for the industries and classifications in which such employee is engaged.

Effective date: Oct. 1, 2003

Industry

(a) Government Employees—$2.77
(b) Fish Canning and Processing—$3.26
(c) Petroleum Marketing—$3.85
(d) Shipping and Transportation:
(1) Classification A—$4.09
(2) Classification B—$3.92
(3) Classification C—$3.88
(e) Construction—$3.60
(f) Retailing, Wholesaling, and Warehousing—$3.10
(g) Bottling, Brewing, and Dairy Products—$3.19
(h) Printing—$3.50
(i) Publishing—$3.63
(j) Finance and Insurance—$3.99
(k) Ship Maintenance—$3.34
(l) Hotel—$2.86
(m) Tour and Travel Services—$3.31
(n) Private Hospitals and Educational Institutions—$3.33
(o) Garment Manufacturing—$2.68
(p) Miscellaneous Activities—$2.57

■ 3. Section 697.4 is revised to read as follows:

§697.4 Effective dates.

The wage rates specified in § 697.2 are effective on October 1, 2003.

Signed at Washington, DC, this 1st day of August 2003.

Tammy D. McCutchen,

Administrator, Wage and Hour Division.

[FR Doc. 03–20096 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–27–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7541–7]

Hazardous Waste Management System; Exclusion for Identifying and Listing Hazardous Waste and a Determination of Equivalent Treatment; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting two petitions submitted by the University of California—E.O. Lawrence Berkeley National Laboratory (LBNL). First, EPA is granting the petition to exclude (or ''delist'') its F002, F003, and F005 mixed waste. Second, EPA is granting LBNL's petition which is for a determination of equivalent treatment (DET) for the catalytic chemical oxidation (CCO) technology that LBNL used to treat its original mixed waste.

After careful analysis EPA has concluded that the petitioned waste is no longer hazardous waste and that the CCO treatment is equivalent to combustion. This exclusion applies to approximately 200 U.S. gallons of residues from treatment of low-level mixed waste from the National Tritium Labeling Facility (NTLF), a research facility located within LBNL. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) provided the petitioner meets the delisting conditions which require that the residue be disposed at an authorized low-level radioactive waste facility.

EFFECTIVE DATE: August 7, 2003.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 9 RCRA Records Center, 75 Hawthorne Street, San Francisco, CA 94105, and is available for viewing from 9 a.m. to 4 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. Call the EPA Region 9 RCRA Records Center at (415) 947–4596 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346. For technical information on specific aspects of these petitions, contact Cheryl Nelson at the address above or at 415–972–3291, e-mail address: *nelson.cheryl@epa.gov.*

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

I. Overview Information

A. What Rule Is EPA Finalizing?

After evaluating the petitions, EPA proposed, on July 31, 2002, to exclude the Lawrence Berkeley National Laboratory (LBNL) waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, and to grant the Demonstration of Equivalent Treatment (DET) for LBNL's Catalytic Chemical Oxidation (CCO) technology used to perform the treatment of the original mixed waste. Mixed waste is defined as waste that contains hazardous waste subject to the requirements of RCRA and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA). See 42 U.S.C. 6903 (41), added by the Federal Facility Compliance Act of 1992. LBNL's petitioned waste contains tritium, a radioactive hydrogen isotope (^3H) manufactured for use as a tracer in biomedical research.

The EPA is finalizing:

(1) The decision to grant LBNL's petition to have its F002, F003, and F005 mixed waste excluded from the definition of a hazardous waste, subject to certain conditions; and (2) the decision to grant LBNL's petition for a determination that the CCO technology used to perform the treatment of the original mixed waste is equivalent to combustion as defined in EPA's Land Disposal Restriction (LDR) Program for treatment of high-total organic carbon (TOC) subcategory D001 ignitable wastes. Because LBNL's original mixed waste is also a D001 ignitable waste, it must be treated via a combustion technology prior to disposal to meet the LDR treatment standard.

