floating roof/cover tanks. It also then observed that one way to address visible gaps could be through the use of internal sleeves and pole caps, provided there were also external seals which minimized gaps and emission pathways between the liquid surface and the atmosphere:

[T]he intent of the regulations is to ensure that the liquid surface is closed off from the atmosphere by a gasketed float or other device. This requirement may be met for slotted guide poles through the use of internal and external seals which minimize gaps and pathways between the liquid surface and the atmosphere.''

ADI Control No. 9400014 (November 16, 1993). The third determination reaffirmed both prior determinations, explaining that:

[s]lotted guidepoles are one type of many possible openings in a floating roof. EPA need not have specifically cited slotted guidepoles for them to be subject to the no visible gap requirement. The November 16 [1993] letter [to Chevron] is a clarification that slotted guide poles were intended to be regulated by NSPS Ka and Kb and have always been subject to the no visible gap requirement.

Letter from John Rasnic, Director, EPA Stationary Source Compliance Division, to J.B. Krider, Chevron (June 6, 1994).

Based on these determinations, EPA Region IX brought enforcement actions against 5 California refineries that had tanks with slotted guidepoles and later issued a letter to the Western States Petroleum Association in which it provided a detailed analysis of the issue, determining that slotted guidepoles are subject to the no visible gap requirement. Letter from Esteban L. Oyenque, Assistant Regional Counsel, EPA Region IX, to Western States Petroleum Association (June 30, 1995). These enforcement matters were settled by the facilities installing controls (e.g., floats and wipers) at 20 NSPS Subpart Ka/Kb tanks and 27 non-NSPS tanks.

This **Federal Register** document ensures that all members of the regulated community are aware of past EPA determinations that uncontrolled slotted guidepoles do not comply with the ''no visible gap'' requirement in NSPS Subparts Ka and Kb, positions we expressly reaffirm today. EPA believes there are a substantial number of facilities with slotted guidepoles that are not in compliance with this requirement. To address these sources of potentially significant VOC emissions in the most expeditious way possible, EPA is also today proposing to establish a program for reducing these emissions in a highly cost-effective and environmentally beneficial manner. Neither this document nor that program modify or otherwise affect the currently applicable requirements identified and described above.

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations and regulatory policies that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This document does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. It reaffirms and publicizes prior EPA determinations concerning the applicability of certain federal requirements to the regulated community. Thus, the requirements of section 6 of the Executive Order do not apply to this document.

The Office of Air Quality Planning and Standards, Office of Air and Radiation, and the Office of Compliance, Office of Enforcement and Compliance Assurance, jointly issue this document reaffirming regulatory interpretation.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Dated: December 23, 1999.

Thomas C. Curran,

Acting Director, Office of Air Quality Planning and Standards, Office of Air and Radiation.

Dated: December 23, 1999.

Bruce R. Weddle,

Acting Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 00–621 Filed 1–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6523–3]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (we or EPA) is granting a petition submitted by BWX Technologies, Inc. (formerly Babcock & Wilcox), to exclude from hazardous waste control (or delist) a certain solid waste. This action responds to the petition originally submitted by BWX Technologies, Inc. to delist a wastewater treatment sludge in the form of a filter cake on a ''generator specific'' basis from the lists of hazardous waste.

After careful analysis, we have concluded that the petitioned waste is not hazardous waste when disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste, a permitted Subtitle C landfill or a Subtitle C landfill which is operating under interim status. This exclusion applies to filter cake generated at BWX Technologies, Inc.'s Lynchburg, Virginia facility. Accordingly, this final rule excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste, a permitted Subtitle C landfill or a Subtitle C landfill which is operating under interim status, but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

EFFECTIVE DATE: January 14, 2000.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029, and is available for viewing from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. Call David M. Friedman at (215) 814–3395 for appointments. The public may copy material from the regulatory docket at $0.15 per page. The docket for this final rule is also located at the offices of the Campbell County Administrator's Office, P.O. Box 100, Main Street—Haberer Building 2nd floor, Rustburg,

VA, 24588, and is available for viewing from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. Call Kathy Elliot at (804) 332–9619 for appointments.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, contact David M. Friedman at the address above or at (215) 814–3395.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Finalizing?

