today's delisting decision is fully consistent with the Agency's and the Administration's own regulatory strategy and policies, as explained in the Response to Comments document.

In any event, EPA believes that today's delisting decision does harmonize with the overall intent and purposes of RCRA and the PPA. While these two statutes generally encourage resource recovery where appropriate, they do not require it in every conceivable case, regardless of the nature of the waste. Indeed, the commenter's interpretation would have the effect of contravening Congressional intent to allow for delistings where appropriate.

ÈPA also notes that the effect of this delisting on K061 recycling practices is speculative in any event. As explained in the Response to Comments document, the extent to which steelmakers may stop using recycling technologies upon today's delisting in favor of managing EAFD through CSI's Super DetoxTM process is unclear.

ÉPA's response on these issues is further explained in the Response to Comments document for this rulemaking.

Multiple Site Nature of the Delisting

Comment: One commenter (HRD) stated that the multiple-site nature of the delisting for CSI is precedent-setting but the Agency has offered no legal justification for it. The commenter believed that 40 CFR 260.22 and RCRA section 3001(f) limit the scope of delisting petitions to wastes generated at a single facility. This commenter also claimed that this delisting violates the notice and comment requirements of the Administrative Procedure Act because there will be no opportunity for comment on any of the CSEAFD delistings at future CSI sites.

Another commenter, however, believed that the multiple-site nature of the delisting would avoid duplicative delisting petitions and save the steel industry the unnecessary costs and administrative burdens of multiple petitions.

Response: The statute and regulations do not limit the availability of delisting decisions to wastes generated at a single facility. The commenter has misinterpreted the language of section 3001(f) of RCRA and 40 CFR 260.22, which both provide that parties may seek delistings for wastes generated at a "particular facility." The term "particular facility" refers to a specific qualifying facility and there is no bar to a delisting covering more than one particular, and qualifying, facility. The language limits delistings to an

identified and qualifying facility or facilities; it does not limit them to a "single" facility. The intent of this language is to indicate that, because delistings are granted only to specific qualifying facilities, a facility may not manage its waste as non-hazardous based solely on a delisting granted to another facility for the same listed waste.

Today's multiple-site delisting is fully consistent with the purposes of RCRA's listing and delisting scheme. If CSI has more than one facility treating the same wastes with the same process, and EPA is assured (through verification testing) that these wastes meet the requirements for being nonhazardous, the statute, its legislative history and the regulations support their removal from the list of hazardous wastes. No part of the statute or regulations purports to limit the number of facilities that a delisting may cover. As to the "up-front" nature of this delisting, the Agency in fact has a long-standing policy and practice of granting delistings to facilities not yet constructed, provided that their waste, once produced, meets specified criteria.

In any event, today's delisting decision appears to be consistent even with the commenter's incorrect interpretation of the statute and regulations. Today's action does not automatically grant a delisting to a multiple number of CSI's facilities. Instead, although EPA has reviewed the Super DetoxTM treatment process itself on a generic basis, EPA is requiring verification testing at each specific facility before the Agency grants a delisting. Thus, the Agency is, in fact, considering each CSEAFD facility separately. The focus of the commenter's criticism would seem to be that EPA is not requiring the company to submit a separate delisting petition for each new facility. It would make no sense to require a company to submit multiple individual petitions for similar wastes generated from similar process and feed materials when the only difference between petitions is the name and location of the specific facility; to do so would be an unnecessary administrative burden and waste of resources for both EPA and the petitioner.

The commenter also alleged an inconsistency with EPA's 1993 publication, "Petitions to Delist Hazardous Wastes: A Guidance Manual" (second edition). The Manual states that "separate petitions must be submitted for wastes generated at different facility locations, even if the contributing processes and raw materials are similar. This requirement is necessary because an amendment to

40 CFR part 261 for an exclusion only applies to a waste produced at a particular facility." This provision was originally included in the draft of the Manual at a point before EPA contemplated the type of multiple-site delisting requested by CSI, and it has been inadvertently carried over in later revisions of the guidance document. EPA has accepted CSI's petition for a multiple-site delisting because of the efficiencies created and in light of the protections afforded by future verification testing. To the extent this provision in the guidance document is viewed as inconsistent with today's delisting, the guidance document should be considered superseded by the notice of proposed rulemaking and this final rulemaking for the CSI delisting to permit appropriate multiple-site petitions here and in the future. In any event, EPA's practice has evolved beyond the provision originally included in this non-binding guidance document and today's action is fully consistent with that practice.

EPA also disagrees with the commenter's claim that today's delisting violates the notice and comment requirements of the Administrative Procedure Act ("APA") since there will be no opportunity for comment on additional CSI facilities producing CSEAFD that may be added to the scope of this delisting in the future. There has been sufficient opportunity for meaningful comment on the current and potential future delistings of CSI facilities producing CSEAFD since all issues the Agency will possibly consider in granting the future delistings have already been aired for comment.

EPA's response on these issues is further explained in the Response to Comments document for this rulemaking.

Executive Order 12866

Comment: One commenter (HRD) alleged that EPA did not conduct the complete regulatory review required by Executive Order 12866 for significant regulatory actions having an annual effect on the economy of \$100 million or more. By HRD's account, the economic impact of this delisting would exceed \$100 million/year because electric arc furnace ("EAF") steelmakers will choose to abandon the existing high temperature metals recovery (HTMR) operations and give all K061 waste treatment business to CSI. The commenter also alleged that EPA failed to consider the other principles of regulatory development stipulated in the Executive Order.

Response: The Agency determined that the effect of the proposed rule,