levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 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'' is 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' This rule 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 Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 16, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.425 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.425 Clomazone; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Peppermint, tops	0.05
* * *	* *
Spearmint, tops	0.05
* * *	* *

* * * * *

[FR Doc. 02–21278 Filed 8–16–02; 4:19 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7264–1]

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 the United States Department of Energy Savannah River Operations Office (DOE–SR) to exclude (or ''delist'') certain hazardous wastes from the lists of hazardous wastes under the Resource Conservation and Recovery Act (RCRA). DOE–SR generated the petitioned waste by treating wastes from various activities at the Savannah River Site (SRS). The petitioned waste meets the definitions of listed RCRA hazardous wastes F006 and F028. DOE–SR petitioned EPA to grant a one-time, generator-specific delisting for its F006 and F028 waste, because DOE–SR believes that its waste does not meet the criteria for which theses types of wastes were listed. The waste is a radioactive mixed waste (RMW) because it is both a RCRA hazardous waste and a radioactive waste. EPA reviewed all of the waste-specific information provided by DOE–SR, performed calculations, and determined that the waste, which has a low level of radioactivity, could be disposed in a landfill for low-level radioactive waste without harming human health and the environment. The petition is for a one-time delisting, because the petitioned waste has been generated, will be completely disposed of at one time, and will not be generated again. Today's final rule grants DOE–SR's petition to delist its F006 and F028 waste. No public comments on the proposed rule were received. Today's final action means that DOE–SR's petitioned waste will no longer be classified as F006 and F028, and will not be subject to regulation as a hazardous waste under Subtitle C of RCRA, provided that it is disposed in a low-level radioactive waste landfill, in accordance with the Atomic Energy Act. The waste will still be subject to the Atomic Energy Act and local, State, and Federal regulations for low-level radioactive solid wastes that are not RCRA hazardous wastes.

EFFECTIVE DATE: This rule is effective on August 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 R4–01–02–DOESRSF. 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 (SCDHEC), 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 Myra C. Reece, Director, South Carolina Department of Health and Environmental Control, Lower Savannah District Environmental Quality Control, 218 Beaufort Street, NE., Aiken, South Carolina 29801, Phone: (803) 641–7670. If you wish to copy documents at SCDHEC, Lower Savannah District Environmental Quality Control, please contact Ms. Reece 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?
  B. What Laws and Regulations Give EPA the Authority to Delist Wastes?
  C. What is the History of this Rulemaking?
II. Summary of Delisting Petition Submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR)
  A. What Waste Did DOE–SR Petition EPA to Delist?
  B. What Information Did DOE–SR Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
  A. What Decision Is EPA Finalizing and Why?
  B. What Are the Terms of This Exclusion?
  C. When Is the Delisting Effective?
  D. How Does This Action Affect the States?
IV. Public Comments Received on the Proposed Exclusion
  A. Who Submitted Comments on the Proposed Rule?
  B. Comments and Responses From EPA
V. Analytical and Regulatory Requirements
  A. Executive Order 12866: Regulatory Planning and Review
  B. What Economic and Equity Analyses Were Completed in Support of the Proposed Delisting for DOE–SR's Petitioned Waste: Residue from Treating M–Area Waste by Vitrification and Cementitious Treatability Samples?
  C. What Substantive Comments Were Received on the Cost/Economic Aspects of the Proposed Delisting for DOE–SR's Petitioned Waste: Residue from Treating M–Area Waste by Vitrification and Cementitious Treatability Samples?
  D. What Are the Potential Costs and Benefits of Today's Final Rule?
  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.*?
  F. Was the Unfunded Mandates Reform Act Considered in this Final Rule?
  G. Were Equity Issues and Children's Health Considered in this Final Rule?
  1. Executive Order 12898: Environmental Justice
  2. Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks''
  H. What Consideration Was Given to Tribal Governments?
  I. Were Federalism Implications Considered in Today's Final Rule?
  J. Were Energy Impacts Considered?
VI. Paperwork Reduction Act
VII. National Technology Transfer and Advancement Act of 1995
VIII. The Congressional Review Act (5 U.S.C. 801 *et seq.*, as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

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).

