contribution to nonattainment of the 1997 8-hour ozone NAAQS in any other state. At a later date, EPA will act on the language and demonstration addressing element (2): prohibition of interference with maintenance of the 1997 8-hour ozone NAAQS in any other state.

VII. Statutory and Executive Order Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 18, 2010.

Carol L. Campbell,

Acting Deputy Regional Administrator, Region 8.

[FR Doc. 2010–6893 Filed 3–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2009–0549; SW–FRL–9131–6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Tokusen USA, Inc. (called just Tokusen hereinafter) to exclude (or delist) a wastewater treatment plant (WWTP) sludge filter cake (called just sludge hereinafter) generated by Tokusen in Conway, AR from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

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, EPA would conclude that Tokusen's petitioned waste is non-hazardous with respect to the original listing criteria. EPA would also conclude that Tokusen's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until April 30, 2010. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2009–0549 by one of the following methods:

1. *Federal e-Rulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: kim.youngmoo@epa.gov.*
3. *Mail:* Youngmoo Kim, 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: Youngmoo Kim, 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–2009–0549. 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 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 proposed rule, EPA–R06–RCRA–2009–0549, is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. 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. 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: For technical information regarding the Tokusen, contact Youngmoo Kim at 214–665–6788 or by e-mail at *kim.youngmoo@epa.gov*.

Your requests for a hearing must reach EPA by April 15, 2010. The request must contain the information described in § 260.20(d).

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

I. Overview Information
A. What Action Is EPA Proposing?
B. Why is EPA Proposing To Approve This Delisting?
C. How Will Tokusen Manage the Waste, if It Is Delisted?
D. When Would the Proposed Delisting Exclusion Be Finalized?
E. How Would This Action Affect States?
II. Background
A. What Is the History of the Delisting Program?
B. What Is a Delisting Petition, and What Does It Require of a Petitioner?
C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?
III. EPA's Evaluation of the Waste Information and Data
A. What Waste Did Tokusen Petition EPA To Delist?
B. Who Is Tokusen and What Process Does It Use To Generate the Petitioned Waste?
C. How Did Tokusen Sample and Analyze the Data in This Petition?
D. What Were the Results of Tokusen's Analyses?
E. How Did EPA Evaluate the Risk of Delisting This Waste?
F. What Did EPA Conclude About Tokusen's Analysis?
G. What Other Factors Did EPA Consider in Its Evaluation?
H. What Is EPA's Evaluation of This Delisting Petition?
IV. Next Steps
A. With What Conditions Must the Petitioner Comply?
B. What Happens if Tokusen Violates the Terms and Conditions?
V. Public Comments
A. How May I as an Interested Party Submit Comments?
B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?
VI. Statutory and Executive Order Reviews

I. Overview Information

A. What Action Is EPA Proposing?

EPA is proposing:

(1) To grant Tokusen's delisting petition to have its WWTP sludge excluded, or delisted, from the definition of a hazardous waste; and subject to certain verification and monitoring conditions.

(2) To use the Delisting Risk Assessment Software (DRAS) to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Tokusen's petition requests an exclusion from the F006 waste listing pursuant to 40 CFR 260.20 and 260.22. Tokusen does not believe that the petitioned waste meets the criteria for which EPA listed it. Tokusen also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial 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 proposed decision to delist waste from Tokusen is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Conway, AR facility.

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

If the sludge is delisted, the WWTP sludge from Tokusen will be disposed at a RCRA Subtitle D landfill: The Waste Management Industrial Landfill, North Little Rock, Arkansas.

D. When Would the Proposed Delisting Exclusion Be Finalized?

RCRA section 3001(f) specifically requires EPA to provide a notice and an opportunity for comment before granting or denying a final exclusion. Thus, 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 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.

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 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, 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 Tokusen transports the petitioned waste to or manages the waste in any state with delisting authorization, Tokusen must obtain delisting authorization from that state before it can manage the waste as non-hazardous in the state.

II. Background

A. What Is the History of the Delisting Program?

EPA published an amended list of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

EPA lists these wastes as hazardous because: (1) The wastes 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), (2) the wastes meet the criteria for listing contained in § 261.11(a)(2) or (a)(3), or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under § 261.3(a)(2)(iv) or (c)(2)(i), known as the "mixture" or "derived-from" rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that 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 EPA or an authorized state to exclude wastes from the list of hazardous wastes. The facility petitions 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 EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under 40 CFR 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 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 non-hazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

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

Besides considering the criteria in 40 CFR 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

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. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Tokusen Petition EPA To Delist?

