in accordance with the report sheets from the analytical laboratory; (2) On page 57922, the TCLP result for Copper in Sample NS–02a is missing; the value 0.05U should be added; and (3) Footnote 6 is missing from page 57924.

Response: EPA is grateful to Nissan for pointing out the above errors and will make the indicated corrections. (The errors for Tin and Reactive Sulfide also occur in Table 6–4 of the petition; Section F of the petition contains the analytical laboratory report sheets which indicate the correct results.) Footnote 6, to be added to page 57924 should read: [6] Because 4-methylphenol could not be distinguished from 3-methylphenol in all samples, the values reported for 4-methylphenol in Table 1 include the values for 3-methylphenol.

In addition, EPA discovered a typographical error in Footnote 7 on page 57926: the plus sign (+) should be changed to a division sign (÷). Footnote 7 should read: [7] This estimate would be based on the following type of calculation for a 100-gram sample, using nickel as an example: % nickel leached out over a long period of time = 100 × (total number of milligrams of nickel in all the sample MEP extracts) ÷ the number of milligrams of nickel originally present in the 100-gram sample.

Comment: Nissan disagrees with EPA's proposed method of setting delisting levels based on the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) in 40 CFR 268.48. Nissan believes that UTS levels are inappropriate for setting delisting levels, because UTS levels were not designed for such a use, but were established to determine whether a hazardous waste could be land disposed.

Response: EPA has decided not to set delisting levels based on LDR UTS for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR UTS. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR UTS for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

Comment: Nissan disagrees with EPA's proposed method of setting delisting levels based on the DRAS EPACMTP. Nissan believes that these levels are inappropriate because they are more stringent than the Toxicity Characteristic (TC) levels used to determine if a waste is hazardous.

Response: Although there is understandable confusion between the definition of hazardous waste and the delisting process, EPA has decided to use the DRAS EPACMTP as the basis for the delisting levels in the TCLP extract of Nissan's waste. The DRAS levels minimize the risk to human health and the environment of land disposal in a nonhazardous (Subtitle D) landfill. As presented in Table 1, Section III.B. of today's preamble, DRAS-calculated delisting levels are the following concentrations in the TCLP extract of

the petitioned waste, in ppm (mg/L): Barium-100.0; [7] Cadmium-0.422; [8] Chromium-5.0; Cyanide-10.1, Lead-5.0; Nickel-79.4; Bis(2-ethylhexyl) phthalate-0.0787; Di-n-octyl phthalate-0.0984; and 4-Methylphenol-10.0.

Comment: Nissan disagrees with EPA's proposal to set limits on total concentrations for delisting. Nissan believes that limits on total concentrations are an added burden without additional benefits, that hazardous wastes are defined by TCLP concentrations rather than total concentrations, and that TCLP limits should be sufficient.

Response: Nissan's points are well taken. However, EPA has decided to promulgate in today's final rule the limits on total concentrations that were proposed. EPA has decided not to require evaluation of the waste by the MEP and believes that total concentration limits serve to reassure the public that long term effects on human health and the environment are minimized. It is true that TCLP concentrations are the only consideration when identifying wastes that could be hazardous by the Toxicity Characteristic of 40 CFR 261.24. However, EPA considers total concentrations as well as TCLP concentrations when deciding whether wastes should be listed hazardous wastes in Subpart D of 40 CFR part 261.

Comment: Alcoa, Inc. (Alcoa) agrees with EPA's proposal to delist Nissan's wastewater treatment sludge, but does not support the use of the MEP to evaluate Nissan's waste, believing that the merits of the MEP should be the subject of a separate **Federal Register** notice.

Response: EPA has used MEP analysis of petitioned wastes in the past as a measure of the long-term resistance of the waste to leaching (see, for example, 47 FR 52687, Nov. 22, 1982; 61 FR 14696–14709, April 3, 1996; 65 FR 48436, August 8, 2000; and 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. EPA has requested in the past and will continue to request public comment on the MEP and all other methods for evaluating delisting petitions each time a proposed rule for delisting a waste is published in the **Federal Register**.

EPA has decided not to use the MEP to evaluate Nissan's petitioned waste, but has decided to promulgate in today's final rule the proposed limits on total concentrations.

Comment: Alcoa does not support proposed limits on total concentrations, because EPA did not establish a correlation between groundwater contamination and total constituent concentrations.

