ensure compliance with the reporting requirements and efficient administration of the survey by eliminating unnecessary followup contact.

(C) Covered services and intangible assets. The services covered by this survey are: Accounting, auditing, and bookkeeping services; computer and data processing services; construction services; foreign expenses related to construction projects; data base and other information services; engineering, architectural, and surveying services; industrial engineering services; industrial-type maintenance, installation, alteration, and training services; legal services; management, consulting, and public relations services; operational leasing services; research, development, and testing services; and telecommunication services. The intangible assets covered by this survey are rights related to: industrial processes and products; books, compact discs, audio tapes and other copyrighted material and intellectual property; trademarks, brand names, and signatures; performances and events pre-recorded on motion picture film and television tape, including digital recording; broadcast and recording of live performances and events; general use computer software; business format franchising fees; and other intangible assets, including indefeasible rights of users.

(ii) [Reserved]

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[FR Doc. 03–24129 Filed 9–22–03; 8:45 am]

BILLING CODE 3510–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW FRL–7562–9]

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

AGENCY: The Environmental Protection Agency (the EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Teris LLC (Teris) to exclude (or delist) a certain solid waste generated by its El Dorado, Arkansas, facility from the lists of hazardous wastes.

The EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

The EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, the EPA would conclude that Teris' petitioned waste is nonhazardous with respect to the original listing criteria and that the stabilization of the incinerator ash generated from the hazardous waste incineration facility will adequately reduce the likelihood of migration of constituents from this waste. The EPA would also conclude that Teris' process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: The EPA will accept comments until November 7, 2003. The EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach the EPA by October 8, 2003. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Derick Warrick, P.E., Hazardous Waste Division, Arkansas Department of Environmental Quality (ADEQ), P.O. Box 8913, Little Rock, Arkansas, 72219–8913. Identify your comments at the top with this regulatory docket number: [F–03–ARDEL–TERIS]. You may submit your comments electronically to James Harris at *harris.jamesa@epa.gov*.

You should address requests for a hearing to Steve Gilrein, Associate Director of RCRA, Multimedia Planning and Permitting Division (6PD), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: James Harris (214) 665–8302.

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

I. Overview Information

A. What Action Is the EPA Proposing?

The EPA is proposing to grant the delisting petition submitted by Teris to have its stabilized hazardous waste incinerator ash excluded, or delisted, from the definition of a hazardous waste.

B. Why Is the EPA Proposing To Approve This Delisting?

Teris' petition requests a delisting for the stabilized ash generated by its hazardous waste incinerator. Teris does not believe that the petitioned waste meets the criteria for which the EPA listed it. Teris also believes no additional constituents or factors could cause the waste to be hazardous. The 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). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The 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. The 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. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from the Teris facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the El Dorado, Arkansas facility.

C. How Will Teris Manage the Waste if It Is Delisted?

Teris currently sends the petitioned waste to a hazardous waste landfill. If the delisting exclusion is finalized, Teris intends to dispose of the petitioned waste (*i.e.*, stabilized hazardous waste incinerator ash) in a subtitle D solid waste landfill in Arkansas.

D. When Would the Proposed Delisting Exclusion be Finazlized?

RCRA section 3001(f) specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months after the EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because the 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 who have received authorization from the EPA to make their own delisting decisions.

The EPA allows the States to impose their own non-RCRA regulatory requirements that are more stringent than the 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, the EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the State law. Delisting petitions approved by the EPA Administrator under 40 CFR 260.22 are effective in the State of Arkansas only after the final rule has been published in the **Federal Register** and the rule has been adopted and approved by the Arkasas Pollution Control and Ecology Commission in Regulation No. 23.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

The EPA lists these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that the EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to the EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which the EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See Part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if the EPA has ''delisted'' the waste.