[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.*

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

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

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

ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. 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 §§ 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?

The United States Department of Energy Savannah River Operations Office (DOE–SR), Aiken, South Carolina (DOE–SR), is seeking a delisting for vitrified radioactive mixed waste (RMW) generated at the Savannah River Site (SRS) in Aiken, South Carolina. The petitioned waste meets the listing definitions of F006 and F028 in § 261.31[2] and was generated by vitrification treatment of F006 and F027[3] waste from the SRS—Area where nuclear reactor components were produced. The petitioned waste also includes a small volume of non-vitrified waste which consists of cementitious treatability samples (EPA Hazardous Waste No. F006).

The hazardous constituents of concern[4] for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). F028 was listed for tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts. DOE–SR petitioned the EPA to exclude its F028 waste (generated from thermal treatment of F027 waste) and F006 waste because DOE-SR believes that the petitioned waste does not meet the criteria for which the waste was listed. DOE–SR claims that its F006 and F028 waste will not be hazardous because the constituents of concern for which F006 and F028 are listed are either not present or present only at such low concentrations that the waste does not meet the criteria in § 261.11(a)(3) for listing a waste as hazardous. DOE–SR 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[5]). 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).

DOE–SR petitioned EPA, Region 4, in September 1996 and submitted revised petitions in September 1998 and September 2000, to exclude this F006 and F028 waste, on a one-time, generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D.

As a result of the EPA's evaluation of DOE–SR's petition, the Agency proposed to grant a delisting to DOE–SR on March 15, 2002. *See* 67 FR 11639–11651, March 15, 2002 for details. EPA received no public comments on the proposed rule and today's rulemaking finalizes the proposed decision to grant DOE–SR's petition for delisting.

II. Summary of Delisting Petition Submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR)

A. What Waste Did DOE–SR Petition EPA To Delist?

DOE–SR petitioned EPA, Region 4, in September 1996 and submitted revised petitions in September 1998 and September 2000, to exclude 538 cubic yards of vitrified F006 and F028 waste and 0.12 cubic yards of cementitious treatability sample F006 waste, on a one-time, generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. DOE–SR treated ten waste streams generated in the Savannah River Site M-Area from 1983 through 1999, by vitrification. The treatment residue of all these streams is the 538 cubic yards of petitioned waste. The 0.12 cubic yards of petitioned waste comes from treatability studies of cementing F006 waste, and is referred to as cementitious treatability samples.

B. What Information Did DOE–SR Submit To Support This Petition?

In support of its petition, DOE–SR submitted: (1) Descriptions[6] of the waste streams that contributed to the petitioned waste, the areas where the contributing waste streams were generated, and the vitrification treatment process that generated the petitioned waste; (2) Material Safety Data Sheets (MSDSs) for all chemicals used in processes that generated the waste streams from which the petitioned waste was derived and the vitrification process that generated the petitioned waste; (3) the total volume of petitioned waste generated; (4) results of analysis of untreated waste and the petitioned waste for all constituents in appendix VIII of 40 CFR part 261 or appendix IX of part 264; (5) results of the analysis of leachate obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311), from the petitioned waste and historical results obtained by the Extraction Procedure Toxicity leaching method ((EPTox), SW–846 Method 1310); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in these wastes; and (7) results of the analysis of the petitioned waste by means of the Multiple Extraction Procedure (MEP), SW–846 Method 1320[7].

[2] F006: ''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.''

F028: ''Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F023, F026, and F027.''

[3] F027: ''Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-tri-chlorophenol as the sole component.)''

[4] The hazardous constituents of concern for every listed waste are in *Appendix VII of Part 261—Basis for Listing Hazardous Waste.*

[5] Note that the waste remains subject to the Atomic Energy Act because of its radioactivity.

[6] Detailed descriptions may be found in the DOE–SR's Approved Site Treatment Plan (1996), developed pursuant to the Federal Facility Compliance Act of 1992.