B. Why Is EPA Approving These Petitions?

LBNL's delisting petition requests a delisting for approximately 200 U.S. gallons of residues from treatment of low-level mixed waste. The petitioned wastes met the definition of listed F002, F003, and F005 RCRA hazardous wastes because they were derived from treatment of mixed wastes that are listed for these waste codes. LBNL does not believe the petitioned waste meets the

criteria for which EPA listed it as a hazardous waste. LBNL 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 (HSWA). 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 also 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 evaluated the waste with respect to other factors to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentrations of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability. EPA believes the petitioned waste does not meet these factors or the listing criteria.

LBNL's DET petition requests a determination under 40 CFR 268.42(b) that the CCO technology used to perform the treatment of the original mixed waste is equivalent to combustion as defined in EPA's LDR Program.

We are granting the DET because LBNL has adequately demonstrated that the CCO technology is equivalent to combustion for the treatment of organic wastes. This demonstration is based primarily on the following key factors: (1) The CCO system achieves a destruction and removal efficiency of more than 99.999% at a temperature near or above 500°C; (2) the CCO system does not emit Hydrogen Chloride Vapor (HCl) or particulate matter; and (3) the CCO system was operated in compliance with Federal, State and local hazardous waste and air emission regulations. The treatment residues generated from LBNL's use of the CCO technology have met the applicable LDR technology standard for DOO1 waste. The LDR treatment standards for F002, F003, and F005 wastes are numeric standards. The CCO technology treated the original mixed wastes to below these numeric standards.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petitions only if conditions contained herein are satisfied.

D. How Will LBNL Manage the Waste?

LBNL is currently storing the waste in its permitted mixed waste storage facility. When the delisting exclusion is finalized, LBNL will dispose the waste in an authorized low-level radioactive waste disposal facility.

E. When Is the Final Rule Effective?

This rule is effective August 7, 2003. The Hazardous and Solid Waste Amendments of 1984, amended section 3010 of RCRA, 42 USCA 6930(b)(1), allow rules to become effective in 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 USCA 553(d).

F. How Does This Final Rule Affect States?

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA 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 State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (*i.e.*, to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, LBNL must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that 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, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities to Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the 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 parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. 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 for a Delisting Petition?

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, that such factors do not warrant retaining the waste as a hazardous waste.

D. What Is a Demonstration of Equivalent Treatment?

A demonstration of equivalent treatment petition is a request from a generator to EPA or another agency with jurisdiction to grant DETs, asking that EPA approve an alternative treatment method that can achieve a measure of performance equivalent to that achievable by the EPA-specified method in the LDR program.

E. What Regulations Allow Facilities To Request a Demonstration of Equivalent Treatment?

Under 40 CFR 268.42(b), facilities may submit an application to EPA demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in § 268.42.

F. What Information Must the Generator Supply for a Demonstration of Equivalent Treatment Petition?

Petitioners must provide sufficient information to EPA, to allow EPA to determine that the alternative treatment method provides a measure of performance equivalent to that achieved by the EPA-specified method in the LDR program. Such information generally includes: a demonstration that their treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment, and demonstrations of equivalence for an alternative method of treatment based on a comparison of technologies.

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

A. What Waste Did LBNL Petition EPA To Delist?

On June 30, 1999, LBNL petitioned EPA to exclude from the list of hazardous wastes at 40 CFR 261.31, an initial volume of approximately 105 U.S. gallons and an approximate annual volume of 65 U.S. gallons of CCO treatment residues generated at the NTLF and designated as F002, F003, and F005 listed mixed wastes. F002, F003, and F005 wastes are spent halogenated and non-halogenated solvent mixtures from non-specific sources. LBNL also included in this submittal a demonstration of equivalent treatment petition for this same waste as this waste is also high-TOC subcategory D001 ignitable wastes.

Since submitting the petitions, the NTLF has generated an additional approximately 95 gallons of treatment residues. There will be no additional treatment residues from the CCO process. LBNL has closed the NTLF. Therefore, the total amount of waste LBNL has petitioned to delist and for which it has sought demonstration of equivalent treatment approval is a total fixed amount of 200 U.S. gallons.