Response: Alcoa's point is well taken, but EPA has decided to promulgate the proposed limits on total concentrations as a condition of delisting. EPA has decided not to evaluate Nissan's waste by means of the MEP and believes that total concentration limits serve to reassure the public that long term effects on human health and the environment are minimized.

Comment: Alcoa does not support setting delisting levels based on LDR UTS, believing that such levels would be ''arbitrary, inappropriate and contradictory.'' Alcoa states that LDR UTS are technology-based, while EPA's delisting evaluation is risk-based and that EPA concluded that Nissan's waste presents no risk to human health and the environment.

Response: EPA has decided not to set delisting levels based on LDR UTS for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR UTS. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR UTS for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

Comment: The Aluminum Association (TAA) supports the proposed delisting and the comments submitted by the Alliance of Automobile Manufacturers. TAA believes that the F019 listing definition should be revised to exclude automobile assembly plant wastewater treatment sludge when aluminum parts are used in place of steel and the conversion coating process does not use hexavalent chromium and cyanides.

Response: Today's final rule is site-specific and waste-specific; it applies only to Nissan's plant in Smyrna, Tennessee, and only to the petitioned waste. An exclusion of general applicability would require a separate rule-making, with more extensive data collection and risk analysis. EPA understands the concern of The Aluminum Association and the Alliance of Automobile Manufacturers about the need for each automobile manufacturer to submit a delisting petition. Please see 67 FR 10341–10353, March 7, 2002, for a proposal by EPA, Region 5, in a cooperative project with the State of Michigan, to address this concern.

Comment: TAA does not believe it is appropriate to set delisting levels based on (1) the MEP; (2) LDR UTS; or (3) total concentrations.

Response: (1) EPA has used MEP analysis of petitioned wastes in the past as a measure of the long-term resistance of the waste to leaching (see, for example, 47 FR 52687, Nov. 22, 1982; 61 FR 14696–14709, April 3, 1996; 65 FR 48436, August 8, 2000; and 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. EPA has requested in the past and will continue to request public comment on the MEP and all other methods for evaluating delisting petitions each time a proposed rule for delisting a waste is published in the **Federal Register**.

EPA has decided not to use the MEP to evaluate Nissan's petitioned waste, but has decided to promulgate in today's final rule the proposed limits on total concentrations.

(2) EPA has decided not to set delisting levels based on LDR UTS for Nissan's petitioned waste, and the final delisting levels in Appendix IX of part 261 established in today's final rule are not based on LDR UTS. The analytical data submitted by Nissan indicate that the petitioned waste, when generated, would meet LDR UTS for all constituents of concern except Nickel, Zinc, Bis(2-ethylhexyl) phthalate, Di-n-octyl phthalate, 4-Methylphenol, and Phenol. The petitioned waste meets the LDR UTS for F019 nonwastewaters, namely, Chromium (Total): 0.60 mg/L TCLP; Cyanides (Total): 590 mg/kg; and Cyanides (Amenable) 30 mg/kg. See the proposed rule, 66 FR 57918–57930, November 19, 2001.

(3) EPA has decided to promulgate the proposed limits on total concentrations as a condition of delisting. EPA has decided not to evaluate Nissan's waste by means of the MEP and believes that total concentration limits serve to reassure the public that long term effects on human health and the environment are minimized.

[7] Delisted wastes cannot exhibit a hazardous waste characteristic. Therefore, when delisting levels are set at the Toxicity Characteristic (TC) regulatory levels, the TCLP extract of the petitioned waste must have concentrations less than the TC levels in order to meet conditions for delisting. Although the DRAS EPACMTP calculates higher concentrations (see the proposed rule, 66 FR 57918–57930, November 19, 2001, and Table 1, Section III.B. of today's preamble), the delisting levels in the final rule are set at the TC levels for barium, chromium, and lead.

[8] DRAS-calculated delisting levels for cadmium and cyanide are based on MCLs.

Comment: TAA believes that the use of DRAS and EPACMTP should be the subject of a separate rulemaking.

Response: Use of the EPACMTP and DRAS has been described in detail in 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). For every delisting petition submitted to EPA, EPA proposes and requests comment on all available methods for evaluating the petition and setting delisting levels, including the EPACMTP and DRAS. Thus, these models, and future improvements, will be proposed for comment in every delisting rulemaking.

