(3) The term *directed order* shall mean a customer order that the customer specifically instructed the broker or dealer to route to a particular venue for execution.

(4) The term *make publicly available* shall mean posting on an Internet web site that is free to the public, furnishing a written copy to customers on request, and notifying customers at least annually in writing that a written copy will be furnished on request.

(5) The term *non-directed order* shall mean any customer order other than a directed order.

(6) The term *national market system plan* shall have the meaning provided in § 240.11Aa3–2(a)(1).

(7) The term *payment for order flow* shall have the meaning provided in § 240.10b–10(d)(9).

(8) The term *profit-sharing relationship* shall mean any ownership or other type of affiliation under which the broker or dealer, directly or indirectly, may share in any profits that may be derived from the execution of non-directed orders.

(9) The term *time of the transaction* shall have the meaning provided in § 240.10b–10(d)(3).

(b) *Quarterly report on order routing.*

(1) Every broker or dealer shall make publicly available for each calendar quarter a report that discusses and analyzes its routing of non-directed orders in covered securities in that quarter. Such report shall include the following information:

(i) The percentage of total customer orders that were non-directed orders, and the percentages of non-directed orders that were market orders, limit orders, and other orders;

(ii) The identity of each venue to which non-directed orders were routed for execution, the percentage of non-directed orders routed to the venue, and the percentages of non-directed market orders, non-directed limit orders, and non-directed other orders that were routed to the venue;

(iii) A discussion of the material aspects of the broker's or dealer's relationship with each venue to which non-directed orders were routed for execution, including a description of any arrangement for payment for order flow and any profit-sharing relationship; and

(iv) A discussion and analysis of the order routing practices of the broker or dealer, including the significant objectives that the broker or dealer considered in determining where to route non-directed orders, the extent to which order executions achieved those objectives, a comparison of the quality of executions actually obtained with those produced by other venues for comparable orders during the relevant time period, and whether the broker or dealer has made or intends to make any material changes in its order routing practices in the succeeding quarter.

(2) A broker or dealer shall make the report required by paragraph (b)(1) of this section publicly available within two months after the end of the quarter addressed in the report.

(c) *Customer requests for information on order routing.*

(1) Every broker or dealer shall, on request of a customer, disclose to its customer the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.

(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (c)(1) of this section.

Dated: July 28, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–19729 Filed 8–7–00; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6847–5]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida, (Tyco), formerly Advanced Quick Circuits, L.P., to exclude (or ''delist'') a certain hazardous waste from the list of hazardous wastes in 40 CFR 261.31. Tyco generates the petitioned waste by treating liquid waste from Tyco's printed circuit board manufacturing processes. The waste so generated is a wastewater treatment sludge that meets the definition of F006 in § 261.31. Tyco petitioned EPA to grant a generator-specific delisting, because Tyco believes that its F006 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Tyco, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. Today's proposed rule proposes to grant Tyco's petition to delist its F006 waste, and requests public comment on the proposed decision. If the proposed delisting becomes a final delisting, Tyco's petitioned waste will no longer be classified as F006, and will not be subject to regulation as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

DATES: EPA is requesting public comments on this proposed decision. Comments will be accepted until September 22, 2000. Comments postmarked after the close of the comment period will be stamped ''late.''

Any person may request a hearing on this proposed decision by filing a request with Richard D. Green, Director of the Waste Management Division, EPA, Region 4, whose address appears below, by August 23, 2000. The request must contain the information prescribed in section 260.20(d).

ADDRESSES: Send two copies of your comments to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Send one copy to Bob Snyder, Central District Office, Florida Department of Environmental Protection, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803–3767. Identify your comments at the top with this regulatory docket number: R4–99–01–TycoP. Comments may also be submitted by e-mail to *sophianopoulos.judy@epa.gov.* If files are attached, please identify the format.

Requests for a hearing should be addressed to Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303.

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

the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

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.

Copies of the petition are available during normal business hours at the following addresses for inspection and copying: U.S. EPA, Region 4, Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8190; and Central District Branch Office, Florida Department of Environmental Protection, 13 East Melbourne Avenue, Melbourne, Florida 32901, (321) 984–4800. The EPA, Region 4, Library is located near the Five Points MARTA station in Atlanta. The Central District Branch Office in Melbourne is located in the southeast corner of Melbourne Avenue and Babcock Street.

FOR FURTHER INFORMATION CONTACT: For general and technical information about this proposed rule, contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, 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.