B. How Did LBNL Sample and Analyze the Waste for the Petitions?

LBNL submitted seven sets of analytical data from mixed waste samples and six sets of analytic data from surrogate waste samples. Because there are no commercially available analytical laboratories with the ability to analyze high activity mixed wastes from NTLF (due to the level of radioactivity), all analytical testing for these mixed wastes was conducted in-house by LBNL and NTLF staff. As a quality control measure, non-radioactive surrogate waste samples were sent for analysis to an offsite commercial laboratory and results were compared to the in-house data.

For the in-house testing data, LBNL provided the experimental data documentation from the operation of the CCO system, and the test results (GC chromatograms). LBNL's in-house testing method used direct liquid injection gas chromatography to minimize the volume of the sample. The LBNL method used two detectors, a Mass Spectrometer and a Flame Ionization Detector. Together, these can detect organic compounds listed in 40 CFR part 261, appendix VIII including those compounds that were present in the original mixed waste and surrogate samples prior to treatment.

LBNL also tested all samples for pH in-house using pH strips. LBNL did not test for inorganic or metal compounds because, based upon the processes and chemicals that LBNL used to produce these wastes, these compounds were not present in the original mixed waste or surrogate samples.

The surrogate samples that were sent to an off-site commercial analytical laboratory were analyzed by EPA Test Methods 8015 (modified) for Industrial Solvents and Method 8260 for Volatile Organic Compounds. Several samples were also tested by Method 8270 for Base Neutral and Acid Extractable Organic Compounds (semivolatile compounds).

IV. Public Comments Received on the Proposed Rule

EPA began accepting public comments just after the original delisting and DET petitions were received in June 1999. At that time, LBNL had just begun treatment of the mixed waste using the CCO process. LBNL operated the CCO system as part of its treatability study in accordance with DTSC regulations (22 CCR 66261.4).

Given the passage of time, many of the public comments that EPA received raised concerns about the treatability study that are no longer pertinent. All the mixed waste has already been treated, the residue is no longer hazardous, and LBNL has closed the NTLF. The remaining residues are radioactive-only and therefore are subject to regulation by NRC. Thus, the potential availability of new treatment technologies has no bearing on EPA's action here.

Other comments raised issues that are not relevant to the Delisting or DET petitions, such as the Superfund status of LBNL and the potential future issuance of treatment permits authorizing CCO technology. While EPA believes that the CCO process is equivalent to, and in some ways superior to combustion, under our regulations, this decision is site-specific. Others who are pursuing this technology will need to submit their own delisting and DET petitions and permit applications.

A. Who Submitted Comments on the Proposed Rule?

A total of 192 comments (letters and oral testimony) were received during the public comment period from a wide variety of industry and trade associations; a local community group; universities and academic institutions; pharmaceutical companies; Department of Energy (DOE) facilities and LBNL; individuals; and government organizations. Of the comments received, one hundred and seventy-two of the comments were supportive of the proposed decisions, six comments were neutral, and fourteen comments were non-supportive of the proposed decisions. A more detailed response to comment document is included in the rulemaking docket.

B. What Did the Supportive Public Comments Say?

The supportive comments came from all of the categories of groups listed above except for the local community group.

In general, the supportive comments cited the small volumes of waste involved, the small scale of the treatment process, treatment onsite by the waste generators, the expertise of the staff involved in the treatment, and the protective controls already in place under DOE regulation. The supportive comments also pointed out the lack of affordable treatment and disposal options for mixed waste and the effectiveness of the CCO method as superior over required large-scale commercial processes (*e.g.* incineration) because it prevents the release of tritium to the environment. Many organizations also mentioned this proposed rule as an important initiative designed to help resolve a national mixed waste problem faced by the DOE, other research organizations, and the pharmaceutical industry.

Several commenters urged EPA to promulgate a broad conditional exemption from RCRA for the use of CCO to all mixed wastes including those containing accelerator produced radionuclides for all sites that are Nuclear Regulatory Commission (NRC) licensees.

EPA Responds: EPA appreciates the viewpoints expressed by these commenters but stresses that our decisions are site-specific and only apply to LBNL's CCO process and waste. Others who may wish to exclude their waste or demonstrate that their particular CCO system or other technology is equivalent to that required for treatment of ignitable wastes as required by our LDR regulations, would be required to submit their own Delisting and DET Petitions to EPA or their authorized state.