V. Analytical and Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

—Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

EPA has determined that today's final rule is not a significant regulatory action as defined by Executive Order 12866 and is, therefore, not subject to OMB comprehensive review and the other provisions of the Executive Order.

B. What Economic and Equity Analyses Were Completed in Support of the Proposed Delisting for Nissan's Wastewater Treatment Sludge?

No economic and equity analyses were required in support of the November 19, 2001 proposed rule. The proposed rule applies only to a single waste at a single facility. Therefore the proposal would have had no generalized effect on industrial compliance costs and would have reduced compliance costs for the single facility, Nissan.

C. What Substantive Comments Were Received on the Cost/Economic Aspects of the Proposed Delisting for Nissan's Wastewater Treatment Sludge?

Public comments were received from four entities. None of the comments dealt with economic effects of the proposed rule.

D. What Are the Potential Costs and Benefits of Today's Final Rule?

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. All other factors being equal, a rule that generates positive net welfare would be advantageous to society, while a rule that results in negative net welfare to society should be avoided.

Today's final rule applies to a single waste at a single facility. Therefore, EPA has determined that the rule is not expected to have any generalized economic, health, or environmental effects on society.

E. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.?

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration (SBA).

EPA has examined the potential effects today's final rule may have on small entities, as required by the RFA/Small Business Regulatory Enforcement Fairness Act (SBREFA). Today's final rule affects a single waste at a single facility, Nissan. Therefore, EPA has determined and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

F. Was the Unfunded Mandates Reform Act Considered in This Final Rule?

Executive Order 12875, ''Enhancing the Intergovernmental Partnership'' (October 26, 1993), called on federal agencies to provide a statement supporting the need to issue any regulation containing an unfunded federal mandate and describing prior consultation with representatives of affected state, local, and tribal governments.

Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) supersedes Executive Order 12875, reiterating the previously established directives while also imposing additional requirements for federal agencies issuing any regulation containing an unfunded mandate.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, the Agency must develop a small

government agency plan, as required under section 203 of UMRA. This plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule is not subject to the requirements of sections 202 and 205 of UMRA. Today's final rule will not result in $100 million or more in incremental expenditures. The aggregate annualized incremental social costs for today's final rule are projected to be near zero. Furthermore, today's final rule is not subject to the requirements of section 203 of UMRA. Section 203 requires agencies to develop a small government Agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. EPA has determined that this final rule will not significantly or uniquely affect small governments.

G. Were Equity Issues and Children's Health Considered in This Final Rule?

By applicable executive order, we are required to consider the impacts of today's rule with regard to environmental justice and children's health.

1. Executive Order 12898: Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Today's final rule applies to a single waste at a single facility. We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

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

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Today's final rule is not subject to the Executive Order because it is not economically significant, as defined in Executive Order 12866.

H. What Consideration Was Given to Tribal Governments?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Today's final rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

I. Were Federalism Implications Considered in Today's Final Rule?

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

Today's final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this final rule.

J. Were Energy Impacts Considered?

Executive Order 13211, ''Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use'' (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse effects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final rule applies to a single waste at a single facility and is not likely to have any significant adverse impact on factors affecting energy supply. EPA believes that Executive Order 13211 is not relevant to this action.

VI. Paperwork Reduction Act

This final 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.*). Because there are no paperwork requirements as part of this final rule, EPA is not required to prepare an Information Collection Request (ICR) in support of today's action.

VII. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), EPA proposed not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Therefore, today's final rule allows the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

VIII. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

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.

The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3). A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication as a final rule in the **Federal Register**.

List of Subjects in 40 CFR Part 261

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

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: June 13, 2002.

James S. Kutzman,

Acting 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, 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
*	*	* * * * *
Nissan North America,Inc	Smyrna, Tennessee	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that Nissan North America, Inc. (Nissan) generates by treating wastewater from the automobile assembly plant located at 983 Nissan Drive in Smyrna, Tennessee. This is a conditional exclusion for up to 2,400 cubic yards of waste (hereinafter referred to as ''Nissan Sludge'') that will be generated each year and disposed in a Subtitle D landfill after June 21, 2002. Nissan must demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium—100.0; Cadmium—0.422; Chromium—5.0; Cyanide—10.1, Lead—5.0; and Nickel—79.4; Bis(2-ethylhexyl) phthalate-0.0787; Di-n-octyl phthalate-0.0984; and 4-Methylphenol—10.0. These 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—20,000; Cadmium—500; Chromium—1,000; Lead—2,000; and Nickel—20,000. (2) *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 Nissan Sludge meet the delisting levels in Condition (1).