We are finalizing:

(1) The decision to grant BWX Technologies, Inc.'s (hereinafter, BWX Technologies') petition to have its filter cake excluded, or delisted, from the definition of a hazardous waste; and

(2) The use of the EPA Composite Model for Landfills as the fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. We used this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

After evaluating the petition, EPA proposed on August 4, 1999, to exclude BWX Technologies' waste from the lists of hazardous wastes found at 40 CFR 261.31 (see 64 FR 42317).

B. Why Is EPA Approving This Delisting?

BWX Technologies petitioned to exclude its filter cake because it does not believe that the petitioned waste meets the criteria for which it was listed.

BWX Technologies also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed, as 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(a)(1) and (2).

For reasons stated in both the proposal and this document, we believe that BWX Technologies' filter cake should be excluded from hazardous waste control. Therefore, we are granting a final exclusion to BWX Technologies, located in Lynchburg, Virginia for its filter cake.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of appendix IX to part 261 of Title 40 of the Code of Federal Regulations are satisfied. The maximum annual volume of the filter cake is 500 cubic yards.

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

The filter cake is currently disposed of in an off-site hazardous waste landfill. When delisted, the waste can be disposed of in an off-site Subtitle D industrial landfill, or it may continue to be disposed of in an off-site hazardous waste landfill.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective January 14, 2000. HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received EPA's authorization to make their own delisting decisions. We describe these two situations below.

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

We have also authorized some States (for example, Delaware, Louisiana, Illinois) to administer a delisting program in place of the Federal program; that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If BWX Technologies transports the petitioned waste to or manages the waste in any State with delisting authorization, BWX Technologies must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a formal request from a generator to EPA or another agency with jurisdiction to exclude from the lists of hazardous waste regulated by RCRA, a waste that the generator does not consider hazardous.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32 and 261.33.

Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information 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 that the waste is not hazardous for any other reason.

III. EPA's Evaluation of the Waste Data

A. What Waste Did BWX Technologies Petition EPA To Delist?

BWX Technologies petitioned EPA to exclude from hazardous waste control the filter cake solids generated by its wastewater treatment facility. This filter cake results from the treatment of wastewaters in the pickle acid treatment system and it is a listed hazardous waste, EPA Hazardous Waste F006. The listed constituents of concern for this EPA Hazardous Waste F006 are cadmium, hexavalent chromium, nickel and complexed cyanide (see 40 CFR part 261, appendix VII).

B. How Much Waste Did BWX Technologies Propose To Delist?

Specifically, in a March 11, 1999 update to its original petition, BWX Technologies requested that EPA grant a standard exclusion for filter cake solids generated at a rate of 300 cubic yards per calender year.

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

In support of its petition, BWX Technologies submitted detailed descriptions of its manufacturing and wastewater treatment processes, a schematic diagram of the wastewater treatment process, and analytical testing results for representative samples of the petitioned wastes, including: (1) The hazardous characteristics of ignitability and corrosivity; (2) total oil and grease; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) analysis for volatile and semi-volatile organic compounds and Toxicity Characteristic (TC) metals plus antimony, beryllium, cobalt, copper, nickel, thallium, tin, vanadium and zinc; (4) total constituent analysis for volatile and semi-volatile organic compounds and TC metals plus antimony, beryllium, cobalt, copper, nickel, thallium, tin, vanadium and zinc; (5) total cyanide, total sulfide, total fluoride and total formaldehyde; and (6) TCLP analysis for fluoride. BWX Technologies developed a list of constituents of concern by comparing a list of all raw materials used in the plant that could possibly appear in the petitioned waste with those found in 40 CFR parts 261, appendix VIII and 264, appendix IX. Based on a knowledge of its metal working processes and other processes at the facility and of the treatment operation, BWX Technologies determined that certain classes of chemical constituents would not be anticipated to be present in the filter cake. These chemicals include semi-volatile organic constituents (except those constituents listed in 40 CFR 261.24), pesticides, herbicides, dioxins and furans.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

We received public comments on the August 4, 1999 proposed exclusion from only one interested party. This was the petitioner, BWX Technologies.

B. What Were the Comments?

BWX Technologies requested an increase in the maximum waste volume that is covered by this exclusion for the filter cake solids from 300 cubic yards per calendar year in the proposed exclusion to 500 cubic yards per calendar year. This request is being made in anticipation of an increase in production levels at the Lynchburg, VA facility.