C. What Factors Must the EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in §§ 260.22(a) and 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA must consider any factors (including additional constituents) other than those for which the EPA listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or

disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

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

A. What Waste Did Teris Petition the EPA To Delist?

On June 3, 2002, Teris petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a stabilized hazardous waste incinerator ash generated from the facility located in El Dorado, Arkansas. The waste falls under the classification of listed waste because of the ''derived-from'' rule in § 261.3. Specifically, in its petition, Teris requested that the EPA grant an exclusion for 30,000 cubic yards per calendar year of stabilized incinerator ash resulting from its hazardous waste thermal treatment process.

B. Who Is Teris and What Process Do They Use To Generate the Petition Waste?

Teris is a commercial hazardous waste treatment and storage facility located in an industrial/commercial setting in the southern portion of the City of El Dorado, Union County, Arkansas. The facility is located east of El Dorado, Arkansas.

Teris thermally treats hazardous wastes (including listed hazardous wastes) that are generated at commercial and industrial facilities throughout the nation. The facility operates two rotary kilns that are used to destroy and remove the hazardous organic constituents found in the waste. These two kilns generate a solid residue (*i.e.,* incinerator ash) in which most of the organic constituents have been destroyed. The incinerator meets the 99.99% Destruction and Removal Efficiency requirement under 40 CFR part 264. This incinerator ash contains trace amounts of regulated metallic constituents that are not destroyed by the incineration process. Teris operates a stabilization treatment system for the incinerator ash that chemically binds the metals so as to prevent their release into groundwater.

C. How Did Teris Sample and Analyze the Data in This Petition?

To support its petition, Teris submitted:

(1) Historical information on past waste generation and management practices;

(2) results of the total constituent analysis for volatiles, semivolatiles, pesticides, herbicides and metals;

(3) results of the Toxicity Characteristic Leaching Procedure (TCLP) extract for those organics detected in the above total constituent analysis;

(4) results of the Multiple pH Protocol Procedure for metal constituents;

(5) results of both total constituent and leachable analysis for total cyanide and sulfide.

D. What Were the Results of Teris' Analyses?

The EPA believes that the descriptions of the Teris analytical characterization provide a reasonable basis to approve the petition of Teris for an exclusion of the hazardous waste incinerator ash. The EPA believes the data submitted in support of the petition show that the stabilized hazardous waste incinerator ash is nonhazardous. Analytical data for the stabilized hazardous waste incinerator ash samples were used in the Delisting Risk Assessment Software. The data summaries for detected constituents are presented in Table I. The EPA has reviewed the sampling procedures used by Teris and has determined they satisfy the EPA's criteria for collecting representative samples of the variations in constituent concentrations in the hazardous waste incinerator ash. The data submitted in support of the petition show that constituents in Teris' waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Teris has successfully demonstrated that the stabilized hazardous waste incinerator ash is nonhazardous.

TABLE 1.—MAXIMUM TCLP CONSTITUENT CONCENTRATIONS OF THE STABILIZED HAZARDOUS INCINERATOR ASH AND CORRESPONDING DELISTING LIMITS [1]

Constituent	Total constituent analyses (mg/kg)	TCLP leachate conc. (mg/l)	Maximum allowable TCLP conc. (mg/l)
Antimony	1400.00	0.206	0.206
Arsenic	537.00	0.0395	0.096
Barium	4500.00	1.40	21.00
Beryllium	2.17	0.004	0.416
Cadmium	49.60	0.0062	0.11
Chromium	1560.00	0.036	0.60
Cobalt	1140.00	0.078	13.14
Copper	12800.00	0.0243	9113.00
Lead	772.00	0.12	0.69
Mercury	0.15	0.00126	0.025
Nickel	5190.00	0.11	3.98
Selenium	497.00	0.285	0.58
Silver	212.00	0.007	0.14
Tin	1760.00	0.48	396.00
Thallium	1.75	0.0012	0.088
Vanadium	370.00	0.49	1.60
Zinc	10300.00	0.0152	2.61
Acenaphthylene	2.0	ND	0.059
Acetone	0.052	ND	0.059
Acetophenone	1.80	ND	0.01
Aniline	0.72	ND	0.81
Anthracene	1.90	ND	0.059
Benzene	0.21	ND	0.14
Benzo(a)pyrene	0.70	ND	0.0018
Benzo(ghi)perylene	0.67	ND	0.0036