On March 25, 2009, Tokusen petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, WWTP sludge (F006) generated from its facility located in Conway, Arkansas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, Tokusen requested that EPA grant a standard exclusion for 2,000 cubic yards per year of the WWTP sludge.

B. Who Is Tokusen and What Process Does It Use To Generate the Petitioned Waste?

The Tokusen USA, Inc. facility produces high-carbon steel tire cord for use in radial tire manufacturing. The steel cord is produced from steel rod which has been reduced in size and electroplated with copper and zinc to produce a brass coating. The facility generates F006 filter cake by the dewatering of wastewater sludge generated at the on-site wastewater treatment plants. This waste is stored on-site less than 90 days and is then transported from the site to the RCRA Subtitle C facility, Chemical Waste Management in Sulphur, LA 70556.

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

To support its petition, Tokusen submitted:

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

(2) Analytical results from four samples for total concentrations of compounds of concern (COCs);

(3) Analytical results from four samples for Toxicity Characteristic Leaching Procedure (TCLP) extract values of COCs; and

(4) Multiple pH testing for the petitioned waste.

D. What Were the Results of Tokusen's Analyses?

EPA believes that the descriptions of the Tokusen analytical characterization provide a reasonable basis to grant Tokusen's petition for an exclusion of the WWTP sludge. EPA believes the data submitted in support of the petition show the WWTP sludge is non-hazardous. Analytical data for the

WWTP sludge samples included in the March 2009 petition were used in the DRAS to develop delisting levels. The data summaries for COCs are presented in Table I. EPA has reviewed the sampling procedures used by Tokusen and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the WWTP sludge. In addition, the data submitted in support of the petition show that constituents in Tokusen's waste are presently below health-based levels used in the delisting decision-making. EPA believes that Tokusen has successfully demonstrated that the WWTP sludge is non-hazardous.

ANALYTICAL RESULTS/MAXIMUM ALLOWABLE DELISTING CONCENTRATION

[Wastewater treatment sludge; Tokusen, Conway, Arkansas]

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allowable TCLP delisting level (mg/L)
Antimony	11.9	<0.3	0.4
Arsenic	26.3	J 0.12	1.59
Barium	111	0.313	(100)
Chromium	38.9	<0.02	(5.0)
Cobalt	<9.69	0.059	0.8
Copper	4090	30	91.3
Lead	334	0.06	2.32
Nickel	35.6	0.774	50.5
Selenium	253	0.21	(1.0)
Acetone	0.0293	BJ 0.0429	1950
Zinc	26400	553	748

Notes:
1. These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific level found in one sample.
2. The delisting levels are from the DRAS analyses except the chemical concentrations with a parenthesis which are the TCLP regulatory levels.
3. J: Estimated Value.

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

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.,* groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in a landfill is the most reasonable, worst-case disposal scenario for Tokusen's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000), and 73 FR 28768 (May 19, 2008) 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 Tokusen's 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/reg5rcra/wptdiv/hazardous/delisting/dras-software.html.* In assessing potential risks to groundwater, EPA used the maximum waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater 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 EPA health-based numbers. Using the maximum compliance-point concentrations and EPA's 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.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater 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 resulted 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 from the landfill). As in the above groundwater 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, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. 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 DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS and TCLP Analyses results found in Table I, the petitioned waste should be delisted

because no constituents of concern tested are likely to be present or formed as reaction products or by-products in Tokusen waste.

F. What Did EPA Conclude About Tokusen's Analysis?

EPA concluded, after reviewing Tokusen's 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 the waste. In addition, on the basis of explanations and analytical data provided by Tokusen, pursuant to § 260.22, EPA concludes that the petitioned waste do not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity. *See* §§ 261.21, 261.22 and 261.23, respectively.

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

During the evaluation of Tokusen's petition, EPA also considered the potential impact of the petitioned waste via non-groundwater routes (*i.e.,* air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Tokusen's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Tokusen's waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Tokusen's waste 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 Tokusen's WWTP waste.