[7] ''SW–846'' means EPAs Publication SW–846, ''Test Methods for Evaluating Solid Waste,

Please see the proposed rule, 67 FR 11639–11651, March 15, 2002 for details on DOE–SR's analytical data, vitrification process, and generation process for the petitioned waste. A summary of analytical data was presented in Preamble Section II, Table 1B of the proposed rule (67 FR 11639–11651, March 15, 2002). 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?

In today's final rule, EPA is finalizing the delisting exactly as proposed in 67 FR 11639–11651, March 15, 2002. Appendix IX, Table 1 of 40 CFR part 261 is amended as proposed (67 FR 11650–11651). Table 1 below, which is a reproduction of Table 2 of the proposed rule (67 FR 11645–11646), summarizes delisting and risk levels calculated by DRAS for DOE–SR's petitioned waste.

TABLE 1: DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR DOE–SR'S 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
Arsenic	0.0649	1,330	3.47×10^{-7}	
Barium	*5,070; 3,860 Based on MCL	1,930		5.66×10^{-6}
Beryllium (Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation 28.8 Based on MCL.	7.21×10^{3}	2.13×10^{-11}	
Beryllium (Non-Carcinogenic Effect)	541; 28.8 Based on MCL	7.21×10^{3}		2.16×10^{-6}
Cadmium (Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation; 10.4 Based on MCL.	2,080	4.17×10^{-15}	
Cadmium (Non-Carcinogenic Effect)	*39; 10.4 Based on MCL	2,080		1.15×10^{-4}
Chromium (Hexavalent; Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation; 107 Based on MCL.	1,070	5.30×10^{-12}	
Chromium (Not Hexavalent; Non-Carcinogenic Effect).	$*1.50 \times 10^{7}$; 2.67×10^{4} Based on MCL	2.67×10^{5}		5.48×10^{-7}
Lead	*5,200	3.46×10^{5}		(**)
Nickel	1,960	2,610		5.64×10^{-4}
Silver	*266	1420		3.71×10^{-5}
Fluoride	Not Enough Information; 4,990 Based on MCL	1,250		(***)
Acetonitrile	847	1,320		6.00×10^{-7}
Total Hazard Quotient for All Waste Constituents.				1.09×10^{-3}
Total Carcinogenic Risk for the Waste (due to Arsenic, Beryllium, Cadmium, and Hexavalent Chromium).			3.48×10^{-7}	

*These levels are all greater than the Toxicity Characteristic (TC) regulatory level in 40 CFR 261.24. A waste cannot be delisted if it exhibits a hazardous characteristic; therefore, the delisting level for each of these constituents could not be greater than the TC level of 100 for Barium; 1.0 for Cadmium; 5.0 for Chromium; 5.0 for Lead; and 5.0 for Silver. MCL = Maximum Contaminant Level of National Primary Drinking Water Standards.

**Not Enough Information: There is No Reference Dose for Lead.

***Not Enough Information.

After reviewing the analytical data and information on processes and vitrification feed materials that DOE–SR submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels and risks using Region 6 Delisting Risk Assessment Software (DRAS) and Dilution Attenuation Factors (DAFs) from the EPA Composite Model for Landfills with Transformation Products (EPACMTP) (67 FR 11639–11651, March 15, 2002). EPA requested public comment on this proposed method of calculating delisting levels and risks for DOE–SR's petitioned waste. No public comments were received.