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

I. Background
A. What Laws and Regulations Give EPA the Authority to Delist Wastes?
B. How did EPA Evaluate this Petition?
II. Disposition of Delisting Petition
A. Summary of Delisting Petition Submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, FL Circuits, LP (Tyco), Melbourne, Florida
B. What Delisting Levels Did EPA Obtain with the EPACML Model?
C. What Delisting Levels Did EPA Obtain by Using UTS Levels or HTMR Exclusion Levels?
D. How Did EPA Use the Multiple Extraction Procedure (MEP) to Evaluate This Delisting Petition?
E. Should EPA Set Limits on Total Concentrations, as well as on TCLP Leachate Concentrations, that the Petitioned Waste must Meet in order to be Delisted?
F. Should EPA Evaluate this Petitioned Waste for Recovery of Metals, as well as for Disposal in a Landfill?
G. Conclusion
III. Limited Effect of Federal Exclusion Will this Rule Apply in All States?
IV. Effective Date
V. Paperwork Reduction Act
VI. National Technology Transfer and Advancement Act
VII. Unfunded Mandates Reform Act
VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act
IX . Executive Order 12866
X. Executive Order 12875
XI. Executive Order 13045
XII. Executive Order 13084
XIII. Submission to Congress and General Accounting Office

I. Background

A. 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).

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, sections 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 section 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 section 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 §§ 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. The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (b)(2) and (c)(2)(i). EPA plans to address waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

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

B. How Did EPA Evaluate This Petition?

This petition requests a delisting for a hazardous waste listed as F006. In making the initial 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, the 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 then 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. See § 260.22 (a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, 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.

For this delisting determination, EPA used such information to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the proposed delisting levels for Tyco's waste. See 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment, by contaminating groundwater, surface water, and air. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations. If EPA makes a final decision to delist Tyco's F006 waste, Tyco must meet the delisting levels and dispose of the waste in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model. With the EPACML approach, EPA caclulated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model. See Table 2 of section II.B. below, which is adapted from 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste that Tyco estimated it would dispose of each year. The delisting level for each constituent is equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels results in conservative levels that are protective of groundwater, because the model does not assume that the landfill has the controls required of many Subtitle D landfills.

EPA is requesting comment on the use of the EPACML model to determine the proposed delisting levels for Tyco's petitioned waste, as well as other methods that will be described below.

Tyco submitted to the EPA analytical data on nine samples of its F006 waste collected during a six-month period.

After reviewing the analytical data and information on processes and raw materials that Tyco submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels for them, using MCLs and EPACML DAFs, as described above.

EPA requests comment on whether the following method of setting delisting levels for the constituents of concern would be more appropriate than the EPACML method:

Delisting levels would be either the Universal Treatment Standards (UTS) levels of the Land Disposal Restrictions (LDR) regulations in 40 CFR part 268 or the generic exclusion levels for residues from treatment of F006 by High Temperature Metal Recovery (HTMR), in 40 CFR 261.3(c)(2)(ii)(C)(1). For each constituent of concern, the delisting level would be the lower of those two sets of values. If the HTMR level is lower than the UTS level, the delisting level would be the HTMR level; if the UTS level is lower than the HTMR level, the UTS level would be chosen as the delisting level.

EPA also requests comment on three additional methods of evaluating Tyco's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320,[1] to evaluate the long-term resistance of the waste to leaching in a landfill; (2) setting limits on total concentrations of constituents in the waste, based on calculations of constituent release from waste in a landfill to surface water and air, and release during waste transport; and (3) setting delisting levels for waste that will be sent to a smelter for metal recovery, where the levels would be calculated in accordance with EPA's Human Health Risk Assessment Procedure (HHRAP) for combustion risk assessment or the delisting levels would be the same as for land disposal, with the additional requirement that the smelting facility be in compliance with a permit issued under the authority of the Clean Air Act .

The EPA provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed. Late comments will be considered to the extent possible.

II. Disposition of Delisting Petition

A. Summary of Delisting Petition Submitted by Tyco Printed Circuit Group, Melbourne Division, Melbourne, FL Circuits, LP (Tyco), Melbourne, Florida

Tyco manufactures printed circuit boards, and is seeking a delisting for the sludge generated by treating liquid wastes from its electroplating operations. This waste meets the listing definition of F006 in § 261.31.[2]

Tyco petitioned the Administrator, on August 26, 1998, to exclude this F006 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. In accordance with the delegation of delisting authority, the Administrator transmitted the petition to EPA, Region 4, and on September 11, 1998, Tyco submitted the petition to EPA, Region 4.