TABLE 1.—MAXIMUM TCLP CONSTITUENT CONCENTRATIONS OF THE STABILIZED HAZARDOUS INCINERATOR ASH AND CORRESPONDING DELISTING LIMITS [1]—Continued

Constituent	Total constituent analyses (mg/kg)	TCLP leachate conc. (mg/l)	Maximum allowable TCLP conc. (mg/l)
Benzo(b)fluoranthrene	0.70	ND	0.0038
Benzo(k)fluoranthrene	0.70	ND	0.0038
Bis(2-	0.86	ND	0.114
Carbon disulfide	0.057	ND	3.80
Chrysene	1.90	ND	0.059
Fluoranthene	2.30	ND	0.068
Fluorene	1.60	ND	0.059
Hexachlorobenzene	0.70	ND	0.00822
Methylnaphthalene 2-	0.830	ND	0.059
Naphthalene	3.40	ND	0.059
Phenanthrene	18.0	ND	0.059
Phenol	1.20	ND	0.039
Pyrene	3.90	ND	0.067
Styrene	0.31	ND	1.90
Toluene	0.078	ND	0.08

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
ND Denotes that the constituent was not detected.

E. How Did the EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for the petitioned waste. The EPA applied the most recent version of the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Teris' petitioned waste on human health and the environment. A copy of this software can be found on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.*

In assessing potential risks to ground water, the EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10–5 and non-cancer hazard index of 1.0), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance point concentrations) using standard risk assessment algorithms and the EPA's health-based numbers. Using the maximum compliance point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance point concentrations in groundwater.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, the EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. The EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Teris has directly disposed of this material in commercial hazardous waste landfills located at other facilities. Since the Teris waste is commingled with other wastes in these landfills, no representative ground water monitoring data specific to the Teris incinerator ash exists. Therefore, the EPA has determined that it would be unnecessary to request ground water monitoring data.

The EPA believes that the descriptions made by Teris of the hazardous waste process and analytical characterization provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are adequately minimized.

DRAS calculates the maximum allowable concentration of chemical constituents in the incinerator ash. Since all maximum TCLP concentrations found in Table I are equal to or less than the maximum allowable TCLP concentration specified by DRAS and the associated risk assessment conducted by the EPA, the petitioned waste meets the applicable delisting criteria. In addition, on the basis of explanations and analytical data provided by Teris, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of toxicity, ignitability, corrosivity, or reactivity. *See* §§ 261.21, 261.22, and 261.23, respectively.

F. What Did the EPA Conclude About Teris' Analysis?

The EPA concluded, after reviewing Teris' processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in Teris' wastes. In addition, on the basis of explanations and analytical data provided by Teris, pursuant to § 260.22, the EPA concludes that the petitoned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. *See* §§ 261.21, 261.22 and 261.23, respectively.

G. What Other Factors Did the EPA Consider in Its Evaluation?

During the evaluation of this petition, the EPA also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. Therefore, no appreciable air releases are likely from the stabilized incinerator ash under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the stabilized incinerator ash in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the hazardous waste incinerator ash. A description of the EPA's assessment of the potential impact of incinerator ash, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for this proposed rule. This docket is designated with the following code F–03–ARDEL–TERIS.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (*See* 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, the EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if the stabilized incinerator ash were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for this proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that this stabilized hazardous waste incinerator ash is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

H. What Is the EPA's Evaluation of This Delisting Petition?

The descriptions by Teris of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for the EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (See Table 1). The EPA believes that the thermal treatment and subsequent stabilization process operated by Teris will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. These treatment processes will also minimize short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, the EPA believes that it should grant to Teris an exclusion for the stabilized hazardous waste incinerator ash. The EPA believes the data submitted in support of the petition show the stabilization treatment process operated by Teris can render the hazardous waste incinerator ash nonhazardous.

The EPA has reviewed the sampling procedures used by Teris and has determined they satisfy the EPA's criteria for collecting representative samples of variable constituent concentrations in the hazardous waste incinerator ash. The data submitted in support of the petition show that constituents in Teris' waste are presently below the compliance point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment. The EPA believes that Teris has successfully demonstrated that the stabilized hazardous waste incinerator ash is nonhazardous.

The EPA therefore proposes to grant an exclusion to Teris, in El Dorado, Arkansas, for the stabilized hazardous waste incinerator ash described in its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the stabilized hazardous waste incinerator ash.

If the EPA finalizes the proposed rule, the EPA will no longer regulate the stabilized incinerator ash under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Teris, must comply with the requirements in 40 CFR part 261, appendix IX, table 1 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents that Teris must test the leachate from the stabilized incinerator ash, below which these wastes would be considered nonhazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) of 40 CFR part 261, appendix IX, table 1, based on

information in the petition. The EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of the treatment process used by Teris, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP extract and total concentrations of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that Teris manages and disposes of any stabilized hazardous waste incinerator ash that might contain hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Holding the stabilized hazardous waste incinerator ash until characterization is complete will protect against improper handling of hazardous material.

(3) Verification Testing Requirements

Teris must complete a rigorous verification testing program on the incinerator ash to assure that the stabilized incinerator ash does not exceed the maximum levels specified in Paragraph (1). If the EPA determines that the data collected under this Paragraph does not support the data provided for in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The first part of the verification testing program consists of testing every batch (*i.e.* roll-off) of incinerator ash for specified indicator parameters as per Paragraph (1). Levels of constituents measured in the samples of the stabilized hazardous waste incinerator ash that do not exceed the levels set forth in Paragraph (1) are nonhazardous. Teris can manage and dispose the stabilized nonhazardous incinerator ash according to all applicable solid waste regulations. If any roll-off fails to meet the specified limits, then Teris must retreat the batch (*i.e.*, reburn and/or restabilize) until the limits are met or they must dispose of the waste as hazardous. Organic indicators are those specified in the Waste Analysis Plan of Teris' RCRA permit to verify that the incinerator operated as demonstrated in the trial burn. Analysis for total and TCLP arsenic must be conducted.

The second part of the verification testing program is the quarterly testing of four representative composite samples of stabilized incinerator ash for all constituents specified in Paragraph (1). If Teris demonstrates for two consecutive quarters complete attainment of all specified limits, then Teris may request approval of the EPA to reduce the frequency of testing to annually. If, after review of performance of the treatment system, the EPA finds that annual testing is adequately protective of human health and the environment, then the EPA may authorize Teris to reduce the quarterly comprehensive sampling frequency to an annual basis. If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Teris must notify the EPA according to the requirements in Paragraph 6. The EPA will then take the appropriate actions necessary to protect human health and the environment per Paragraph 6. Teris must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

The exclusion is effective upon publication in the **Federal Register** but the disposal cannot begin until the verification sampling is completed. Disposal is also not authorized if Teris fails to perform the quarterly and yearly testing as specified herein. Should Teris fail to conduct the quarterly/yearly testing as specified herein, then disposal of stabilized incinerator ash as delisted waste may not occur in the following quarter(s)/year(s) until Teris obtains the written approval of the EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow Teris the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, Teris must prove the effectiveness of the modified process and request approval from the EPA. Teris must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and Paragraph (3), is satisfied.

(5) Data Submittals

To provide appropriate documentation that Teris' facility is properly treating the incinerator ash, Teris must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that Teris furnish these data upon request for inspection by any employee or representative of the EPA or the State of Arkansas.

If the proposed exclusion is made final, then it will apply only to 30,000 cubic yards per calendar year of stabilized hazardous waste incinerator ash generated at the Teris facility after successful verification testing.

The EPA would require Teris to file a new delisting petition under any of the following circumstances:

(a) If Teris significantly alters the manufacturing process treatment system except as described in Paragraph (4).

(b) If Teris uses any new manufacturing or production process(es), or significantly change from the current process(es) described in its petition; or

(c) If Teris makes any changes that could affect the composition or type of waste generated.

