responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Permitting, and Reporting and recordkeeping requirements.

Dated: February 9, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(54)(viii)(C), (c)(86)(ii)(B), (c)(124)(xii)(B), (c)(138)(i)(B), (c)(168)(i)(A)(*4*), (c)(222)(i)(E), (c)(230)(i)(E), and (c)(231)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(54) * * *

(viii) * * *

(C) Previously approved on May 27, 1982 in paragraph (viii)(B) of this section and now deleted Rules 4.5A and 4.5B.

* * * * *

(86) * * *

(ii) * * *

(B) Previously approved on May 27, 1982 in paragraph (ii)(A) of this section and now deleted Rule 4.9.

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(124) * * *

(xii) * * *

(B) Previously approved on June 1, 1983 in paragraph (xii)(A) of this section and now deleted Rules 4–6 and 4–6A.

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(138) * * *

(i) * * *

(B) Previously approved on November 18, 1983 in paragraph (i)(A) of this section and now deleted without replacement Rules 4–3 and Rule 4–11.

* * * * *

(168) * * *

(i) * * *

(A) * * *

(*4*) Rule 424, adopted on August 6, 1985.

* * * * *

(222) * * *

(i) * * *

(E) Butte County Air Quality Management District.

(*1*) Rule 403, adopted on November 9, 1993.

* * * * *

(230) * * *

(i) * * *

(E) Butte County Air Quality Management District.

(*1*) Rule 422, adopted on September 18, 1990.

* * * * *

(231) * * *

(i) * * *

(D) Butte County Air Quality Management District.

(*1*) Rule 1105, adopted on February 15, 1996.

* * * * *

[FR Doc. 01–10649 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6968–6]

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 BMW Manufacturing Corporation, Greer, South Carolina (BMW), to exclude (or ''delist'') a certain hazardous waste from the lists of hazardous wastes. BMW will generate the petitioned waste by treating wastewater from BMW's automobile assembly plant 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. BMW petitioned EPA to grant a ''generator-specific'' delisting because BMW 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 BMW, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. This action responds to BMW'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, BMW's petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

EFFECTIVE DATE: This rule is effective on May 2, 2001.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–00–01–BMWF. 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 South Carolina Department of Health and Environmental Control, 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, S.W., 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 Cindy Carter, Appalachia III District, South Carolina Department of Health and Environmental Control (SCDHEC), 975C North Church Street, Spartanburg, South Carolina. If you wish to copy documents at SCDHEC, please contact Ms. Carter for copying procedures and costs.

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

I. Background

A. What Is a Delisting Petition?

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

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

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

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

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

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of

[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

Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. *Shell Oil Co.* v. *EPA,* 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. The mixture and derived-from rules are codified in 40 CFR 261.3 (b)(2) and (c)(2)(i). EPA plans to address waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

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

C. What Is the History of This Rulemaking?

BMW manufactures BMW automobiles, 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 automobile 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]

BMW petitioned EPA, Region 4, on June 2, 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). BMW petitioned the EPA to exclude its F019 waste because BMW does not use either of these constituents in the manufacturing process. Therefore, BMW does not believe that the waste meets the criteria of the listing.

BMW 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. BMW 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 BMW's petition, the Agency proposed to grant a delisting to BMW, on February 12, 2001. See 66 FR 9781–9798, February 12, 2001, for details. Today's rulemaking addresses public comments received on the proposed rule and finalizes the proposed decision to grant BMW's petition for delisting.

II. Summary of Delisting Petition Submitted by BMW Manufacturing Corporation, Greer, South Carolina (BMW)

A. What Waste Did BMW Petition EPA To Delist?

BMW petitioned EPA, Region 4, on June 2, 2000, to exclude a maximum annual weight of 2,400 tons (2,850 cubic yards) of its F019 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. BMW manufactures BMW automobiles, 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 automobile 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 BMW Submit To Support This Petition?