C. What Were the Non-Supportive Comments and EPA's Responses?

The non-supportive comments came mostly from a local community group with a few from industry.

(1) One industry representative expressed support for EPA's proposed delisting decision but did not support the DET proposed decision. This commenter was concerned that EPA's decision will give an implied seal of approval by allowing the decision to include any other application of the CCO technology beyond the instance of its practice at LBNL. This commenter was further concerned that EPA's approval is ''sanctioning a thermal technology, not unlike incineration, when other alternatives are available.'' Several local citizens expressed a similar concern that approval of the petition could allow others to utilize the petition and help others ''* * * get their legal status established'' and that approval of the petition will open the use of this process for further application at LBNL.

EPA Responds: EPA disagrees with these commenters. As previously described our final decision is a site-specific, one-time only exclusion, that applies to the approximately 200 US Gallons of residues from treatment of low-level mixed waste from the NTLF at LBNL. The NTLF that generated the original mixed waste is now closed and is not expected to reopen. The CCO unit has been dismantled and stored and is not expected to be reused at the LBNL facility.

LBNL did purposefully share their data from the treatability study and their analysis of the regulatory requirements for treatment of mixed waste to assist others who are interested in developing national capacity for treatment of mixed wastes. However, others who may wish to demonstrate their own particular CCO technology would be required to submit their own DET Petition to EPA or their authorized state.

(2) Another commenter said that the tritium should not be disposed in a landfill. Other commenters agreed and expressed concern that EPA has inaccurate information regarding the availability of mixed waste treatment and disposal facilities. Additionally, several commenters stated that a superior process for CCO is currently being tested under EPA's Project XL and therefore LBNL's Delisting Petition is not necessary.

EPA Responds: EPA disagrees with these commenters that the Delisting Petition is unnecessary or that tritium should not be disposed to a landfill. Tritium is not a regulated hazardous waste constituent under EPA's RCRA program. Approval of the Delisting Petition in no way alters the DOE radioactive material standards applicable to the tritium in the treatment residuals. These wastes must be managed as a low-level radioactive waste.

At this time, EPA is unaware of any available option for recycling of the tritium. EPA believes that the CCO process LBNL used represents the state of the art in capture and recovery of tritium in mixed waste.

The wide geographic use and almost simultaneous development of this technology nationally and the degree of sharing of information among these facilities leads EPA to conclude that catalytic chemical oxidation of mixed wastes is a viable and effective treatment method.

(3) Several commenters requested that EPA postpone its Delisting and DET decision until all the radioactivity in the treated residual waste has decayed, then manage the waste as a hazardous waste. Commenters suggest that this would be the cheapest and safest method of dealing with the waste and less of a health risk than future burning of more radioactive mixed waste.

EPA Responds: EPA disagrees with these commenters. The original mixed waste has already been treated to destroy the hazardous constituents; the remaining treatment residuals are low-level radioactive waste only (tritiated water). The DET and Delisting are necessary administrative steps to facilitate appropriate final disposition of the waste. EPA calculates that the natural decay of these residuals would take several hundred years. The permitted mixed waste storage facility at LBNL is not designed or operated to store radioactive wastes for this long period of time. EPA believes that the treated residual waste is best managed as a low-level radiological waste at a disposal facility designed and operated to safely and permanently manage these wastes.

Our decision to grant LBNL's petitions for a Delisting and DET is site specific and applies only to the 200 gallons of treated residual waste at LBNL. Any other facility that generates and wishes to treat its own mixed waste is subject to its own local, state, and federal regulations for hazardous and for radioactive wastes.

(4) Several commenters expressed a variety of concerns regarding tritium and its release during the CCO process, given that ''the CCO system is still a very highly experimental process'' and believed that it was premature for EPA to make any decisions regarding the use of the process at this time. Commenters also asked numerous questions regarding specific operational details of the CCO system such as the possible formation of deposits or dioxins, and whether any corrosion or safety studies had been done.