Teris must manage waste volumes greater than 30,000 cubic yards per calendar year of stabilized hazardous waste incinerator ash as hazardous waste until the EPA grants a new exclusion. When this exclusion becomes final, the management by Teris of the stabilized incinerator ash covered by this petition would be relieved from Subtitle C jurisdiction. Teris must either (a) treat, store, or dispose of the waste in a State permitted on-site facility, or (b) Teris must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or register to manage municipal or industrial solid waste.

(6) Reopener

The purpose of Paragraph 6 is to require Teris to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. Teris must also use this procedure if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow the EPA to reevaluate the exclusion if a source provides new or additional information to the EPA. The EPA will evaluate the information on which it based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause the EPA to deny the petition if presented.

This provision expressly requires Teris to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If the EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a

delisting decision. The EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

The EPA believes a clear statement of its authority in delistings is merited in light of the EPA experience. See Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, the EPA will continue to address these situations case by case. Where necessary, the EPA will make a good cause finding to justify emergency rulemaking. See APA § 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, the EPA is requiring that Teris provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Teris must provide this notification within 60 days of commencing this activity.

B. What Happens if Teris Violates the Terms and Conditions?

If Teris violates the terms and conditions established in the exclusion, the EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis. The EPA expects Teris to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraph 1 of the exclusion.

V. Public Comments

A. How May I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Derick Warrick, P. E., Hazardous Waste Division, Arkansas Department of Environmental Quality (ADEQ), P.O. Box 8913, Little Rock, Arkansas 72219–8913. You should identify your comments at the top with this regulatory docket number: F–03–ARDEL–TERIS.

You should submit requests for a hearing to Steve Gilrein, Associate Director of RCRA, Multimedia Planning and Permitting Division (6PD–0), U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a 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 the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, the EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

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

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for the EPA rules, under section 205 of the UMRA the EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before the EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of the EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA 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 EPA. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, the EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the 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 the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have ''meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the EPA is directed 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, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the Act requires that the EPA provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires the 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'' are defined in the Executive Order to include regulations 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.''

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on 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, because it affects only one facility.

List of Subjects in 40 CFR Part 261

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

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

Dated: September 4, 2003.

William Luthans,

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

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In Tables 1, 2 and 3 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
*	*	* * * * *
Teris LLC	El Dorado, AR	Stabilized hazardous waste incinerator ash bearing some or all of the following EPA Hazardous Waste Numbers: F001–F012, F019, F024, F025, F032, F034, F035, F037–F039. The stabilized hazardous waste incinerator ash is generated at a maximum rate of 30,000 cubic yards per calendar year after [publication date of the final rule] and disposed in a Subtitle D landfill. For the exclusion to be valid, Teris must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All leachable concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Teris must use the leaching method specified at 40 CFR Part 261.24 to measure constituents in the waste leachate. When analyzing for leachable metals, Teris must perform two runs using the Multiple Extraction Procedure. One run will use a pH 7.0 leaching medium on inorganic and organic constituents and the other run will use a leaching medium adjusted to pH 4.9 on inorganic constituents. (A) Inorganic Constituents (from Table 1) TCLP (mg/l): Antimony—0.206; Arsenic—0.096; Barium—21.00; Beryllium—0.416; Cadmium—0.11; Chromium—0.60; Cobalt—13.14; Copper—9113.00; Lead—0.69; Mercury—0.025; Nickel—3.98; Selenium—0.58; Silver—0.14; Tin—396.00; Thallium—0.088; Vanadium—1.6; Zinc—2.61. (B) Organic Constituents (from Table 1) TCLP (mg/l): Acenapthylene—0.059; Acetone—0.059; Acetophenone—0.01; Aniline—0.81; Anthracene—0.059; Benzene—0.14; Benzo(a)pyrene—0.0018; Benzo(ghi)perylene—0.0036; Benzo(b)fluoranthrene—0.0038; Benzo(k)fluoranthrene—0.0038; Bis(2-ethylhexyl)phthalate—0.114; Carbon Disulfide—3.80; Chrysene—0.059; Fluoranthene—0.068; Fluorene—0.059; Hexachlorobenzene—0.00822; 2-Methylnapthalene—0.059; Napthalene—0.059; Phenanthrene—0.059; Phenol—0.039; Pyrene—0.067; Styrene—1.90; Toluene—0.08. (2) Waste Holding and Handling: (A) Teris must store the hazardous waste incinerator ash as described in its RCRA permit, or continue to dispose of as hazardous all hazardous waste incinerator ash generated, until the verification testing described in Paragraph (3)(A) and (B), as appropriate, is completed and valid analyses demonstrate that Condition (3) is satisfied. (B) Teris can manage and dispose the stabilized nonhazardous incinerator ash according to all applicable solid waste regulations when levels of constituents measured in the samples of the stabilized hazardous waste incinerator ash do not exceed the levels set forth in Paragraph (1) for two consecutive quarters. (C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), Teris must retreat the batches of incinerator waste used to generate the representative sample until they meet the levels specified in Paragraph 1. Teris must repeat the analyses of the treated waste. (D) If the facility has not treated the incinerator ash as necessary to achieve the limits in Paragraph (1), then Teris must either manage and dispose the waste generated under Subtitle C of RCRA, or retreat the incinerator ash until it meets the requirements specified in Paragraph (1). (3) Verification Testing Requirements: Teris must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. (A) Verification Testing: At quarterly intervals for one year after the EPA grants the final exclusion, Teris must do the following: (i) Collect four representative composite samples of roll-off of the hazardous waste incinerator ash. (ii) Analyze each sample for all constituents listed in Paragraph 1. All samples exceeding delisting levels in Paragraph 1 will be retested. Any roll-off exceeding the delisting levels listed in Paragraph (1) must be retreated or disposed as hazardous waste in a Subtitle C landfill. (iii) Within sixty (60) days after this exclusion becomes final, Teris will report initial verification analytical test data, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final of the stabilized incinerator ash treatment process. If levels of constituents measured in the samples of the stabilized hazardous waste incinerator ash that do not exceed the levels set forth in Paragraph (1) are also nonhazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion, Teris can manage and dispose the stabilized nonhazardous incinerator ash according to all applicable solid waste regulations. (B) Quarterly Testing: (i) Teris must test four representative composite samples of the stabilized incinerator ash for all constituents listed in Paragraph (1) at least once per calendar quarter.

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

Facility	Address	Waste description
		(ii) Once the analytical results submitted under Paragraph (3)(B)(i) show two consecutive quarters below the delisting levels in Paragraph (1), Teris may then request that the EPA not require quarterly testing. After the EPA notifies Teris in writing, the company may end quarterly testing. (iii) Following cancellation of the quarterly testing, Teris must continue to test a representative composite sample (according to SW–846 methodologies) for all constituents listed in Paragraph (1) at least annually after the effective date of the final exclusion. (4) Changes in Operating Conditions: If Teris 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 as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify the EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Paragraph (1) and it has received written approval to do so from the EPA. (5) Data Submittals: Teris must submit the information described below. If Teris fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Teris must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, Region 6 Oklahoma/Texas Section, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time specified. (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 the EPA or the State of Arkansas request 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 the 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 the 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) Reopener: (A) If, anytime after disposal of the delisted waste Teris 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 Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate 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, Teris must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Teris 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 Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires the EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information requires action the EPA, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate 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 the EPA action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information.

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

Facility	Address	Waste description
		(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 Regional Administrator or his delegate will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) Notification Requirements: Teris must do following before transporting the delisted waste: (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 Teris 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.
*	*	* * * * *

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Teris LLC	El Dorado, AR	Stabilized hazardous waste incinerator ash (at a maximum generation of 30,000 cubic yards per calendar year) bearing some or all of the following EPA Hazardous Waste Numbers: K001–K011, K013–K052, K060–K062, K064–K066, K069, K071, K073, K083–K088, K090–K091, K093–K118, K123–K126, K131–K132, K136, K141–K145, K147–K151, K156–K161, K169–K172, K174–K180 generated at Teris. Teris must implement the testing program described in Table 1. Waste Excluded From Non-Specific Sources for the petition to be valid.
*	*	* * * * *

TABLE 3.—WASTE EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
*	*	* * * * *
Teris LLC	El Dorado, AR	Stabilized hazardous waste incinerator ash (at a maximum generation of 30,000 cubic yards per calendar year) bearing some or all of the following EPA Hazardous Waste Numbers: P001–P008, P010–P018, P020–P024, P026–P031, P033–P034, P036–P051, P054, P056–P060, P062–P064, P066–P078, P081–P082, P084–P085, P087–P089, P092–P099, P101–P106, P108–P116, P118–P123, P127–P128, P185, P188–P192, P194, P196–P199, P201–P205, U001–U012, U014–U039, U041–U053, U055–U064, U066–U099, U101–U103, U105–U138, U140–U174, U176–U194, U196–U197, U200–U211, U213–U223, U225–U228, U234–U240, U243–U244, U246–U249, U271, U277–U280, U328, U353, U359, U364–U367, U372–U373, U375–U379, U381–U396, U400–U404, U407, and U409–U411 generated at Teris. Teris must implement the testing program described in Table 1. Waste Excluded From Non-Specific Sources Thereof for the petition to be valid.
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[FR Doc. 03–24120 Filed 9–22–03; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–03–16194]

RIN 2127–AI09

Federal Motor Vehicle Safety Standards; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In this document, we propose to update and expand our standard regulating motor vehicle controls and displays. The standard requires, among other things, that certain controls, telltales and indicators be identified by specified symbols or words. The NPRM proposes to require the mandatory use of symbols for the identification of these controls, telltales and indicators, as well as for additional controls, telltales and indicators. The NPRM also proposes to extend the standard's display requirements to vehicles with a Gross Vehicle Weight Rating (GVWR) greater than 10,000 pounds. Finally, the NPRM proposes to update the standard's requirements for multi-function controls and displays, to make the requirements appropriate for advanced systems.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than November 24, 2003.

ADDRESSES: You may submit your comments [identified by the DOT DMS Docket Number cited in the heading of this document] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, except for international harmonization issues, you may call Ms. Gayle Dalrymple, Office of Crash Avoidance Standards at (202) 366–5559. Her FAX number is (202) 493–2739.

For international harmonization issues, you may call Mr. Patrick Boyd, Office of Crash Avoidance Standards at (202) 366–6346. His FAX number is (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to all of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

NHTSA issued the original version of Federal Motor Vehicle Safety Standard (FMVSS) 101, *Controls and Displays,* in 1967 (32 FR 2408) as one of the initial FMVSSs. The standard applies to passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses.[1] The purpose of the original standard was to assure the accessibility and visibility of motor vehicle controls and displays under all lighting conditions. The standard was designed to reduce the risk of safety hazards caused by the diversion of the driver's attention from the driving task to locate and identify the desired control or display, and to ensure that a driver wearing a safety belt could reach controls needed to accomplish the driving task.

At present, FMVSS 101 specifies requirements for the location (S5.1), identification (S5.2), and illumination (5.3) of various controls and displays. It specifies that those controls and displays must be accessible and visible to a driver properly seated wearing his or her safety belt. Table 1, ''Identification and Illumination of Controls,'' and Table 2, ''Identification and Illumination of Displays,'' indicate which controls and displays are subject to the identification requirements, and how they are to be identified, colored, and illuminated.

II. Issues Raised in 1996 NPRM and 1997 Final Rule

In 1996, pursuant to a March 4, 1995 directive entitled ''Regulatory Reinvention Initiative'' from the President to the heads of departments

[1] The requirements of the current Table 2, ''Identification and Illustration of Displays'' do not apply to vehicles of 10,000 pounds or more GVWR. We are proposing to change this. See section V.B.