EPA also requested comment on three additional methods of evaluating DOE–SR's delisting petition and determining delisting levels: (1) 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; (2) comparing total concentrations of constituents in the waste to the results obtained by DRAS for total concentrations; and (3) comparing concentrations of constituents in the waste and waste leachate to the Land Disposal Restrictions (LDR) Universal Treatment Standards. (1) The MEP results for DOE–SR's petitioned waste indicated long-term resistance to leaching in a landfill. For example, less than 1% of

Physical/Chemical Methods.'' Methods in this publication are referred to in today's final rule as ''SW–846,'' followed by the appropriate method number.

the available nickel would be expected to leach from the waste in more than 100 years (67 FR 11646). (2) Total concentrations of constituents in the petitioned waste were several orders of magnitude below results obtained by DRAS for total concentrations. The maximum reported total concentrations for DOE–SR's petitioned waste were all below the following levels (mg/kg): Arsenic—10; Barium—200; Beryllium—10; Cadmium—10; Chromium—500; Lead—200; Nickel—10,000; Silver—20; Acetonitrile—1.0, and Fluoride—1.0. (3) The petitioned waste meets the LDR Universal Treatment Standards, as required by the Federal Facility Compliance Agreement. No public comments were received.

B. What Are the Terms of This Exclusion?

In today's final rule, EPA is excluding DOE–SR's petitioned waste from being listed as F006 and F028, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that DOE–SR's petitioned waste must be disposed in accordance with the Atomic Energy Act. This exclusion is valid only if the petitioner disposes of the waste in a low-level radioactive waste landfill in accordance with the Atomic Energy Act, as required by the amended Table 1 of appendix IX of 40 CFR part 261. Under these conditions, the petitioned waste is not subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the waste remains a solid waste under RCRA and a low-level radioactive waste under the Atomic Energy Act. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management and low-level radioactive waste regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to verify reported analytical data.

C. When Is the Delisting Effective?

This final rule is effective on August 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 final rule reduces the existing requirements for the petitioner. 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?

This final rule 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 and State 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 final exclusion does not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, SRS must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. *See* 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process described under 40 CFR part 271.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. The State must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so. Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. *See* also 40 CFR 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

Today's final rule is promulgated pursuant to HSWA authority, and contains provisions that are less stringent than the current Federal program. The final exclusion for DOE–SR's petitioned waste would be less stringent. Consequently, States would not be required to adopt this final exclusion as a condition of authorization of their hazardous waste programs.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

No one submitted comments on the proposed rule to EPA.

B. Comments and Responses From EPA

EPA did not receive any comments.

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 DOE–SR's Petitioned Waste: Residue From Treating M-Area Waste by Vitrification and Cementitious Treatability Samples?

No economic and equity analyses were required in support of the March 15, 2002 proposed rule. The proposed rule applies only to a one-time generated 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, DOE–SR Savannah River Site.

C. What Substantive Comments Were Received on the Cost/Economic Aspects of the Proposed Delisting for DOE–SR's Petitioned Waste: Residue From Treating M-Area Waste by Vitrification and Cementitious Treatability Samples?

EPA received no public comments on the proposed rule to delist DO–ESR's petitioned waste.

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 one-time generated 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 one-time generated waste at a single facility, DOE–SR Savannah River Site. 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 one-time generated 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 Determination?

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 one-time generated 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 determination 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 evaluation of 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. Measurements were completed by the facility prior to publication of the proposed rule and EPA evaluated the data before publishing the proposed rule and promulgating today's final rule.

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: August 8, 2002.