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

Facility	Address	Waste description
		(A) *Initial Verification Testing:* Nissan must collect and analyze a representative sample from each of the first eight roll-off boxes of Nissan sludge generated in its wastewater treatment system after June 21, 2002. Nissan must analyze for the constituents listed in Condition (1). Nissan must report analytical test data, including quality control information, no later than 60 days after generating the first Nissan Sludge to be disposed in accordance with the delisting Conditions (1) through (7). (B) *Subsequent Verification Testing:* If the initial verification testing in Condition (2)(A) is successful, i.e., delisting levels of condition (1) are met for all of the eight roll-offs described in Condition (2)(A), Nissan must implement an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract and total concentrations measured in the unextracted waste do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* Nissan must store as hazardous all Nissan Sludge generated until verification testing, as specified in Condition (2)(A), is completed and valid analyses demonstrate that Condition (1) is satisfied. If the levels of constituents measured in the composite samples of Nissan Sludge do not exceed the levels set forth in Condition (1), then the Nissan Sludge is nonhazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of Nissan Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* Nissan must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Nissan in writing that the Nissan Sludge must be managed as hazardous waste F019 until Nissan has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Nissan has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Nissan, in writing, that Nissan must verify that the Nissan Sludge continues to meet Condition (1) delisting levels. (5) *Data Submittals:* Data obtained in accordance with Condition (2)(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, SW., Atlanta, Georgia 30303. This submission is due no later than 60 days after generating the first batch of Nissan Sludge to be disposed in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (2) must be compiled, summarized, and maintained by Nissan for a minimum of three years, and must be furnished upon request by EPA or the State of Tennessee, 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 certification statement in 40 CFR 260.22(i)(12). (6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, Nissan 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, Nissan 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 (2)(B), does not meet the delisting requirements of Condition (1), Nissan 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 Nissan with an opportunity to present information as to why the proposed action is not necessary. Nissan shall have 10 days from the date of EPA's notice to present such information.

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

Facility	Address	Waste description
		(E) Following the receipt of information from Nissan, 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, unless EPA provides otherwise. (7) *Notification Requirements:* Nissan 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.
*	*	* * * * * *

[FR Doc. 02–15612 Filed 6–20–02; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens; 1626 Negotiated Rulemaking Working Group Meeting

AGENCY: Legal Services Corporation.

ACTION: Regulation negotiation working group meeting.

SUMMARY: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR Part 1626. This document announces the dates, times, and address of the next meeting of the working group, which is open to the public.

DATES: The Legal Services Corporation's 1626 Negotiated Rulemaking Working Group will meet on June 26–27, 2002. The meeting will begin at 9 a.m. on June 26, 2002. It is anticipated that the meeting will end by 3:30 p.m. on June 27, 2002.

ADDRESSES: The meeting will be held at the offices of Marasco Newton Group, Inc., 2425 Wilson Blvd., Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC, 20001; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR Part 1626. The working group will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Ms. Condray.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–15715 Filed 6–20–02; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1389; MM Docket No.01–133; RM–10143 & RM–10150]

Radio Broadcasting Services; Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Notice of Proposed Rule Making* in this proceeding considered a petition filed by Charles Crawford requesting the allotment of Channel 249C3 at Mason, Texas and a petition filed by Katherine Pyeatt requesting the allotment of Channel 269C3 at Mason, Texas. *See* 66 FR 35768, July 9, 2001. In response to the proposal filed by Katherine Pyeatt, this document allots Channel 269C3 at Mason, Texas, at coordinates 30–45–00 and 99–10–41. There is a site restriction 5.7 kilometers (3.6 miles) east of the community. Mexican concurrence has been requested for this allotment but notification has not been received. Therefore, operation with the facilities specified for Mason herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. Due to a lapse in the Commission's data base which failed to disclose a short spacing with a proposal to allot Channel 249C1 at Converse, Texas, in MM Docket 00–148, we will dismiss the proposal to allot Channel 249C3 at Mason, Texas. With this action, this proceeding is terminated. A filing window for Channel 269C3 at Mason will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective July 29, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–133, adopted June 5, 2002, and released June 14, 2002. The full text of this Commission decision is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows: