Act of 1995 (''NTTAA''), Public Law 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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule applies to one facility and withdraws a rule that was not implemented.

K. The Congressional Review Act

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

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Waste treatment and disposal.

Dated: July 24, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons set forth in the preamble, part 261 of chapter I of title 40 of the Code of Federal Regulations is 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, 6924(y) and 6938.

■ 2. Section 261.4 paragraph (b)(18) is removed.

[FR Doc. E9–18390 Filed 7–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0418; SW–FRL–8933–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Direct Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by WRB Refining, LLC Company to exclude (or delist) the sludge from its wastewater treatment plant generated by WRB Refining, LLC Company in Borger, Texas from the lists of hazardous wastes. This direct final rule responds to the petition submitted by WRB Refining, LLC Company to delist the thermal desorber residual solids with Hazardous Waste Numbers: F037, F038, K048, K049, K050, and K051.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 5,000 cubic yards per year of the thermal desorber residual solids with Hazardous Waste Numbers: F037, F038, K048, K049, K050, and K051. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.

DATES: This direct final rule will be effective September 29, 2009 without further notice, unless EPA receives relevant adverse comments by August 31, 2009. If EPA receives such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2008–0418 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the online instructions for submitting comments.

2. *E-mail: peace.michelle@epa.gov.*

3. *Mail:* Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2008–0418. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this rule, EPA–R06–RCRA–2008–0418, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at $0.15 per page. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202 at (214) 665–7324. For technical information concerning this rule, contact Young Moo Kim, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–C), Dallas, Texas 75202, at (214) 665–6788, or *kim.youngmoo@epa.gov*.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information
A. What action is EPA taking?
B. Why is EPA approving this action?
C. What are the limits of this exclusion?
D. How will WRB Refining, LLC Company manage the waste if it is delisted?
E. When is the final delisting exclusion effective?
F. How does this direct final rule affect states?
II. Background
A. What is a delisting?
B. What regulations allow facilities to delist a waste?
C. What information must the generator supply?
III. EPA's Evaluation of the Waste Information and Data
A. What waste did WRB Refining, LLC Company petition EPA to delist?
B. How much waste did WRB Refining, LLC Company propose to delist?
C. How did WRB Refining, LLC Company sample and analyze the waste data in this petition?
IV. Public comments received on the proposed exclusion
A. Who submitted comments on the proposed rule?
V. Statutory and Executive Order Reviews

I. Overview Information

A. What action is EPA taking?

After evaluating the petition, EPA proposed, on May 19, 2008, to exclude the thermal desorber residual solids from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 73 FR 28768). After the comment period ended for the proposed rule, EPA received a request from WRB Refining to increase the volume of waste that may be disposed of by the facility. The original petition requested that 1,500 cubic yards of the residual solids be delisted. On September 19, 2008, a request was made to increase this volume to 5,000 cubic yards. The risk assessment has been run to insure that the waste does not exceed any delisting limits. The waste meets the criteria for 5,000 cubic yards. Therefore, EPA conditionally grants WRB Refining, LLC Company's delisting petition to have its thermal desorber residual solids managed and disposed as non-hazardous waste. EPA is opening a 30-day comment period to allow comment on the decision to grant the change in waste volume. If there are no adverse comments regarding this change, EPA's decision will become effective in 60 days.

B. Why is EPA approving this action?

WRB Refining, LLC Company's petition requests a delisting from the F019 waste listing under 40 CFR 260.20 and 260.22. WRB Refining, LLC Company does not believe that the petitioned waste meets the criteria for which EPA listed it. WRB Refining, LLC Company also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from WRB Refining, LLC Company's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Borger, Texas facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

D. How will WRB Refining, LLC Company manage the waste if it is delisted?

The sludge from WRB Refining, LLC Company will be disposed of in a RCRA Subtitle D landfill.

E. When is the final delisting exclusion effective?

This direct final rule will be effective September 29, 2009 without further notice, unless EPA receives relevant adverse comments by August 31, 2009.

F. How does this direct final rule affect states?

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

EPA to make their own delisting decisions.

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

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

II. Background

A. What is a delisting petition?

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

B. What regulations allow facilities to delist a waste?

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

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. Based on the information supplied by the generator, the Administrator must determine whether factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste. The generator must also supply information to demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21–§ 261.24.

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

A. What waste did WRB Refining, LLC Company petition EPA to delist?

On August 26, 2005, WRB Refining LLC(formerly ConocoPhillips Company) petitioned EPA to exclude from the lists of hazardous wastes contained in §§ 261.31 and 261.32, thermal desorber residual solids from processing oil-bearing hazardous secondary materials including F037, F038, K048, K049, K050 and K051 generated by its facility located in Borger, Texas. The waste falls under the classification of listed waste pursuant to §§ 261.31 and 261.32.

B. How much waste did WRB Refining, LLC Company propose to delist?

Specifically, in its petition, WRB Refining LLC requested that EPA grant a conditional exclusion for 1500 cubic yards per year of thermal desorber residual solids for a period of 10 years. On September 19, 2008, the facility requested that the amount of waste delisted be increased from 1,500 to 5,000 cubic yards of waste a year.

C. How did WRB Refining, LLC Company sample and analyze the waste data in this petition?

To support its petition, WRB Refining, LLC Company submitted:

- Historical information on waste generation and management practices;
- Results of the total constituents list for 40 CFR part 264, Appendix IX volatile and semi-volatile organic compounds and metals. These wastes are also analyzed for cyanide, and sulfide.
- Results of the constituent list for appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semevolatiles, and metals.
- Results from total oil and grease analyses and multiple pH measurements, and
- Results from a total of ten composite samples including two duplicates, representing 60 discrete thermal desorber residual solid samples.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

No comments were received on the Proposed Rule during the comment period. However after the comment period closed, the facility requested an increase in the volume of waste excluded by the delisting petition. Based on the application of the DRAS model with the requested increase, the Agency has decided to allow the increase in volume requested by WRB Refining. The sample results provided by the petitioner meet the maximum allowable waste concentrations at 1,500 cubic yards and at the increased volume of 5,000 cubic yards. The delisting limits in the final exclusion will be revised to cover the additional waste volume. The delisting concentration limits are lower than the values originally proposed in the May 19, 2008 proposed rule.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review '' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). 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.*) because it applies to a particular facility only. Because this rule is 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, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule 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, ''Federalism'', (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as

specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), 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. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. 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 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform'', (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

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

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: July 9, 2009.

William N. Rhea,

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

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

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

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
WRB Refining, LLC	Borger, TX	Thermal desorber residual solids (Hazardous Waste Nos. F037, F038, K048, K049, K050, and K051) generated at a maximum annual rate of 5,000 cubic yards per calendar year after September 29, 2009 and disposed in Subtitle D Landfill. For the exclusion to be valid, WRB Refining LLC must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Thermal Desorber Residual Solid Leachable Concentrations (mg/l): Antimony–0.165; Arsenic–0.0129; Barium–54.8; Beryllium–0.119; Cadmium–0.139; Chromium–3.23; Chromium, Hexavalent–3.23; Cobalt–20.7; Copper–38.6; Cyanide–4.69; Lead–1.07; Mercury–0.104; Nickel–20.6; Selenium–1.0; Silver–5.0; Tin–3790.00; Vanadium–1.46; Zinc–320.0; Acenapthene–16.2; Anthracene–39.5; Benzene–0.117; Carbon Disulfide–86.0; 2-chlorophenol–4.41; Dibenzofuran–0.0226; 1,4-Dichlororbenzene–0.518; Ethylbenzene–16.5; Fluoranthene–3.75; Methylene Chloride–0.077; Naphthalene–0.0498; Phenol–264.0; Pyrene–6.78; Toluene–23.0; 1,2,4-Trichlorobenzene–1.51; Trichlorofluoromethane–23.5; Xylenes–14.6. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for thermal desorber residual solids has occurred for two consecutive quarterly sampling events. (B) If constituent levels in any sample taken by WRB Refining LLC exceed any of the delisting levels set in paragraph (1) for the thermal desorber residual solids, WRB Refining LLC must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose the thermal desorber residual solids as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, WRB Refining LLC may perform quarterly analytical testing by sampling and analyzing the desorber residual solids as follows: (A) Quarterly Testing:

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(i) Collect two representative composite samples of the sludge at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking its first quarterly sample, WRB Refining LLC will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, WRB Refining LLC can manage and dispose the non-hazardous thermal desorber residual solids according to all applicable solid waste regulations. (B) Annual Testing: (i) If WRB Refining LLC completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), WRB Refining LLC may begin annual testing as follows: WRB Refining LLC must test two representative composite samples of the thermal desorber residual solids for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B,1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the WRB Refining thermal desorber residual solids are representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report should include the total amount of delisted waste in cubic yards disposed as non-hazardous waste during the calendar year. (4) Changes in Operating Conditions: If WRB Refining LLC significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. WRB Refining LLC must submit a modification to the petition, complete with full sampling and analysis, for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream, if it wishes to dispose of the material as non-hazardous. (5) Data Submittals: WRB Refining LLC must submit the information described below. If WRB Refining LLC fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). WRB Refining LLC must: (A) Submit the data obtained through paragraph (3) to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas, 75202, within the time specified. All supporting data can be submitted on CD–ROM or comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Re-opener

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) If, anytime after disposal of the delisted waste WRB Refining LLC possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, WRB Refining LLC must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If WRB Refining LLC fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements WRB Refining LLC must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

[FR Doc. E9–18389 Filed 7–30–09; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 506

[Docket No. 09–04]

RIN 3072–AC36

Inflation Adjustment of Civil Monetary Penalties

July 28, 2009.

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The rule adjusts for inflation the maximum amount of each statutory civil penalty subject to Federal Maritime Commission (''Commission'') jurisdiction in accordance with the requirements of that Act.

DATES: *Effective Date:* July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Vern W. Hill, Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol Street, NW., Room 900, Washington, DC 20573, (202) 523–5783.

SUPPLEMENTARY INFORMATION: This rule implements the Debt Collection Improvement Act of 1996 (''DCIA''), Public Law 104–134, Title III, section 31001(s)(1), April 26, 1996, 110 Stat. 1321–373. The DCIA amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (''FCPIAA''), Public Law 101–410, Oct. 5, 1990, 104 Stat. 890, 28 U.S.C. 2461 note, to require the head of each executive agency to adopt regulations that adjust the maximum civil monetary penalties (''CMPs'') assessable under its agency's jurisdiction at least every four years to ensure that they continue to maintain their deterrent value.[1] The Commission last adjusted each CMP subject to its jurisdiction effective August 15, 2000. (65 FR 49741).

The inflation adjustment under the FCPIAA is to be determined by increasing the maximum CMP by the cost-of-living, rounded off as set forth in section 5(a) of that Act. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (''CPI'')[2] for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law.

[1] Increased CMPS are applicable only to violations occurring after the increase takes effect.

[2] The CPI defined in the FCPIAA is the U.S. Department of Labor's Consumer Price Index for all-urban consumers (''CPI–U''). 28 U.S.C. 2461 note (3)(3).