

Commissioner to disclose return information to the Congressional Budget Office (CBO) for the purpose of, but only to the extent necessary for, long term models of the Social Security and Medicare programs. The conference report, H. R. Conf. Rep. No. 106-1033, at 1020-21 (2000), provides that it is the intent of Congress that all requests for information made by CBO under this provision be made to the Commissioner, who will use his authority under section 6103(p)(2) such that the Social Security Administration (SSA) or other agency can furnish the information directly to CBO for the purpose of CBO's long term models of Social Security and Medicare. SSA, not IRS, collects and maintains much of the information sought by CBO and also receives the tax information CBO seeks under other provisions of section 6103. However, section 301.6103(p)(2)(B)-1 in its current form would not allow the Commissioner to authorize SSA to redisclose return information properly in its possession to CBO, an authorized recipient of the information under section 6103(j)(6). Updating the regulation would allow SSA to make return information in its possession available to CBO to the extent authorized by section 6103(j)(6).

There are other situations, similar to that found under section 6103(j)(6), where it is more efficient for returns and return information in the possession of one authorized agency recipient, to be disclosed by such agency to another statutorily authorized recipient. The inability of agencies, including Federal, state and local agencies, to share returns and return information between themselves or even inside a single agency, even where the information is more readily available from an agency other than the IRS, was highlighted by the Department of the Treasury on pages 89-90 of its October 2000 Report to the Congress on the Scope and Use of Taxpayer Confidentiality and Disclosure Provisions. The report notes, for example, that currently a single agency within a state (or even a single caseworker) may be administering both child support under Title IV-D of the Social Security Act and welfare under Title IV-A of the Social Security Act. The agency may receive return information under both section 6103(l)(6) and section 6103(l)(7) to aid the agency in making determinations of eligibility for these programs, but the current regulation does not permit even intra-agency pooling or sharing of these data. The report notes that both intra- and inter-agency data sharing with respect to common data elements could be authorized by amendment to the

Treasury regulations. Updating the regulation would allow the IRS to authorize such redisclosure in appropriate situations.

The text of the proposed temporary regulation also serves as the text of this proposed regulation. The preamble to the temporary regulation contains a full explanation of the reasons underlying the issuance of the proposed regulation.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

### Comments and Request for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of this regulation is Julie C. Schwartz, Office of the Associate Chief Counsel (Procedure and Administration), Disclosure and Privacy Law Division.

### List of Subjects

#### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### 26 CFR Part 602

Reporting and recordkeeping requirements.

### Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are proposed to be amended as follows:

### PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*.

Section 301.6103(p)(2)(B)-1 also issued under 26 U.S.C. 6103(p)(2); \* \* \*.

#### § 301.6103(p)(2)(B)-1 [Removed]

**Par. 2.** Section 301.6103(p)(2)(B)-1 is removed.

**Par. 3.** Section 301.6103(p)(2)(B)-1T is added to read as follows:

[The text of this proposed section is the same as the text of § 301.6103(p)(2)(B)-1T published elsewhere in this issue of the **Federal Register**].

### PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 4.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*.

**Par. 5.** In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

[The text of this proposed section is the same as the text of § 602.101 published elsewhere in this issue of the **Federal Register**].

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 01-30620 Filed 12-12-01; 8:45 am]

BILLING CODE 4830-01-P

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL-7116-7]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the White Bridge Road property of the Asbestos Dump Superfund Site, Operable Unit Two, from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region II Office

announces its intent to delete the White Bridge Road property of the Asbestos Dump Superfund Site, Operable Unit (OU) 2, from the National Priorities List (NPL) and requests public comment on this action. The Asbestos Dump site is listed in the NPL as being located in Millington, NJ; however, the portion of the site which is the subject of this proposal for partial delisting, the White Bridge Road property, is located in Long Hill Township, NJ. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate remedial actions have been completed at the White Bridge Road parcel and no further fund-financed remedial action is appropriate under CERCLA. In addition, EPA and the State of New Jersey have determined that all remedial actions taken to date at the White Bridge Road property are protective of public health and the environment. This partial deletion pertains only to the White Bridge Road property of OU 2 of the Asbestos Dump Site. The other properties which comprise the site are the Millington property (OU1), the New Vernon Road property (OU2) and the Deitzman Tract (OU3). All properties comprising the site, other than the White Bridge Road property, will remain on the NPL. No further response actions, other than Operation and Maintenance and enforcement, are planned for any of the properties comprising the Asbestos Dump site.