Jewell A. Harper,

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 to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Savannah River Site (SRS)	Aiken, South Carolina	Vitrified waste (EPA Hazardous Waste Nos. F006 and F028) that the United States Department of Energy Savannah River Operations Office (DOE–SR) generated by treating the following waste streams from the M-Area of the Savannah River Site (SRS) in Aiken, South Carolina, as designated in the SRS Site Treatment Plan: W–004, Plating Line Sludge from Supernate Treatment; W–995, Mark 15 Filter Cake; W–029, Sludge Treatability Samples (glass and cementitious); W–031, Uranium/Chromium Solution; W–037, High Nickel Plating Line Sludge; W–038, Plating Line Sump Material; W–039, Nickel Plating Line Solution; W–048, Soils from Spill Remediation and Sampling Programs; W–054, Uranium/Lead Solution; W–082, Soils from Chemicals, Metals, and Pesticides Pits Excavation; and Dilute Effluent Treatment Facility (DETF) Filtercake (no Site Treatment Plan code). This is a one-time exclusion for 538 cubic yards of waste (hereinafter referred to as ''DOE–SR Vitrified Waste'') that was generated from 1996 through 1999 and 0.12 cubic yard of cementitious treatability samples (hereinafter referred to as ''CTS'') generated from 1988 through 1991 (EPA Hazardous Waste No. F006). The one-time exclusion for these wastes is contingent on their being disposed in a low-level radioactive waste landfill, in accordance with the Atomic Energy Act, after [insert date of final rule.] DOE–SR has demonstrated that concentrations of toxic constituents in the DOE–SR Vitrified Waste and CTS do not exceed the following levels: (1) *TCLP Concentrations:* All leachable concentrations for these metals did not exceed the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS): (mg/l TCLP): Arsenic—5.0; Barium—21; Beryllium—1.22; Cadmium—0.11; Chromium—0.60; Lead—0.75; Nickel—11; and Silver—0.14. In addition, none of the metals in the DOE–SR Vitrified Waste exceeded the allowable delisting levels of the EPA, Region 6 Delisting Risk Assessment Software (DRAS): (mg/l TCLP): Arsenic—0.0649; Barium—100.0; Beryllium—0.40; Cadmium—1.0; Chromium—5.0; Lead—5.0; Nickel—10.0; and Silver—5.0. These metal concentrations were measured in the waste leachate obtained by the method specified in 40 CFR 261.24. *Total Concentrations in Unextracted Waste:* The total concentrations in the DOE–SR Vitrified Waste, not the waste leachate, did not exceed the following levels (mg/kg): Arsenic—10; Barium—200; Beryllium—10; Cadmium—10; Chromium—500; Lead—200; Nickel—10,000; Silver—20; Acetonitrile—1.0, which is below the LDR UTS of 38 mg/kg; and Fluoride—1.0

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

Facility	Address	Waste description
		(2) *Data Records:* Records of analytical data for the petitioned waste must be maintained by DOE–SR 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 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 maintained with a signed copy of the certification statement in 40 CFR 260.22(i)(12). (3) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, DOE–SR 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 is identified at a level higher than the delisting level allowed by EPA in granting the petition, DOE–SR must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (3)(A) 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. (C) 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 DOE–SR with an opportunity to present information as to why the proposed action is not necessary. DOE–SR shall have 10 days from the date of EPA's notice to present such information.(E) Following the receipt of information from DOE–SR, as described in paragraph (3)(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 (3)(A) or (3)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (4) *Notification Requirements:* DOE–SR 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. 02–21287 Filed 8–20–02; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–192

Federal Management Regulation; Technical Amendments

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Correction and technical amendment to final rule.

SUMMARY: This document makes amendments to the Federal Management Regulation (FMR) in order to correct references and make a technical amendment to the mail management regulations of the FMR.

DATES: Effective Date: August 21, 2002.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, Regulatory Secretariat, Acquisition Policy Division (MVP), General Services Administration, 1800 F Street, NW., Washington, DC 20405, (202) 208–7312.

List of Subjects in 41 CFR Part 102–192

Government contracts, Intergovernmental relations, Reporting and recordkeeping requirements, Security measurements.

Therefore, GSA amends 41 CFR part 102–192 as set forth below:

PART 102–192—MAIL MANAGEMENT

1. The authority citation for 41 CFR part 102–192 continues to read as follows:

Authority: Sec. 2, Pub. L. 94–575, as amended, 44 U.S.C. 2904; 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

§ 102–192.55 [Amended]

2. Redesignate § 192.55 as § 102–192.55.

§ 102–192.125 [Amended]

3. Amend § 102–192.125 in the introductory text by removing ''§ 192.50'' and adding ''§ 102–192.50'' in its place and in paragraph (e) by removing ''(see subpart C) of this part;'' and adding ''(see subpart C of this part);'' in its place.

Dated: August 13, 2002.

Laurie Duarte,

Regulatory Secretariat, Acquisition Policy Division.

[FR Doc. 02–21076 Filed 8–20–02; 8:45 am]
BILLING CODE 6820–24–P