In support of its petition, BMW 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 automobiles and to treat wastewater; (3) the minimum and maximum annual amounts of wastewater treatment sludge generated from 1996 through 1999, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis for metals, cyanide, sulfide, fluoride, and volatile organic compounds in the currently generated waste at the BMW plants in Greer, South Carolina, and Dingolfing, Germany; (5) results of the analysis of leachate from these wastes, obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311 [3]); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity in these wastes; (7) results of determinations of dry weight percent, bulk density, and free liquids in these wastes; and (8) results of the analysis of the waste currently generated at the plant in Greer, South Carolina, by means of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, in order to evaluate the long-term resistance of the waste to leaching in a landfill.

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

BMW submitted to the EPA analytical data from its Greer, South Carolina plant and from the BMW plant in Dingolfing, Germany. Four composite samples of wastewater treatment sludge, from approximately 60 batches of wastewater, were collected from each plant over a three-week period. Based on this information, EPA identified the following constituents of concern: barium, cadmium, chromium, cyanide, lead, and nickel. The maximum reported concentrations of the toxicity characteristic (TC) metals barium, cadmium, chromium, and lead in the

[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.''

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

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 section 268.48. Chromium was undetected in the TCLP extract of any sample. The maximum reported concentration of chromium in unextracted samples was 100 mg/kg for the German plant and 222 mg/kg for the Greer, South Carolina plant. The maximum concentration of nickel in the TCLP extract of any sample was 0.73 milligrams per liter (mg/l) for the German plant and 6.25 mg/l for the Greer, South Carolina plant. The maximum reported concentration of nickel in unextracted samples was 6,500 mg/kg for the German plant and 1,700 mg/kg for the Greer, South Carolina plant. See the proposed rule, 66 FR 9781–9798, February 12, 2001, for details on BMW'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.

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 BMW's petitioned waste should be excluded from hazardous waste control. EPA, therefore, is granting a final generator-specific exclusion to BMW, of Greer, South Carolina, for a maximum annual generation rate of 2,850 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 BMW's petition, dated June 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. BMW's preferred method of waste management for its delisted waste is recycling, rather than land disposal. 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 February 12, 2001, EPA requested public comment on which of the following possible methods should be used to evaluate BMW's delisting petition and set delisting levels for the petitioned waste (see 66 FR 9781–9798, February 12, 2001):

(1) Delisting levels based on the EPA Composite Model for Landfills (EPACML), modified for delisting; (2) 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); (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; and (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 9781–9798, February 12, 2001, for details of calculating delisting levels using these methods.

After considering all public comments on the proposed rule, and the MEP analysis of the petitioned waste which indicated long-term resistance to leaching (see 66 FR 9793–9794, February 12, 2001), EPA is granting BMW, 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. BMW must meet all of the following delisting conditions in order for this exclusion to be valid: (1) Delisting levels in mg/l in the TCLP extract of the waste based on the DRAS EPACMTP model of 100.0[5] for Barium, 1.0 for Cadmium, 5.0 for Chromium, 33.6 for Cyanide, 5.0 for Lead, and 70.3 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 2,000 for Barium, 500 for Cadmium, 1,000 for Chromium, 2,000 for Lead, and 20,000 for Nickel.

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 1 below.[6] 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 BMW's petitioned waste, 66 FR 9792–9793, February 12, 2001.

[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.

[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 9793, February 12, 2001, and Table 1, below), the delisting levels in the final rule are set at the TC levels for barium, cadmium, 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] Table 1 is identical to Table 3B of the proposed rule (66 FR 9793, February 12, 2001), except that typographical errors for the entries for lead and chromium have been corrected in response to verbal comments by BMW. Specifically, the DRAS-calculated delisting level for chromium was corrected to read ''5.39×10^{5}*,'' instead of ''$5.39 \times 10^{\text{minus;}5}$,'' and the DAF for lead was corrected to read ''1.24×10^{4},'' instead of ''1.24×10^{-4}.'' The acronym, ''DAF,'' in Table 1, means the Dilution Attenuation Factor calculated by DRAS. The ''*'' in Table 1 means that the DRAS-calculated delisting level exceeds the Toxicity Characteristic regulatory level. See Footnote 5 above.