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

The descriptions of Tokusen's hazardous waste process and analytical characterization provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the leachable concentrations (*see* Table I). EPA believes that Tokusen's waste, F006 from copper and zinc electroplating process to produce a brass coating will not impose any threat to human health and the environment.

Thus, EPA believes Tokusen should be granted an exclusion for the WWTP sludge. EPA believes the data submitted in support of the petition show Tokusen's WWTP sludge is non-hazardous. The data submitted in support of the petition show that constituents in Tokusen's waste are presently below the compliance point concentrations used in the delisting decision and would not pose a substantial hazard to the environment. EPA believes that Tokusen has successfully demonstrated that the WWTP sludge is non-hazardous.

EPA therefore, proposes to grant an exclusion to Tokusen in Conway, Arkansas, for the WWTP sludge described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the WWTP sludge.

If EPA finalizes the proposed rule, EPA will no longer regulate the petitioned waste under Parts 262 through 268 and the permitting standards of Part 270. Tokusen must comply with the LDR requirements before disposing of the delisted waste because the LDR attaches at the point of generation of the waste. The delisting, if granted, will absolve the generator from his obligation of handling the waste as hazardous. The appropriate waste code for this waste is F006. The LDR treatment standard for F006 is found in 40 CFR 268.40.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Tokusen, must comply with the requirements in 40 CFR Part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) *Delisting Levels:*

This paragraph provides the levels of constituents for which Tokusen must test the WWTP sludge, below which these wastes would be considered non-hazardous. EPA selected the set of inorganic and organic constituents specified in paragraph (1) of 40 CFR Part 261, Appendix IX, Table 1, (the exclusion language) based on information in the petition. EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of Tokusen's treatment process, 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 concentrations.

(2) *Waste Holding and Handling:*

The purpose of this paragraph is to ensure that Tokusen manages and disposes of any WWTP sludge that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the WWTP sludge as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. If EPA determines that the data collected under this paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal as non-hazardous cannot begin until the verification sampling is completed.

(3) *Verification Testing Requirements:*

Tokusen must complete a rigorous verification testing program on the WWTP sludge to assure that the sludge does not exceed the maximum levels specified in paragraph (1) of the exclusion language. This verification program operates on two levels. The first part of the verification testing program consists of testing the WWTP sludge for specified indicator parameters as per paragraph (1) of the exclusion language. If EPA determines that the data collected under this paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification testing program demonstrate that the leachate meets the delisting levels, Tokusen may request quarterly testing. EPA will notify Tokusen in writing, if and when it may replace the testing conditions in paragraph (3)(A) with the testing conditions in (3)(B) of the exclusion language.

The second part of the verification testing program is the quarterly testing of representative samples of WWTP sludge for all constituents specified in paragraph (1) of the exclusion language. EPA believes that the concentrations of the constituents of concern in the WWTP sludge may vary over time. Consequently this program will ensure that the sludge is evaluated in terms of variation in constituent concentrations in the waste over time.

The proposed subsequent testing would verify that Tokusen operates a treatment facility where the constituent concentrations of the WWTP sludge do not exhibit unacceptable temporal and spatial levels of toxic constituents. EPA is proposing to require Tokusen to analyze representative samples of the WWTP sludge quarterly during the first year of waste generation. Tokusen would begin quarterly sampling 60 days after the final exclusion as described in paragraph (3)(B) of the exclusion language.

EPA, per paragraph 3(C) of the exclusion language, is proposing to end the subsequent testing conditions after

the first year, if Tokusen has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, Tokusen must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of components in paragraph (1) of the exclusion language. If operating conditions change as described in paragraph (4) of the exclusion language; Tokusen must reinstate all testing in paragraph (1) of the exclusion language. Tokusen must prove through a new demonstration that their waste meets the conditions of the exclusion. If the annual testing of the waste does not meet the delisting requirements in paragraph (1), Tokusen must notify EPA according to the requirements in paragraph (6) of the exclusion language. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

(4) *Changes in Operating Conditions:*

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

(5) *Data Submittals:*

To provide appropriate documentation that Tokusen's WWTP sludge is meeting the delisting levels, Tokusen 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) of the exclusion language including quality control information for five years. Paragraph (5) of the exclusion language requires that Tokusen furnish these data upon request for inspection by any employee or representative of EPA or the State of Arkansas.