C. What is EPA's Response to the Comment?

This requested change in the volume of filter cake solids will not change the results of EPA's evaluation of the petition for the following reasons.

We evaluated the potential impacts from disposal of the filter cake solids on the ground water, surface water and air exposure pathways. The model that we used for evaluating the potential ground water contamination does so by calculating a dilution/attenuation factor (DAF) which can vary from 100 for smaller annual volumes of waste (*i.e.*, less than 1000 cubic yards per year) to 10 for larger annual volumes of waste (*i.e.*, 400,000 cubic yards per year or more). Because the requested change to 500 cubic yards per year is still below the 1000 cubic yard per year threshold, the DAF used in evaluating the potential impact on ground water will not change; that is, the DAF will remain 100 (which was the DAF used in our evaluation for the proposed rule).

In addition, there is no change in the evaluation that we did of the potential impacts from disposal of the filter cake solids on the surface water and air exposure pathways since our evaluation for the proposed rule was done using a waste volume of 500 cubic yards. The results of all these evaluations are contained in the RCRA public docket for today's rule.

Therefore, we approve the request to increase the volume of filter cake solids covered by this exclusion from 300 cubic yards to 500 cubic yards per calendar year.

V. Administrative Assessments

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is ''significant'' and, therefore, subject to OMB review and the other provisions of the Executive Order. A ''significant regulatory action'' is 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 or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to Executive Order 12866 it has been determined that this rule is not a ''significant regulatory action'' and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act(5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions).

However, no regulatory flexibility analysis is required if the head of an agency or delegated representative certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal Agencies to provide a statement of the factual basis for certifying that a 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 small entities since its effect would be to reduce the overall costs of EPA's hazardous waste rules. Accordingly, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

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

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed delisting decision is deregulatory, and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments and, therefore, no small government agency plan is required under section 203 of the UMRA.

E. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (CRA) generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Rules of particular applicability are exempt, however, from the CRA. See 5 U.S.C. 804(3). Inasmuch as this action affects only one facility, it is a rule of particular applicability which is exempt from the requirements of the CRA and the EPA is not required to submit a rule report regarding today's action under section 801.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

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, or EPA consults with those governments. If EPA complies by consulting with these governments, Executive Order 12875 requires EPA to 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, any 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.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) 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 rulemaking does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule.

I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting with these governments, Executive Order 13084 requires EPA to 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 officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of today's proposed delisting decision. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

Lists 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: December 13, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region 3.

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

PART 261—[AMENDED]

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 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.
*	*	* * * * *
BWX Technologies	Lynchburg, VA	Wastewater treatment sludge from electroplating operations (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 500 cubic yards per year, after January 14, 2000, and disposed of in a Subtitle D landfill. BWX Technologies must meet the following conditions for the exclusion to be valid: (1) Delisting Levels: All leachable concentrations for the following constituents measure using the SW–846 method 1311 (the TCLP) must not exceed the following levels (mg/l). (a) Inorganic constituents—Antimony-0.6; Arsenic-5.0; Barium-100; Beryllium-0.4; Cadmium-0.5; Chromium-5.0; Cobalt-210; Copper-130; Lead-1.5; Mercury-0.2; Nickel-70; Silver-5.0; Thallium-0.2; Tin-2100; Zinc-1000; Fluoride-400. (b) Organic constituents—Acetone-400; Methylene Chloride-0.5. (2) Verification testing schedule: BWX Technologies must analyze a representative sample of the filter cake from the pickle acid treatment system on an annual, calendar year basis using methods with appropriate detection levels and quality control procedures. If the level of any constituent measured in the sample of filter cake exceeds the levels set forth in Paragraph 1, then the waste is hazardous and must be managed in accordance with Subtitle C of RCRA. Data from the annual verification testing must be submitted to EPA within 60 days of the sampling event. (3) Changes in Operating Conditions: If BWX Technologies significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, BWX Technologies may not manage the filter cake generated from the new process under this exclusion until it has met the following conditions: (a) BWX Technologies must demonstrate that the waste meets the delisting levels set forth in Paragraph 1; (b) it must demonstrate that no new hazardous constituents listed in appendix VIII of part 261 have been introduced into the manufacturing or treatment process: and (c) it must obtain prior written approval from EPA to manage the waste under this exclusion. (4) Data Submittals: The data obtained under Paragraphs 2 and 3 must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be furnished upon request by EPA or the Commonwealth of Virginia, and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time period will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent determined necessary by EPA. All data must be accompanied by a signed copy of the certification statement set forth in 40 CFR 260.22(i)(12) to attest to the truth and accuracy of the data submitted.