The hazardous constituents of concern for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Tyco petitioned the EPA to exclude its F006 waste because Tyco does not believe that the waste meets the criteria of the listing.

Tyco claims that its F006 waste is not hazardous because the constituents of concern are either present at low

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

[2] ''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.''

concentrations, or do not leach out of the waste at significant concentrations. Tyco also believes that this waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Tyco's petition.

In support of its petition, Tyco submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste and the manufacturing steps that contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for process materials; (3) Quantities of petitioned waste generated each year from 1983 through 1997; (4) results of analysis for water, metals, cyanide, sulfide, and oil and grease in the waste; (5) results of the analysis of waste leachate obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311) for metals; (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity; and (7) results of the MEP analysis of the waste.

Tyco operates two electroplating operations on John Rodes Boulevard in Melbourne, Florida, that electroplate copper, tin/lead, nickel, and gold in the process of manufacturing printed circuit boards. One of the operations manufactures printed circuit boards mainly for commercial and military customers; the other is set up for high-tech, quick-turnaround manufacturing of printed circuit boards. Wastewater and off-specification plating solutions from both operations are piped to an on-site wastewater treatment facility, where they are treated by pH adjustment and flocculation to precipitate dissolved metals as metal hydroxides. The precipitated metal hydroxides are filtered, pressed, and concentrated, at which point, F006 sludge is generated.

Tyco's average annual generation rate of F006 from 1983 through 1997 was 192 tons, with a minimum of 134 tons in 1989 and a maximum of 334.53 tons in 1990. Tyco estimated a future maximum generation rate of 300 tons per year, and stated that actual generation rates depend on sales.

Table 1 below summarizes the hazardous constituents and their concentrations in Tyco's petitioned waste.

TABLE 1.—TYCO PRINTED CIRCUIT GROUP, MELBOURNE DIVISION: F006 SLUDGE PROFILE

Name of constituent [1]	Sample number								
	1	2	3	4	5	6	7	8	9
1. Arsenic	0.02U [2]	0.20U	0.20U	0.10U	0.10U	0.10U	0.05U	0.05U	0.05U
2. Barium	10U	10U	10U	0.50	0.60	0.80	2.0U	2.0U	20U
3. Cadmium	0.50U	0.50U	0.50U	0.024	0.036	0.020	0.10U	0.10U	0.10U
4. Chromium	1U	1U	1U	0.10U	0.10U	0.10U	0.10U	0.50	0.50U
5. Lead	1U	1U	1U	0.20	0.19	0.16	0.50U	0.50U	0.50U
6. Mercury	.005U	.005U	.005U	.005U	.005U	.005U	.005U	.005U	.005U
7. Selenium	0.50U	0.05U	0.05U	0.010U	0.020U	0.010U	0.050U	0.050U	0.050U
8. Silver	1U	1U	1U	0.40U	0.040U	0.040U	0.20U	0.20U	0.20U
9. Cyanide	NA	NA	0.10U	0.10U	0.10U	0.20U	0.10	1.5	NA
10. Oil and Grease	NA	NA	100	130	13000	22000	2700	580	16000
11. Sulfide	NA	NA	10U	10U	10U	10U	17U	10U	10U
12. Nickel	NA	NA	NA	NA	NA	NA	NA	2100	960
13. Nickel	NA	NA	NA	NA	NA	NA	NA	NA	0.50U

[1] For all metals, except nickel, the concentrations in Table 1 are in milligrams per liter (mg/l) in the TCLP leachate. Concentrations in the unextracted waste (total concentrations), in milligrams per kilogram (mg/kg), are given for cyanide, oil and grease, and sulfide. The total concentration (mg/kg) of nickel in the sludge samples is given in row 12, and the TCLP concentration of nickel (mg/l) is given in row 13.

[2] U=Not detected to level shown; NA = Not analyzed.

