Dated: June 16, 2005.

Margaret Guerriero,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, 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 P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(160) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(160) On July 9, 2002, Indiana submitted revised process weight rate rules as a requested revision to the Indiana State Implementation Plan. The changes clarify rule applicability, correct errors in the process weight rate table, allow sources to substitute work standard practices instead of the process weight rate table. They clarify the definitions of particulate and particulate matter. They also reduce duplicative recordkeeping.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules Rule 3: Particulate Emission Limitations for Manufacturing Process. 6–3–1 Applicability, 6–3–1.5 Definitions and 6–3–2 Particulate emission limitations, work practices, and control technologies. Adopted by the Indiana Air Pollution Control Board on February 6, 2002. Filed with the Secretary of State May 13, 2002, effective June 12, 2002.

[FR Doc. 05–14601 Filed 7–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7940–3]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by Bayer Material Science LLC (Bayer) to exclude (or delist) a certain liquid waste generated by its Baytown, TX plant from the lists of hazardous wastes. This final rule responds to the petition submitted by Bayer to delist K027, K104, K111, and K112 treated effluent generated from the facility's waste water treatment plant.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS) EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 18,071,150 cubic yards (5.745 billion gallons) per year of the Outfall 007 Treated Effluent. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when discharged in accordance with the facility's TPDES permit.

EFFECTIVE DATE: July 25, 2005.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is [R6–TXDEL–FY04–BAYER]. 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 FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

For technical information concerning this document, contact Michelle Peace, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–C), Dallas, Texas 75202, at (214) 665–7430, or *peace.michelle@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
- A. What Action Is EPA Finalizing?
- B. Why Is EPA Approving This Action?
- C. What Are the Limits of This Exclusion?
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- B. What Regulations Allow Facilities to Delist a Waste?
- C. What Information Must the Generator Supply?

III. EPA's Evaluation of the Waste Information and Data
- A. What Waste Did Bayer Petition EPA To Delist?
- B. How Much Waste Did Bayer Propose To Delist?
- C. How Did Bayer Sample and Analyze the Waste Data in This Petition?

IV. Public Comments Received on the Proposed Exclusion
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VI. Regulatory Flexibility Act

VII. Paperwork Reduction Act

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IX. Executive Order 13045

X. Executive Order 13084

XI. National Technology Transfer and Advancement Act

XII. Executive Order 13132 Federalism

XIII. Executive Order 13211

XIV. Executive Order 12988

XV. Congressional Review Act

I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating the petition, EPA proposed, on October 4, 2004 to exclude the waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 69 FR 59156). EPA is finalizing the decision to grant Bayer's delisting petition to have its Outfall 007 Treated Effluent generated from treating waste waters at the plant subject to certain continued verification and monitoring conditions.

B. Why Is EPA Approving This Action?

Bayer's petition requests a delisting from the K027, K104, K111, and K112, waste listings under 40 CFR 260.20 and 260.22. Bayer does not believe that the petitioned waste meets the criteria for which EPA listed it. Bayer also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste

was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from Bayer's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Baytown, TX facility.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, appendix IX, table 2 and the conditions contained herein are satisfied.

D. How Will Bayer Manage the Waste if It Is Delisted?

The treated effluent will continue to be piped and discharged from Bayer's TPDES-permitted Outfall 007 after the delisting is effective. The waste is delisted from its exit from the outfall tank to its point of discharge.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective July 25, 2005. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allows rules to become effective less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Final Rule Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, and Illinois) to administer an RCRA delisting program in place of the Federal program; that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If Bayer transports the petitioned waste to or manages the waste in any state with delisting authorization, Bayer must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, 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 and that such factors do not warrant retaining the waste as a hazardous waste.

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

A. What Waste Did Bayer Petition EPA To Delist?

On June 25, 2003, Bayer petitioned EPA to exclude from the lists of hazardous waste contained in § 261.32, Outfall 007 Treated Effluent generated from its facility located in Baytown, Texas. The waste falls under the classification of a listed waste under § 261.30.