TABLE 1.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BMW PETITIONED WASTE

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Barium	182*	69.2		4.87×10^{-2}
Cadmium	1.4*	74.6	1.62×10^{-13}	3.57×10^{-2}
Chromium	$5.39\times10^{5*}$	9,580		5.8×10^{-7}
Cyanide	33.6	44.8		1.49×10^{-3}
Lead	187*	1.24×10^{4}		Not Calculable; No Reference Dose for Lead
Nickel	70.3	93.5		8.9×10^{2}
Total Hazard Quotient for All Waste Constituents				0.187
Total Carcinogenic Risk for the Waste (due to Cadmium)			1.62×10^{-13}	

EPA believes that the limits on total concentrations in conditions (2) and (3) above are protective of human health and the environment, and that they are appropriate, given that the delisted waste is not subject to regulation as a hazardous waste. EPA also believes that these limits are realistic, attainable values for wastewater treatment sludges that contain metals and cyanide. The limit for cyanide was chosen so that the waste could not exhibit the reactivity characteristic for cyanide by exceeding the interim guidance for reactive cyanide of 250 mg/kg of releasable hydrogen cyanide (SW–846, Chapter Seven, section 7.3.3.)

After taking into account all public comments on the proposed rule, EPA is retaining in today's final rule to exclude BMW's petitioned waste Conditions (2) through (7) in Table 1, appendix IX of part 261 of the proposed rule (66 FR 9796–9798, February 12, 2001). In response to public comments, EPA is changing Condition (1) for BMW's waste in Appendix IX, by replacing the proposed delisting levels in the TCLP leachate with the leachate delisting levels in the first condition of today's Preamble, section III.B: delisting levels, in mg/l in the TCLP extract of the waste, of 100.0 [7] for Barium, 1.0 for Cadmium, 5.0 for Chromium, 33.6 for Cyanide, 5.0 for Lead, and 70.3 for Nickel. The limits on total concentrations in today's final rule are the same as proposed in Condition (1) of Table 1, appendix IX, part 261: The total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg; the total concentrations, in mg/kg, of metals in the waste, not the waste leachate, must not exceed 2,000 for Barium, 500 for Cadmium, 1,000 for Chromium, 2,000 for Lead, and 20,000 for Nickel.

C. When Is the Delisting Effective?

This rule is effective on May 2, 2001. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication.

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

D. How Does This Action Affect the States?

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

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, BMW 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 9781–9798, February 12, 2001, from (1) BMW Manufacturing Corporation, Greer, South Carolina (BMW), the petitioner, (2) Alliance of Automobile Manufacturers, Washington, DC, (3) Nissan North America, Inc., Smyrna, Tennessee, 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: BMW stated that the Land Disposal Restrictions (LDR) should not be used to establish delisting levels, because there is no scientific or regulatory basis for their use. BMW also stated, in support of this position, that EPA had decided not to establish delisting levels based on LDR, in

[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 delisitng. Although the DRAS EPACMTP calculates higher concentrations (see the proposed rule, 66 FR 9793, February 12, 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, cadmium, chromium, and lead.

response to public comments on a previously proposed rule to delist F019 waste (64 FR 55443, October 13, 1999).

Response: EPA has decided not to set delisting levels based on LDR for BMW'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 BMW indicate that the petitioned waste, when generated, would meet LDR treatment standards. See the proposed rule, 66 FR 9790–9792, February 12, 2001, and today's preamble, section II.B.