EPA concluded after reviewing Tyco's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in Tyco's petitioned waste. In addition, on the basis of test results and other information provided by Tyco, pursuant to § 260.22, EPA concluded that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

During its evaluation of Tyco's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Tyco's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of Tyco's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water, because of storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (See the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at municipal solid waste landfills can effectively control runoff, as Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. While some contamination of surface water is possible through runoff from a waste disposal area, EPA believes that the dissolved concentrations of hazardous constituents in the runoff are likely to be lower than the extraction procedure test results reported in today's proposed rule, because of the aggressive acidic medium used for extraction in the TCLP. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Subtitle D controls would

minimize significant releases to surface water from erosion of undissolved particulates in runoff.

B. What Delisting Levels Did EPA Obtain With the EPACML Model?

In order to account for possible variability in the generation rate, EPA calculated delisting levels using a generation rate of 500 tons per year, rather than Tyco's estimate of an annual maximum of 300 tons. EPA converted the 500 tons to a waste volume of 590 cubic yards, by using the density of water for the density of the sludge. While the sludge is certainly more dense than water, using the lower density results in a higher value for the waste volume, and a lower, more conservative, Dilution Attenuation Factor (DAF). Table 2 below is a table of waste volumes in cubic yards and the corresponding DAFs from the EPACML model. EPA obtained a DAF of 100 from Table 2, for Tyco's petitioned waste.

TABLE 2.—DILUTION/ATTENUATION FACTORS (DAFS) FOR LANDFILLS CALCULATED BY THE EPACML MODEL, MODIFIED FOR DELISTING

Waste volume in cubic yards per year [1]	DAF (95th percentile) [2]
1,000	[3] 100
1,250	96
1,500	90
1,750	84
2,000	79
2,500	74
3,000	68
4,000	57
5,000	54
6,000	48
7,000	45
8,000	43
9,000	40
10,000	36

TABLE 2.—DILUTION/ATTENUATION FACTORS (DAFS) FOR LANDFILLS CALCULATED BY THE EPACML MODEL, MODIFIED FOR DELISTING—Continued

Waste volume in cubic yards per year [1]	DAF (95th percentile) [2]
12,500	33
15,000	29
20,000	27
25,000	24
30,000	23
40,000	20
50,000	19
60,000	17
80,000	17
90,000	16
100,000	15
150,000	14
200,000	13
250,000	12
300,000	12

[1] The waste volume includes a scaling factor of 20 (56 FR 32993, July 18, 1991; and 56 FR 67197, Dec. 30, 1991), where the annual volume of waste in the table is assumed to be sent to a landfill every year for 20 years.

[2] The DAFs calculated by the EPACML are a probability distribution based on a range of values for each model input parameter; the input parameters include such variables as landfill size, climatic data, and hydrogeologic data. The 95th percentile DAF represents a value in which one can have 95% confidence that a contaminant's concentration will be reduced by a factor equal to the DAF, as the contaminant moves from the bottom of the landfill through the subsurface environment to a receptor well. For example, if the 95th percentile DAF is 10, and the leachate concentration of cadmium at the bottom of the landfill is 0.05 mg/l, one can be 95% confident that the receptor well concentration of cadmium will not exceed 0.005 mg/l. See 55 FR 11826, March 29, 1990; 56 FR 32993, July 18, 1991; and 56 FR 67197, December 30, 1991.

[3] DAF cutoff is 100, corresponding to the Toxicity Characteristic Rule (55 FR 11826, March 29, 1990).

Table 3 below is a table of EPACML delisting levels for each constituent of concern in Tyco's petitioned waste. The constituents of concern are barium, cadmium, chromium, cyanide, lead, and nickel, and the DAF is 100 for the maximum estimated volume.

TABLE 3.—DELISTING LEVELS CALCULATED FROM EPACML MODEL FOR TYCO PETITIONED WASTE

Constituent	MCL [1] (mg/l)	Delisting level (mg/l TCLP)
Barium	2	200
Cadmium	0.005	0.5
Chromium	0.10	[2] 5
Cyanide	0.20	[3] 20
Lead	[4] 0.015	1.5
Nickel	[5] 0.73	73

[1] See the ''Docket Report on Health-based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22,'' December 1994, located in the RCRA public docket, for the Agency's methods of calculating health-based levels for evaluating delisting petitions from MCLs, and when MCLs are not available.

[2] The Toxicity Characteristic (TC) regulatory level for chromium in 40 CFR 261.24 is 5 mg/l. Therefore, although a DAF of 100 times 0.10 equals 10, the delisting level cannot be greater than 5 mg/l, because a delisted waste must not exhibit a hazardous characteristic.