B. How Much Waste Did Bayer Propose To Delist?

Specifically, in its petition, Bayer requested that EPA grant a conditional exclusion for 18,071,150 cubic yards (5.745 billion gallons) per year of the treated effluent.

C. How Did Bayer Sample and Analyze the Waste Data in This Petition?

To support its petition, Bayer submitted:

(1) Results of the total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs, and metals for six samples; and

(2) Descriptions of the waste water treatment process and effluent.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

Comments were submitted by the Texas Commission on Environmental Quality (TCEQ) to correct information contained in the proposed rule.

B. What Were the Comments and What Are EPA's Responses to Them?

TCEQ noted that the name of the facility has been changed from Bayer Polymers LLC to Bayer Material Science LLC. EPA has noted this name change and made appropriate changes to the final rule and exclusion language to reflect this change.

TCEQ also noted that the carbon regeneration unit referred to in the proposed rule has been certified closed. EPA has verified that the carbon regeneration has been closed. EPA's

mention of the unit in the proposed rule description was based on the information provided in the 2003 petition.

TCEQ has recommended that the exclusion language include language that minimizes the potential for leaks in the effluent pipe line. The maintenance and management requirements for the effluent pipe line are not included in the TPDES permit and TCEQ is concerned that the delisting exclusion will relax Bayer's maintenance of the effluent pipe line. EPA will add language to the exclusion which requires Bayer to perform regular and routine maintenance on the pipe line to prevent and repair leaks as soon as they are discovered.

In addition, on October 30, 2002, (67 FR 66251), EPA proposed the Methods Innovation Rule to remove from the regulations unnecessary requirements other than those considered to be Method Defined Parameters (MDP). An MDP is a method that, by definition or design, is the only one capable of measuring the particular property (*e.g.* Method 1311–TCLP). Therefore, EPA is no longer generally requiring the use of only SW–846 methods for regulatory applications other than those involving MDPs. The general purpose of this rule is to allow more flexibility when conducting RCRA-related sampling and analysis activities. In this proposal, we retain only those methods considered to be MDPs in the regulations and incorporate them by reference in 40 CFR 260.11. EPA is changing Bayer's delisting exclusion language found in paragraph (3) to reflect the generic language placed in all delisting exclusions as a result of the Methods Innovation Rule (70 FR 34537) which was finalized on June 14, 2005.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant under Executive Order 12866 since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this final rule, section would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, EPA hereby certifies that this final regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any state, local, or tribal governments or the private sector. In addition, the final delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA 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 EPA. This final rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

X. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the

rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have ''meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities or Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XI. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, 15 U.S.C. 3701 *et seq.*, EPA is directed 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, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable, voluntary consensus standards are not used by EPA, the Act requires EPA to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XII. Executive Order 13132, Federalism

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'' 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the final regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless EPA consults with state and local officials early in the process of developing the final regulation.

This action does not have federalism implications. It will not have a substantial direct effect on 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, because it affects only one facility.

XIII. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution and Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

XIV. Executive Order 12988

As required by section 3 of Executive Order 12988, ''Civil Justice Reform,'' (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.

XV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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: July 11, 2005.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division, Region 6.

■ For the reasons set out in the preamble, 40 CFR part 261 is to be 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 2 of appendix IX of part 261, add the following waste stream in alphabetical order by facility to read as follows:

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

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Bayer Material Science LLC	Baytown, TX	Outfall 007 Treated Effluent (EPA Hazardous Waste Nos. K027, K104, K111, and K112) generated at a maximum rate of 18,071,150 cubic yards (5.475 billion gallons) per calendar year after July 25, 2005 as it exits the Outfall Tank and disposed in accordance with the TPDES permit. The delisting levels set do not relieve Bayer of its duty to comply with the limits set in its TPDES permit. For the exclusion to be valid, Bayer must implement a verification testing program that meets the following Paragraphs:

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/kg specified in this paragraph. Outfall 007 Treated Effluent Total Concentrations (mg/kg): Antimony—0.0816; Arsenic—0.385, Barium—22.2; Chromium—153.0; Copper—3620.0; Cyanide—0.46; Mercury—0.0323; Nickel—11.3; Selenium—0.23; Thallium—0.0334; Vanadium—8.38; Zinc—112.0; Acetone—14.6; Acetophenone—15.8; Aniline—0.680; Benzene—0.0590; Bis (2-ethylhexyl)phthalate—1260.0; Bromodichloromethane—0.0719; Chloroform—0.077; Di-n-octyl phthalate—454.0; 2,4-Dinitrotoluene—0.00451; Diphenylamine—11.8; 1,4-Dioxane—1.76; Di-n-butyl phthalate—149.0; Fluoranthene—24.6; Methylene chloride—0.029; Methyl ethyl ketone—87.9; Nitrobenzene—0.0788; m-phenylenediamine—0.879; Pyrene—39.0; 1,1,1,2-Tetrachloroethane—0.703; o-Toluidine—0.0171; p-Toluidine—0.215; 2,4-Toluenediamine—0.00121. Toluene diisocyanate—0.001. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for the treated effluent has occurred for two consecutive quarterly sampling events and those reports have been approved by EPA. The delisting for the treated effluent applies only during periods of TPDES compliance. (B) If constituent levels in any sample taken by Bayer exceed any of the delisting levels set in paragraph (1) for the treated effluent, Bayer must do the following: (i) notify EPA in accordance with paragraph (6) and (ii) Manage and dispose the treated effluent as hazardous waste generated under Subtitle C of RCRA. (iii) Routine inspection and regular maintenance of the effluent pipe line must occur to prevent spills and leaks of the treated effluent prior to discharge. (3) Testing Requirements: Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Bayer treated effluent meet the delisting levels in paragraph (1). (A) Quarterly Testing: Upon this exclusion becoming final, Bayer may perform quarterly analytical testing by sampling and analyzing the treated effluent as follows: (i) Collect two representative composite samples of the treated effluent at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the treated effluent must be disposed of as hazardous waste in accordance with the applicable hazardous waste requirements in its TPDES discharge permit. (iii) Within thirty (30) days after taking its first quarterly sample, Bayer will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the treated effluent do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, Bayer can manage and dispose the nonhazardous treated effluent according to all applicable solid waste regulations. (B) Annual Testing: (i) If Bayer completes the four (4) quarterly testing events specified in paragraph (3)(A) above and no sample contains a constituent with a level which exceeds the limits set forth in paragraph (1), Bayer may begin annual testing as follows: Bayer must test two representative composite samples of the treated effluent for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Bayer treated effluent for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(4) Changes in Operating Conditions: If Bayer significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. Bayer must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: Bayer must submit the information described below. If Bayer fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Bayer must: (i) Submit the data obtained through paragraph (3) to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas, 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media. (ii) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (iii) Furnish these records and data when either EPA or the State of Texas request them for inspection. (iv) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Reopener: (i) If, anytime after disposal of the delisted waste Bayer possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (ii) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph (1), Bayer must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (iii) If Bayer fails to submit the information described in paragraphs (5), (6)(i) or (6)(ii) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (iv) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (v) Following the receipt of information from the facility described in paragraph (6)(iv) or (if no information is presented under paragraph (6)(iv)) the initial receipt of information described in paragraphs (5), (6)(i) or (6)(ii), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	* * * * * * *

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2004–20484]

RIN 2127–AJ54

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends regulations on insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices must file three copies of its report for the 2002 calendar year before October 25, 2005. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: This final rule becomes effective on September 23, 2005. Insurers listed in the appendices are required to submit reports before October 25, 2005.

FOR FURTHER INFORMATION CONTACT: Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, by electronic mail to *rosalind.proctor@nhtsa.dot.gov.* Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information,* NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term ''small insurer'' is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best,[1] publishes in its *State/Line Report* each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, *i.e.*, any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and 33112(e)(1) and (2),

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve

[1] A.M. Best Company is a well-recognized source of insurance company ratings and information. 49 U.S.C. 33112(i) authorizes NHTSA to consult with public and private organizations as necessary.