If the proposed exclusion is made final, it will apply only to 2,000 cubic yards per year of wastewater treatment sludge generated at Tokusen after successful verification testing.

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

(a) If it significantly alters the manufacturing process treatment system except as described in paragraph (4) of the exclusion language;

(b) If it uses any new manufacturing or production process(es), or significantly changes from the current process(es) described in their petition; or

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

Tokusen must manage waste volumes greater than 2,000 cubic yards per year of WWTP waste as hazardous until EPA grants a new exclusion. When this exclusion becomes final, Tokusen's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction, and the WWTP sludge from Tokusen will be disposed to the RCRA Subtitle D landfill of Waste Management Industrial Subtitle D landfill in North Little Rock, AR.

(6) *Re-opener:*

The purpose of paragraph (6) of the exclusion language is to require Tokusen 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. Tokusen 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 EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which EPA 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 EPA to deny the petition, if presented.

This provision expressly requires Tokusen 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 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.

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

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

(7) *Notification Requirements*

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

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

If Tokusen violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects Tokusen 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?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section (6PD–C), Multimedia Planning and Permitting Division, Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Hazardous Waste Division, Arkansas Department of Environmental Quality, P.O. Box 8913, Little Rock, AR 72118. Identify your comments at the top with this regulatory docket number: "EPA–R06–RCRA–2009–0549." You may submit your comments electronically to Youngmoo Kim at *kim.youngmoo@epa.gov.*

You should submit requests for a hearing to Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section (6PD–C), Multimedia Planning and Permitting Division, 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

Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in 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. 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 proposed 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 proposed 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 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 this action under section 801 because this is a rule of particular applicability. Executive Order (EO) 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 proposed 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. The Agency's risk assessment did not identify risks from management of this material in a Subtitle D landfill. Therefore, EPA does not believe that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

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: March 17, 2010.

Susan Spalding,

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 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
*	*	* * * * *
Tokusen, USA Inc	Conway AR	Wastewater Treatment Sludge (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 2,000 cubic yards per calendar year after [insert publication date of the final rule] will be disposed in Subtitle D landfill. For the exclusion to be valid, Tokusen must implement a verification testing program that meets the following paragraphs: (1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the following levels (mg/l for TCLP). (A) Inorganic Constituents: Antimony—0.4; Arsenic—1.59; Barium—100; Chromium—5.0; Cobalt—0.8; Copper—91.3; Lead—2.32; Nickel—50.5; Selenium—1.0; Zinc—748. (B) Organic Constituents: Acetone—1950. (2) *Waste Management:* (A) Tokusen must manage as hazardous all WWTP sludge generated, until it has completed initial verification testing described in paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied and approval is received by EPA. (B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are non-hazardous. Tokusen can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the Delisting Levels set in paragraph (1) Tokusen can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, Tokusen must, from that point forward, treat all the waste covered by this exclusion as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). Tokusen must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. (D) Upon completion of the verification testing described in paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), Tokusen may proceed to manage its WWTP sludge as non-hazardous waste. If subsequent Verification Testing indicates an exceedance of the Delisting Levels in paragraph (1), Tokusen must manage the WWTP sludge as a hazardous waste after it has received approval from EPA as described in paragraph (2)(C). (3) *Verification Testing Requirements:* Tokusen must perform sample collection and analyses, including quality control procedures, using 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 8260B, 1311/8260B, 8270C, 6010B, 7470, 9034A, ASTMD–4982B, ASTMD–5049, E413.2. Methods must meet Performance Based Measurement System Criteria in Which The Data Quality Objectives are to demonstrate that representative samples of sludge meet the delisting levels in paragraph (1). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in paragraph (3)(A) with the testing required in paragraph (3)(B). Tokusen must continue to test as specified in paragraph (3)(A) until and unless notified by EPA in writing that testing in paragraph (3)(A) may be replaced by paragraph (3)(B). (A) *Initial Verification Testing:* After EPA grants the final exclusion, Tokusen must do the following: (i) Within 60 days of this exclusion becoming final, collect eight samples, before disposal, of the WWTP sludge. (ii) The samples are to be analyzed and compared against the Delisting Levels in paragraph (1). (iii) Within sixty (60) days after this exclusion becomes final, Tokusen will report initial verification analytical test data for the WWTP sludge, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final. Tokusen must request in writing that EPA allow Tokusen to substitute the testing conditions in (3)(B) for (3)(A). (B) *Subsequent Verification Testing:* Following written notification by EPA, Tokusen may substitute the testing conditions in (3)(B) for (3)(A). Tokusen must continue to monitor operating conditions, and analyze two representative samples of the wastewater treatment sludge for each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. If levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) in two consecutive quarters after this exclusion become effective, Tokusen can manage and dispose of the WWTP sludge according to all applicable solid waste regulations. After the first year of analytical sampling verification sampling can be performed on a single annual sample of the wastewater treatment sludge. The results are to be compared to the Delisting Levels in paragraph (1). (C) *Termination of Testing:* (i) After the first year of quarterly testing, if the Delisting Levels in paragraph (1) are met, Tokusen may then request in writing that EPA not require quarterly testing. (ii) Following cancellation of the quarterly testing, Tokusen must continue to test a representative sample for all constituents listed in paragraph (1) annually.