[3] The TCLP is to be followed for cyanide, except that deionized water must be used as the leaching medium, instead of the acetic acid or acetate buffer specified in the TCLP. SW–846 Method 9010 or 9012 must be used to measure cyanide concentration in the deionized water leachate.

[4] This value is an action level for a Publicly Owned Treatment Works, rather than a MCL.

[5] This value is a value that is protective of tap water, obtained from EPA Region 9's Preliminary Remediation Goals Tables. Internet address is: http://www.epa.gov/region09/waste/sfund/prg/s1__05.htm.

C. What Delisting Levels Did EPA Obtain by Using UTS Levels or HTMR Exclusion Levels?

Please see Table 4 below.

TABLE 4.—DELISTING LEVELS FROM UTS LEVELS OR HTMR EXCLUSION LEVELS

Constituent	UTS (mg/l TCLP) [40 CFR 268.48]	HTMR (mg/l TCLP, except for cyanide) [1] [40 CFR 261.3(c)(2)(ii)(C)(1)]	Delisting level (mg/l TCLP, except for cyanide) [1]
Barium	21	7.6	7.6.
Cadmium	0.11	0.050	0.050.
Chromium	0.60	0.33	0.33.
Cyanide	590 (total); 30 (amenable)[1]	1.8 (total)	1.8 (total).
Lead	0.75	0.15	0.15.
Nickel	11	1.0	1.0.

[1] Cyanide concentrations must be measured by the method specified in 40 CFR 268.40, Note 7. In order to meet the UTS levels, the cyanide (total, not amenable) concentration must not exceed 590 mg/kg, and the concentration of cyanide amenable to chlorination must not exceed 30 mg/kg. Cyanide amenable to chlorination is a measure of free, uncomplexed cyanide. These concentrations are by total analysis of the waste, not analysis of waste leachate. In order to meet the generic exclusion level for HTMR residues, the cyanide (total, not amenable) concentration must not exceed 1.8 mg/kg, by total analysis, not analysis of leachate.

D. How Did EPA Use the Multiple Extraction Procedure (MEP) To Evaluate This Delisting Petition?

EPA developed the MEP test (SW–846 Method 1320) to help predict the long-term resistance to leaching of stabilized wastes, which are wastes that have been treated to reduce the leachability of hazardous constituents. The MEP consists of a TCLP extraction of a sample followed by nine sequential extractions of the same sample, using a synthetic acid rain extraction fluid (prepared by adding a 60/40 weight mixture of sulfuric acid and nitric acid to distilled deionized water until the pH is 3.0±0.2). The sample which is subjected to the nine sequential extractions consists of the solid phase remaining after, and separated from, the initial TCLP extract. EPA designed the MEP to simulate multiple washings of percolating rainfall in the field, and estimates that these extractions simulate approximately 1,000 years of rainfall. (See 47 FR 52687, Nov. 22, 1982.) MEP results are presented in Table 5 below. In response to a request by EPA for additional information, Tyco reported the following practical quantitation limits in the MEP test: 2.0 mg/l for barium; and 0.5 mg/l for cadmium, chromium, lead, and nickel. Table 5 presents the results of analysis of MEP extracts.

TABLE 5.—MULTIPLE EXTRACTION PROCEDURE (SW–846 METHOD 1320) RESULTS FOR TYCO'S PETITIONED WASTE [1]

Extract No.	Barium (Ba)	Cadmium (Cd)	Chromium (Cr)	Lead (Pb)	Nickel (Ni)	pH [2] (before/after)
1 (TCLP)	2.0 U [1]	0.10 U	0.50 U	0.50 U	1.8 I [4]	
2 (first extraction of the MEP)	0.50 U	0.020 U	0.10 U	0.10 U	0.20 I	6.827/7.616
3	0.50 U	0.020 U	0.10 U	0.10	0.10 U	7.406/NA [3]
4	0.50 I	0.020 U	0.10	0.10 U	0.10 U	7.743/7.361
5	0.50 U	0.020 U	0.10	0.10 U	0.10 U	7.821/8.345
6	0.50 U	0.020 U	0.10	0.10 U	0.10 U	8.038/8.409
7	0.50 U	0.020 U	0.10 U	0.10 U	0.10 U	7.980/8.605
8	0.50 U	0.020 U	0.10 U	0.10 U	0.10 U	8.042/8.121
9	0.50 U	0.020 U	0.10 U	0.10 U	0.10 U	8.112/8.121
10	0.50 U	0.020 U	0.10 U	0.10 U	0.10 U	7.738/8.576