EPA Responds: EPA disagrees that consideration of the fate of tritium during the CCO process is relevant to our proposed decisions to grant the Delisting or the DET Petitions or that the CCO process is experimental or our decision premature. As previously described, tritium is not a RCRA hazardous constituent and therefore is not subject to EPA's delisting or DET petition regulations. EPA regulates the hazardous waste portion, while the NRC or DOE regulate the radioactive portion of mixed waste.

In order for EPA to delist a particular waste, the petitioner must demonstrate: (1) The waste does not meet any of the criteria under which the waste was listed, (2) the waste does not exhibit any of the hazardous waste characteristics defined in Secs. 261.21 through 261.24, and (3) there are no additional constituents in the waste other than those for which it was listed, that would cause the waste to be a hazardous waste (40 CFR 260.22(a)). For this petition, EPA believes that LBNL has met the three criteria listed in 40 CFR 260.22(a) because the treatment residuals do not contain any detectable concentrations of RCRA hazardous constituents.

The object of the CCO process was to ensure destruction of the hazardous constituents of the waste while capturing radioactive constituents. The data from the treatability study indicate a greater than 98% trapping efficiency for the tritiated water in the CCO system. EPA believes that the CCO process represents the state of the art in

capture and recovery of tritium and is far more effective in the capture of tritium than combustion in a permitted mixed waste incinerator. Therefore, we maintain that the CCO process provides a superior environmental outcome than destruction of the wastes by incineration.

LBNL did not ''invent'' catalytic chemical oxidation technology nor did they pioneer its use for destroying mixed waste; rather, they adopted this proven technology to their specific type of mixed waste. LBNL operated their CCO process in accordance with State of California regulations (22 CCR 66261.4) for conducting treatability studies, which are designed to insure that treatability studies are conducted in a safe manner. Pre-approval to operate any treatment unit in compliance with these regulations is not required. The regulations do, however, require that LBNL notify the State prior to conducting the study, obtain an EPA identification number, limit the volume of waste treated and the amount of time of treatment, meet certain management standards for both wastes and treatment residues, keep records, and submit annual reports to the State. Additionally, LBNL was also subject to any other applicable regulatory standards from other agencies such as the California State Air Resources Board and DOE. DTSC confirms that LBNL operated the CCO process in accordance with the applicable regulations for treatability studies.

(5) Several commenters asked for an independent peer review of LBNL's treatability study and analytical data and asked how EPA could allow LBNL to choose and submit only 7 sets of analytical data to represent 71 treatment batches.

EPA Responds: EPA disagrees with the commenters that an independent peer review of the treatability study or the analytical data generated in support of the Delisting and DET Petition is necessary. As described below, EPA has full confidence that the procedures followed for generation and review of the data is sufficient to meet the regulatory requirements for Delisting and DET Petitions and are sufficient to support our final decision.

EPA performed both a completeness and technical review of LBNL's Delisting Petition and concludes that LBNL satisfied all of the RCRA regulatory requirements for analytical testing in support of Delisting Petitions and that (1) No RCRA hazardous constituents are likely to be present above detection limits in the treatment residues or the bubbler water on silica gel generated by catalytic chemical oxidation treatment of the original mixed waste at LBNL, and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively.

EPA's Delisting regulations (40 CFR 260.22) require applicants to submit no less than four representative samples of analytical data in support of a petition. The burden of proof that the samples are representative of the overall petitioned waste is on the applicant. LBNL detailed how it determined that the seven sets of analytical data submitted are representative of the overall petitioned waste. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results under penalty of perjury. LBNL submitted a signed Certification of Accuracy and Responsibility required by 40 CFR 260.22(i)(12). EPA reviewed and approved LBNL's rationale for the selection of representative samples. LBNL also made available to EPA all of the remaining analytical data from the treatability study.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 261

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

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

Dated: July 25, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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

PART 261—IDENTIFICATION AND LISTING HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