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

Facility	Address	Waste description
		(4) *Changes in Operating Conditions:* If Tokusen significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly 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 EPA in writing; 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. (5) *Data Submittals:* Tokusen must submit the information described below. If Tokusen 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. Tokusen must: (A) Submit the data obtained through paragraph(3) to the Section Chief, Corrective Action and Waste Minimization Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the state of Arkansas 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 can not 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:* (A) If, any time after disposal of the delisted waste, Tokusen possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater 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 the annual testing of the waste does not meet the delisting requirements in paragraph (1), Tokusen 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 Tokusen 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 does require action, EPA's 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 action by EPA 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's 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:* Tokusen 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 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.
*	*	* * * * * *

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2009-0019]
[MO 92210-0-0008 B2]

RIN 1018-AV91

Endangered and Threatened Wildlife and Plants; Listing Casey's June Beetle as Endangered and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our July 9, 2009, proposed listing and critical habitat designation for Casey's June beetle (*Dinacoma caseyi*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis (DEA), and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the proposed listing and critical habitat designation, the DEA, and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: We will consider comments that we receive on or before April 30, 2010.

ADDRESSES: You may submit comments by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. FWS–R8–ES–2009–0019.

• U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R8–ES–2009–0019; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone (760) 431–9440; facsimile (760) 431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from the proposed rule will be based on the best scientific data available and will be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned government agencies, the scientific community, industry, or other interested party during this reopened comment period on the proposed rule to list the Casey's June beetle (*Dinacoma caseyi*) with critical habitat that was published in the **Federal Register** on July 9, 2009 (74 FR 32857), including the DEA of the proposed critical habitat designation and the amended required determinations section provided in this document. We are particularly interested in comments concerning:

(1) Any available information on known or suspected threats and proposed or ongoing projects with the potential to threaten Casey's June beetle, specifically:

(a) The present or threatened destruction, modification or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; and

(e) Other natural or manmade factors affecting its continued existence.

(2) Additional information concerning the range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), including whether there are threats to Casey's June beetle from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation, such that the designation of critical habitat is not prudent.

(4) Specific information on areas that provide habitat for Casey's June beetle that we did not discuss in the proposed rule, whether such areas contain the physical and biological features essential to the conservation of Casey's June beetle, and what special management considerations or protections may be required to maintain or enhance the essential features.

(5) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(6) Any foreseeable economic, national security, or other relevant impact that may result from designating particular areas as critical habitat, and, in particular, any impacts to small entities (such as small businesses or small governments), and the benefits of including or excluding areas from the proposed designation that exhibit these impacts.

(7) Whether any particular area being proposed as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) Whether inclusion of tribal lands of the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California (preferred name "Agua Caliente Band of Cahuilla Indians"), in Riverside County is appropriate and why.

(9) The likelihood of adverse social reactions to the designation of critical habitat, and how the consequences of such reactions, if they occur, would relate to the conservation of the species and regulatory benefits of the proposed critical habitat designation.

(10) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate.

(11) The potential effects of climate change on this species and its habitat and whether the critical habitat may adequately account for these potential effects.

(12) Whether our approach to designating critical habitat could be improved or modified in any way to provide an opportunity for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (74 FR 32857) during the initial comment period from July 9, 2009, to September 8, 2009, please do not resubmit them. These comments are included in the public record for this rulemaking, and