[1] U = Not detected to level shown.
[2] pH is a measure of the negative logarithm of the hydrogen ion activity in an aqueous solution, and is a measure of how acidic or basic (alkaline) a solution is. At 25 °C, solutions with pH values less than 7 are acidic; greater than 7 are basic (alkaline); and a pH value of 7 indicates a neutral solution. In general, metals and their compounds are less soluble in basic (alkaline) solutions. ''Start'' means pH at start of the extraction and ''Finish'' means pH at the end of the extraction.
[3] NA = Not analyzed.
[4] I = Analyte detected at level between the Method Detection Level and the Practical Quantitation Level.

The MEP data in Table 5 indicate that the petitioned waste would be expected to be resistant to leaching for a period of at least 100 years, because concentrations in each extract are either not detected, or very close to the detection limit. The average life of a landfill is approximately 20 years. (See 56 FR 32993, July 18, 1991; and 56 FR 67197, Dec. 30, 1991.)

The MEP pH data in Table 5 indicate that the pH of the petitioned waste would be expected to remain alkaline for a period of more than 100 years. Most heavy metal hydroxides, like those in the petitioned waste, tend to remain insoluble in water at alkaline pHs (pH greater than 7).

E. Should EPA Set Limits on Total Concentrations, as well as on TCLP Leachate Concentrations, that the Petitioned Waste must Meet in order to be Delisted?

EPA requests public comment on the appropriateness of setting a maximum of 20,000 mg/kg for the total concentration of nickel, and 500 mg/kg for the total concentration of each of the metals, barium, cadmium, chromium, and lead, in the petitioned waste. These maximum concentration limits would be in addition to the limits on the TCLP concentrations proposed in preamble section II, paragraphs B and C.

F. Should EPA Evaluate This Petitioned Waste for Recovery of Metals, as Well as for Disposal in a Landfill?

Metal recovery from Tyco's petitioned waste is economically feasible. Tyco reported to EPA that the metal value of its petitioned waste if sent directly to a metal smelter would be more than $200,000 per year.

EPA requests comment on the following proposed methods of delisting the petitioned waste before shipping it to a metal smelter:

Method I requires that two conditions be met: (1) The waste must meet the same delisting levels proposed for landfill disposal, and (2) The metal recovery facility must have, and be in compliance with, a permit issued in accordance with the Clean Air Act.[3]

Method II requires that the risk of smelting the waste must be determined to be acceptable in accordance with EPA's Human Health Risk Assessment Protocol (HHRAP) for combustion risk assessment.

[3] Note that Federal, State, and local solid waste regulations have always applied, and continue to apply, to the residues from the metal recovery process.

G. Conclusion

EPA believes that Tyco's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill, if the proposed delisting levels are met. EPA requests comment on four proposals: (1) Delisting levels for land disposal based on (a) the EPACML model, or (b) the LDR Universal Treatment Standards or the generic delisting levels of 40 CFR 261.3(c)(2)(ii)(C)(1), whichever are lower; (2) delisting levels for land disposal that set limits for total concentrations; (3) delisting levels for metal recovery that are the same as for land disposal, with the additional requirement that the metal recovery facility must operate in compliance with a permit issued in accordance with the Clean Air Act; and (4) delisting levels for metal recovery that are based on the determination of acceptable risk in accordance with EPA's Human Health Risk Assessment Protocol (HHRAP) for combustion risk assessment.

EPA proposes to exclude Tyco's petitioned waste from being listed as F006, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that Tyco's petitioned waste must meet

proposed delisting levels before disposal. Thus, EPA's proposed decision is based on verification testing conditions. If the proposed rule becomes effective, the exclusion will be valid only if the petitioner demonstrates that the petitioned waste meets the verification testing conditions and delisting levels in the amended Table 1 of appendix IX of 40 CFR part 261. If the proposed rule becomes final and EPA approves that demonstration, the petitioned waste would not be 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 would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met.

III. Limited Effect of Federal Exclusion

Will This Rule Apply in All States?

This proposed rule, if promulgated, would be 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 proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, Tyco must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce 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).

V. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VI. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 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 proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow 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.

VII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, which was signed into law on March 22, 1995, 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 today's proposed 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 proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

Pursuant to 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 that describes the impact of the rule on small entities (*i.e.*, 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 a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on any 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, I hereby certify that this proposed 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.

IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) 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;

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

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

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

OMB has exempted this proposed rule from the requirement for OMB review under Section (6) of Executive Order 12866.

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. 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, 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. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

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 Office of Management and Budget, 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 meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's proposed rulemaking does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XIII. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States.

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, etc. 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). This rule will become effective on the date of publication 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: July 28, 2000.

Jewell Grubbs,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed 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 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Tyco Printed Circuit Group, Melbourne Division.	Melbourne, Florida	Wastewater treatment sludge (EPA Hazardous Waste No. F006) that Tyco Printed Circuit Group, Melbourne Division (Tyco) generates by treating wastewater from its circuit board manufacturing plant located on John Rodes Blvd. in Melbourne, Florida. This is a conditional exclusion for up to 500 cubic yards of waste (hereinafter referred to as ''Tyco Sludge'') that will be generated each year and disposed in a Subtitle D landfill after [insert date of final rule.] Tyco must demonstrate that the following conditions are met for the exclusion to be valid. (Please see Conditon (8) for proposed requirements for the exclusion to be valid for waste that is sent to a smelter for metal recovery.) (1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260–270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Tyco Sludge meet the delisting levels in Condition (3). (A) *Initial Verification Testing:* Tyco must collect and analyze a representative sample of every batch, for eight sequential batches of Tyco sludge generated in its wastewater treatment system after [insert date of final rule.]. A batch is the Tyco Sludge generated during one day of wastewater treatment. Tyco must analyze for the constituents listed in Condition (3). A minimum of four composite samples must be collected as representative of each batch. Tyco must report analytical test data, including quality control information, no later than 60 days after generating the first batch of Tyco Sludge to be disposed in accordance with the delisting Conditions (1) through (7). (B) *Subsequent Verification Testing:* If the initial verification testing in Condition (1)(A) is successful, i.e., delisting levels of condition (3) are met for all of the eight initial batches, Tyco must test a minimum of 5% of the Tyco Sludge generated each year. Tyco must collect and analyze at least one composite sample representative of that 5%. The composite must be made up of representative samples collected from each batch included in the 5%. Tyco may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are non-hazardous. (2) *Waste Holding and Handling:* Tyco must store as hazardous all Tyco Sludge generated until verification testing as specified in Condition (1)(A) or (1)(B), as appropriate, is completed and valid analyses demonstrate that Condition (3) is satisfied. If the levels of constituents measured in the samples of Tyco Sludge do not exceed the levels set forth in Condition (3), then the Tyco Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set forth in Condition (3), the batch of Tyco Sludge generated during the time period corresponding to this sample must be retreated until it meets the delisting levels set forth in Condition (3), or managed and disposed of in accordance with Subtitle C of RCRA. (3) *Delisting Levels:* All leachable concentrations for these metals must not exceed the following levels (ppm): Barium—7.6; Cadmium—0.050; Chromium—0.33; Lead—0.15; and Nickel—1.0. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. The cyanide (total, not amenable) concentration must not exceed 1.8 mg/kg, by total analysis, not analysis of leachate. Cyanide concentrations must be measured by the method specified in 40 CFR 268.40, Note 7. (4) *Changes in Operating Conditions:* Tyco must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are necessary (e.g., use of new chemicals not specified in the petition). EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Tyco in writing that the Tyco sludge must be managed as hazardous waste F006, pending receipt and evaluation of a new delisting petition. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Tyco, in writing, that Tyco must repeat Condition (1)(A) to verify that the Tyco Sludge continues to meet Condition (3) delisting levels.

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

Facility	Address	Waste description
		(5) *Data Submittals:* Data obtained in accordance with Condition (1)(A) must be submitted to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD-RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia. 30303. This notification is due no later than 60 days after generating the first batch of Tyco Sludge to be disposed in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (1) must be compiled, summarized, and maintained by Tyco for a minimum of three years, and must be furnished upon request by EPA or the State of Florida, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the 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 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. In the event that 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 void exclusion.'' (6) *Reopener Language:* (A) If, anytime after disposal of the delisted waste, Tyco possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Tyco must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (1)(B), does not meet the delisting requirements of Condition (3), Tyco must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Tyco with an opportunity to present information as to why the proposed action is not necessary. Tyco shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from Tyco, as described in paragraph (6)(D) or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* Tyco 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.