■ 2. In Table 1, 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 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Lawrence Berkeley National Laboratory	Berkeley, California	Treated ignitable and spent halogenated and non-halogenated solvent mixed waste (D001, F002, F003, and F005), and bubbler water on silica gel generated during treatment at the National Tritium Labeling Facility (NTLF) of the Lawrence Berkeley National Laboratory (LBNL). This is a one-time exclusion for 200 U.S. gallons of treatment residues that will be disposed of in a Nuclear Regulatory Commission (NRC) licensed or Department of Energy (DOE) approved low-level radioactive waste disposal facility, after August 7, 2003. (1) Waste Management: The treated waste residue and bubbler water on silica gel must be managed in accordance with DOE or NRC requirements prior to and during disposal. (2) Reopener Language: (A) If, anytime after disposal of the delisted waste, LBNL possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any organic constituent from the waste is detected in the leachate or the groundwater, then LBNL must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (2)(A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify LBNL in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing LBNL with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. LBNL shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days LBNL presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (3) Notification Requirements: LBNL must do the following before transporting the delisted waste off-site:(A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if LBNL ships the delisted waste to a different disposal facility. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion.
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[FR Doc. 03–20161 Filed 8–6–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 13 and 80

[WT Docket No. 00–48; FCC 02–102; RM–9499]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission consolidates, revises and streamlines the Commission's rules governing maritime communications. These changes incorporate new international maritime requirements, improve the operational ability of all users of marine radios, and remove unnecessary or duplicative requirements from the rules.

DATES: Effective October 6, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of October 6, 2003.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *jtobias@FCC.gov,* or Ghassan Khalek, *gkhalek@fcc.gov,* Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order,* FCC 02–102, adopted on March 27, 2002, and released on April 9, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. In this Report and Order, we adopt changes to part 80 of the Commission's rules that were either proposed in or suggested in response to the Notice of Proposed Rule Making (''NPRM'') in this proceeding. The NPRM, released on March 24, 2000, 65 FR 21694, April 24, 2000, proposed rule changes that were intended to consolidate, revise and streamline our rules governing maritime communications pursuant to requests from the National GMDSS Implementation Task Force and Globe Wireless, Inc. These changes were proposed to address new international maritime requirements, improve the operational ability of all users of marine radios and remove unnecessary or duplicative requirements from our rules.

2. The significant actions taken in this Report and Order are as follows: (1) The extension of the fishing vessel exemption from Global Maritime Distress and Safety System (GMDSS) requirements until one year after the United States Coast Guard (USCG) establishes Sea Areas A1 and A2; (2) the establishment of a Restricted GMDSS Radio Operator's License; (3) the authorization of the USCG or its designee to issue a Proof of Passing Certificate that would allow operators to obtain an FCC GMDSS Radio Operator's License; (4) the modification of certain sections of our rules to implement international standards; (5) the imposition of a mandatory watch on Channel 70 for voluntary vessels; (6) the allowance of J2B and J2D transmissions on frequencies currently reserved for Morse Code transmissions; (7) the removal of certification for Class S emergency position indicating radiobeacons; and (8) the elimination of subpart Q and the streamlining of subpart R of part 80 of the Commission's rules. In addition, we today decide not to extend the fishing vessel exemption to other vessels.

I. Regulatory Matters

A. Paperwork Reduction Act

3. This Report and Order and Further Notice of Proposed Rule Making does not contain any new or modified information collection.

B. Final Regulatory Flexibility Certification

4. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

5. The purpose of this Report and Order and Further Notice of Proposed Rule Making is to streamline and clarify our rules under Parts 13 and 80 governing maritime communications. We believe that the rules adopted in the Report and Order do not impose any additional compliance burden on small entities regulated by the Commission.

6. We have identified those small entities that could conceivably be affected by the rule changes adopted herein. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this certification, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) communications. This definition is that a ''small entity'' for purposes of public coast station licensees, a subgroup of marine radio users, is any entity employing 1,500 or fewer persons. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 513322. Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of marine radio service providers and users that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had at least 1,000 employees.

7. The adopted rules may also affect small businesses that manufacture marine radio equipment. The Commission has not developed a definition of small entities applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of ''Radio and Television Broadcasting and Communications Equipment.'' According to the SBA regulations, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business. 13 CFR § 121.201, North American Industrial Classification