Comment: BMW disagrees with EPA's proposed method of setting delisting levels based on total concentrations, because there is no scientific correlation between total concentrations of metals and environmental impact. BMW stated that EPA modeling and testing demonstrate that harmful concentrations of constituents will not leach from the petitioned waste.

Response: BMW 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.

Comment: BMW disagrees with EPA's proposal to base delisting levels on the EPACML model (66 FR 9792–9793, 9797, February 12, 2001). BMW stated that if the new EPACMTP model ''is truly based on improved science, the concentration limits calculated by the model should be the basis for establishing delisting levels.''

Response: EPA agrees with the points made in this comment, and today's final rule uses the DRAS EPACMTP as the basis for the delisting levels in the TCLP extract of the waste. As stated in today's preamble, section III.B., concentrations in the TCLP extract of the waste (in mg/l) are limited to 100.0 [8] for Barium, 1.0 for Cadmium, 5.0 for Chromium, 33.6 for Cyanide, 5.0 for Lead, and 70.3 for Nickel.

[8] 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 9793, February 12, 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, cadmium, chromium, and lead.

Comment: The Alliance of Automobile Manufacturers (Alliance) stated that it strongly supports the proposed delisting, and agrees with EPA that fate and transport models are 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 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 BMW's plant in Greer, South Carolina, 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, but is unable to address this concern at the present time.

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

Response: (1) EPA used MEP analysis of the petitioned waste as a measure of the long-term resistance of the waste to leaching (see 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. (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. (3) EPA has decided not to set delisting levels based on LDR for BMW'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 BMW indicate that the petitioned waste, when generated, would meet LDR treatment standards. See the proposed rule, 66 FR 9790–9792, February 12, 2001, and today's preamble, section II.B.

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. 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.

Comment: Nissan North America, Inc. (Nissan) stated that none of the following methods proposed by EPA is appropriate for evaluating BMW's petition and setting delisting levels for the petitioned waste: (1) Use of the MEP; (2) setting limits on total concentrations; and (3) setting delisting levels at the LDR UTS levels in 40 CFR 268.48.

Response: (1) EPA used MEP analysis of the petitioned waste as a measure of the long-term resistance of the waste to leaching (see 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. (2) Nissan's points are well taken, but 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. (3) EPA has decided not to set delisting levels based on LDR for BMW'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 BMW indicate that the petitioned waste, when generated, would meet LDR treatment standards. See the proposed rule, 66 FR 9790–9792, February 12, 2001, and today's preamble, section II.B.

Comment: The Aluminum Association (TAA) stated that the restrictions imposed in the proposed

rule (66 FR 9781–9798, February 12, 2001) may have an impact on future delistings submitted by aluminum industry customers that use aluminum parts in the manufacture of automobiles.

Response: TAA's concern is understandable, but today's final rule is site-specific and waste-specific. It applies only to BMW's plant in Greer, South Carolina, and only to the petitioned waste. EPA evaluates every delisting petition on its own merits, in accordance with 40 CFR 260.20 and 260.22, and every proposed and final rule on delisting is site-specific and waste-specific.

Comment: TAA expressed support for the proposed delisting and the determination that BMW's petitioned waste is nonhazardous. TAA also expressed support for all of the comments on the proposal submitted by the Alliance of Automobile Manufacturers (Alliance): (1) The F019 listing definition needs to be changed so that conversion coating processes are excluded when they don't use the constituents of concern that were the basis of the original listing; (2) BMW's waste should not be evaluated by means of the MEP; (3) limits for total concentrations in BMW's waste should not be set; (4) delisting levels for BMW's waste should not be based on the LDR UTS; and (5) EPA should use a separate notice and comment rulemaking for use of the EPACMTP and DRAS.