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

Facility	Address	Waste description
		(8) *Delisting Conditions to be Met Prior to Shipping Waste to Smelter for Metal Recovery:* Tyco must provide a written notification to EPA and the Florida Department of Environmental Protection (FDEP), that includes the name, address, and telephone number of each smelting facility to which Tyco's petitioned waste will be shipped. The notification must be provided at least 60 days prior to the first shipment of petitioned waste to be smelted. At the same time, Tyco must notify EPA and FDEP of the total concentrations (mg/kg) of barium, cadmium, chromium, cyanide, lead, and nickel in the waste to be smelted, and the concentrations of barium, cadmium, chromium, lead, and nickel in the TCLP leachate (mg/l) of the waste to be smelted. If the risk determined in accordance with EPA's Human Health Risk Assessment Protocol (HHRAP) for combustion risk assessment is unacceptable, the waste to be smelted must be managed as F006.
*	*	* * * * *

[FR Doc. 00–20020 Filed 8–7–00; 8:45 am]
BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket No. OST–2000–7703]

RIN 2105–AC86

Americans With Disabilities Act Accessibility Standards

AGENCY: Office of the Secretary.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Transportation is proposing to amend its rules implementing the Americans with Disabilities Act (ADA) by adopting as its standards revised accessibility guidelines proposed by the Architectural and Transportation Barriers Compliance Board (Access Board). The Access Board published a notice of proposed rulemaking (NPRM) to revise and update the accessibility guidelines for the ADA and the Architectural Barriers Act (ABA) in the November 16, 1999 issue of the **Federal Register**. This proposed rule would adopt the Access Board's revised and updated ADA guidelines and make a conforming change to the Department's rule implementing the ADA.

DATES: Comments are requested by September 7, 2000.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Docket No. OST–2000–7703, Room PL–401, 400 7th Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit/*. The Dockets Management Facility, Room PL–401, is open for public inspection and copying of comments from 9 a.m. to 5 p.m. ET Monday through Friday, except Federal Holidays. Any person wishing acknowledgement of comment receipt should include a self-addressed stamped postcard, or print the acknowledgement page after submitting comments electronically. The public may also review docketed comments electronically.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Attorney, Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC, 20590. (202) 366–4723 (voice); (202) 755–7687 (TDD); blane.workie@ost.dot.gov (email). Copies will be made available in alternative formats on request.

SUPPLEMENTARY INFORMATION: All timely comments received by the Access Board on its notice of proposed rulemaking (NPRM) published November 16, 1999 (64 FR 62248), will be deemed by the Department to have been submitted in response to this proposed rule and will be considered fully as the Department works towards a final rule based on this proposal. Therefore, it is not necessary for any comments submitted to the Board on its proposed rule to be resubmitted to the Department.

This proposed rule would adopt the amended Access Board's Appendix A which contains scoping provisions for the ADA and Appendix C which contains common technical provisions for the ADA as a new Appendix A to Part 37, replacing the Department's current Appendix A. The Access Board issued an NPRM on November 16, 1999 and requested public comments on its revised appendices. Then, on March 9, 2000, the Access Board extended the comment period until May 15, 2000 to allow the public additional time to prepare comments on the proposed rule. See 65 FR 12493. As a member of the Access Board, the Department will be actively involved in the review and analysis of comments the Access Board receives and in making any revisions on the appendices in response to those comments. Therefore, the Department has proposed to adopt the Access Board's amended appendices A and C as its accessibility standards. We request comments on whether the Department's accessibility standards should differ from the Access Board's guidelines proposed on November 16, 1999.

Regulatory Analyses and Notices

Executive Order 12866

This NPRM which proposes to adopt the Access Board's accessibility guidelines is significant under Executive Order 12866 and significant under DOT policies and procedures. The Access Board's NPRM which underlies this rule and which was published in the November 16, 1999 **Federal Register** is also significant under Executive Order 12866 . Both the Access Board's NPRM and this NPRM have been reviewed by the Office of Management and Budget. The Access Board prepared a Regulatory Assessment, which examines the cost impact of sections of the proposed rule that establish new requirements. In order to avoid duplicative or unnecessary analyses, DOT is utilizing the regulatory assessment prepared by the Access Board. Comments submitted to the Access Board on its Regulatory Assessment will be considered by the Department as comments on this NPRM.

Executive Order 13132: Federalism

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and