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

Facility	Address	Waste description.
		(5) Reopener: (a) If BWX Technologies discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then BWX Technologies must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment. (6) Notification Requirements: BWX Technologies must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will be deemed to be a violation of this exclusion and may result in a revocation of the decision.

[FR Doc. 00–959 Filed 1–13–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 268

[FRA Docket No. FRA–98–4545; Notice No. 3]

RIN 2130–AB29

Magnetic Levitation Transportation Technology Deployment Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA published an Interim final rule with request for comments on October 13, 1998 (63 FR 54600), implementing the Magnetic Levitation Technology Deployment Program. An amendment to the interim final rule was published on February 12, 1999 (64 FR 7133) extending the deadline for the submission of application packages from December 31, 1998, to February 15, 1999, and making other adjustments to various dates which flow from that extension of time.

As amended, the interim final rule establishes dates for the Timing of Major Milestones and requires FRA to select one project for final design, engineering, and construction funding at the completion of Phase III. This rulemaking revises the dates established for the Timing of Major Milestones to reflect unanticipated delays in the completion of Phase I of the program, changes the description of Phase II to eliminate the requirement for each grant recipient to initiate activities aimed at preparing a site-specific draft Environmental Impact Statement (EIS), expands Phase III to allow down-selecting to more than one project for additional study, and shifts FRA's selection of one project for final design, engineering, and construction funding to Phase IV. It also specifies that certain expenses incurred prior to the execution of a cooperative agreement to assist in the financing of pre-construction activities, but after enactment of the Transportation Equity Act for the 21st Century (TEA 21) (June 9, 1998), are eligible for reimbursement of the Federal share of the cost.

EFFECTIVE DATE: This final rule is effective January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Arnold Kupferman, FRA, 1120 Vermont Ave., NW, Washington, DC 20590 (telephone 202–493–6365; E-mail address: (Arnold.Kupferman@fra.dot.gov), or Gareth Rosenau, Attorney, Office of Chief Counsel, FRA, 1120 Vermont Ave., NW, Mailstop 10, Washington, DC 20590 (telephone 202–493–6054; E-mail address: Gareth.Rosenau@fra.dot.gov).

SUPPLEMENTARY INFORMATION:

I. Background

A. The Transportation Equity Act for the 21st Century (TEA 21)

TEA 21 (Pub. L. No. 105–178) adds a new section 322 to title 23 of the United States Code. Section 322 provides a total of $55 million for Fiscal Years 1999 through 2001 for transportation systems employing magnetic levitation (''Maglev''). Section 322 requires FRA to establish project selection criteria, to solicit applications for funding, to select one or more projects to receive financial assistance for preconstruction planning activities, and, after completion of such activities, to select one of the projects to receive financial assistance for final design, engineering, and construction activities. Section 322 authorizes—but does not appropriate—additional Federal funds of $950 million for final design and construction of the most promising project. Section 322 provides that the portion of the project not covered by the funds provided under section 322 may be covered by any non-Federal funding sources—including private (debt and/or equity), State, local, regional, and other public or public/private entities—as well as by Federally-provided Surface Transportation Program, and Congestion Mitigation and Air Quality Improvement Program funds, and from other forms of financial assistance under TEA 21, such as loans and loan guarantees.

B. The Interim Final Rule

On October 13, 1998, FRA published in the **Federal Register** an interim final rule that established, on an interim basis, the regulations governing financial assistance under the Maglev Deployment Program, including the project selection criteria. The document solicited public comments and applications for Maglev preconstruction planning grants. As noted above, the rule was amended once to extend the deadline for submission of application packages from interested States or their designated authorities. The interim final rule provides: a definition of terms used in the Interim Final Rule; a description and schedule for the various phases of the Maglev Deployment Program; identification of available funding sources for the Program; requirements for the Federal and State shares and restrictions on the uses of Federal maglev funds; identification of eligible participants; project eligibility