Response: (1) Today's final rule is site-specific and waste-specific; it applies only to BMW's plant in Greer, South Carolina, 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 TAA and the Alliance about the need for each auto company to submit a delisting petition, but is unable to address this concern at the present time. (2) EPA used MEP analysis of the petitioned waste as a measure of the long-term resistance of the waste to leaching (see 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. (3) 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. (4) EPA has decided not to set delisting levels based on LDR for BMW'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 BMW indicate that the petitioned waste, when generated, would meet LDR treatment standards. See the proposed rule, 66 FR 9790–9792, February 12, 2001, and today's preamble, section II.B. (5) 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. Regulatory Impact

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

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

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

VI. Congressional Review Act

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

VII. Executive Order 12875

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

elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

List of Subjects in 40 CFR Part 261

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

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

Dated: April 10, 2001.

Richard D. Green,

Director, Waste Management Division.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

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

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
BMW Manufacturing Corporation ..	Greer, South Carolina	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that BMW Manufacturing Corporation (BMW) generates by treating wastewater from automobile assembly plant located on Highway 101 South in Greer, South Carolina. This is a conditional exclusion for up to 2,850 cubic yards of waste (hereinafter referred to as ''BMW Sludge'') that will be generated each year and disposed in a Subtitle D landfill after May 2, 2001. With prior approval by the EPA, following a public comment period, BMW may also beneficially reuse the sludge. BMW must demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals must be less than the following levels (ppm): Barium—100.0; Cadmium—1.0; Chromium—5.0; and Lead—5.0. All leachable concentrations for cyanide and nickel must not exceed the following levels (ppm): Cyanide—33.6; and Nickel—70.3. These metal and cyanide concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. The total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. The total concentrations of metals in the waste, not the waste leachate, must not exceed the following levels (ppm): Barium—2,000; Cadmium—500; Chromium—1,000; Lead—2,000; and Nickel—20,000. (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 BMW Sludge meet the delisting levels in Condition (1). (A) *Initial Verification Testing:* BMW must conduct verification sampling initially when test runs of aluminum vehicle parts are run and again when production of vehicles with aluminum body parts commences. For verification sampling during the test runs, BMW must collect and analyze a minimum of four composite samples of the dewatered sludge that is generated from wastewater treated during the time of the test runs. For verification sampling at the initiation of the production of vehicle models with aluminum parts, BMW must collect a minimum of four composite samples from the first roll-off box of sludge generated after production of automobiles with aluminum parts reaches 50 units per day. BMW must analyze for the constituents listed in Condition (1). If BMW chooses to beneficially reuse sludge, and the reuse has been approved by EPA, following a public comment period, verification testing of the sludge must consist of analyzing a minimum of four composite samples of the sludge for the constituents listed in Condition (1).

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

Facility	Address	Waste description
		(B) *Subsequent Verification Testing:* If the initial verification testing in Condition (2)(A) is successful for both the test runs and the commencement of production, i.e., delisting levels of Condition (1) are met for all of the composite samples, BMW 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:* BMW must store as hazardous all BMW 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 BMW Sludge do not exceed the levels set forth in Condition (1), then the BMW Sludge is non-hazardous 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 BMW 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:* BMW 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 BMW in writing that the BMW Sludge must be managed as hazardous waste F019 until BMW 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 BMW has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify BMW, in writing, that BMW must verify that the BMW 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, Atlanta, Georgia 30303. This submission is due no later than 60 days after filling the first roll-off box of BMW Sludge to be disposed in accordance with delisting Conditions (1) through (7) for both the test runs and again for the commencement of production. Records of analytical data from Condition (2) must be compiled, summarized, and maintained by BMW for a minimum of three years, and must be furnished upon request by EPA or the State of South Carolina, 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).

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

Facility	Address	Waste description
		(6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, BMW 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, BMW 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), BMW 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 BMW with an opportunity to present information as to why the proposed action is not necessary. BMW shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from BMW, 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:* BMW 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.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 042701B]

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the second seasonal apportionment of the 2001 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 27, 2001, until 1200 hrs, A.l.t., June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) for the second season, the period April 1, 2001, through June 10, 2001, as 100 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2001