This deletion of the White Bridge Road property of the Asbestos Dump site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites listed on the NPL, published in the **Federal Register** on November 1, 1995.

**DATES:** The EPA will accept comments concerning its proposal for partial deletion for thirty (30) days after publication of this document in the **Federal Register** and a newspaper of record.

**ADDRESSES:** Comments may be mailed to: Ms. Kim O'Connell, Section Chief, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, NY 10007-1866.

Comprehensive information on the White Bridge Road property of the

Asbestos Dump Superfund Site as well as information specific to this proposed partial deletion is contained in the Administrative Record and is available for viewing, by appointment only, at: U.S. EPA Records Center, 290 Broadway—18th Floor, New York, New York 10007-1866.

**Hours:** 9 am to 5 pm—Monday through Friday. Contact the Records Center at 212-637-4308.

Information on the site is also available for viewing at the Information Repository which is located at: Long Hill Township Free Public Library, 91 Central Avenue, Stirling, New Jersey 07930, (908) 647-2088.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kim O'Connell, Section Chief, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, NY 10007-1866, phone: (212) 637-4399; fax: (212) 637-4429; e-mail: [occonnell.kim@epa.gov](mailto:occonnell.kim@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. Introduction**

The United States Environmental Protection Agency (EPA) Region II announces its intent to delete the White Bridge Road property of the Asbestos Dump Site, Operable Unit 2, located in Long Hill Township, Morris County, New Jersey from the National Priorities List (NPL) and requests public comment on this action. The Asbestos Dump site is listed in the NPL as being located in Millington, NJ; however, the portion of the site which is the subject of this proposal for partial deletion, the White Bridge Road property, is located in Long Hill Township, NJ. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. This proposal for partial deletion pertains to the White Bridge Road property of the Asbestos Dump Site—Operable Unit (OU) 2. The White Bridge Road property of the site is a privately owned twelve acre property located on Block 225, Lots 79, 35.01 and 35.02 on White Bridge Road in Long Hill Township, New Jersey. The property has a street address of 651 White Bridge Road in Long Hill Township, NJ. An occupied residence and an active horse boarding facility are located on the property. The property is

bounded by White Bridge Road to the north, the Great Swamp National Wildlife Refuge to the east and southeast, Black Brook to the southwest and a vacant wooded lot to the west.

At the White Bridge Road property, EPA implemented extensive soil and air sampling, conducted a Remedial Investigation and Feasibility Study (RI/FS), conducted a risk assessment, selected a remedy and implemented the selected remedial action on asbestos contaminated materials (ACM) on the property.

EPA proposes to delete the White Bridge Road property because all appropriate CERCLA response activities have been completed. The three other properties which constitute the site, Operable Unit 1 (the Millington site), the New Vernon Road property of OU2, and OU3 (the Deitzman tract), will remain on the NPL and are not the subject of this partial deletion.

The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to public health or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning its intent for partial deletion for thirty (30) days after publication of this notice in the **Federal Register** and a newspaper of record.

#### **II. NPL Deletion Criteria**

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making this determination, EPA, in consultation with the state, will consider whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further response action is appropriate; or

(iii) Based on a remedial investigation, it has been determined that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for

subsequent Fund-financed actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede Agency efforts to recover costs associated with response efforts.

### III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

The following procedures were used for the intended deletion of the White Bridge Road property of the Asbestos Dump Superfund Site:

1. EPA conducted an RI/FS to characterize and evaluate site contamination, conducted a risk assessment and on September 27, 1991 selected a remedial action. On October 20, 1993, EPA modified the remedy in an Explanation of Significant Differences.
2. The remedial design of the selected remedy for the site was completed in 1993. Construction of the remedy occurred in 1994 and 1995. In 1995, EPA issued a Cure Notice requiring additional work. In 1996, the additional work was completed and in 1997, the final Remedial Action Report for the site was issued.
3. EPA has recommended the partial deletion and has prepared the relevant documents.
4. The State of New Jersey, through the New Jersey Department of Environmental Protection, has concurred with the partial deletion decision in a letter dated November 20, 2001.
5. Concurrent with this national Notice of Intent for Partial Deletion, a notice has been published in a local newspaper and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty-day public comment period on the deletion package, which starts on the date of publication of this notice in the **Federal Register** and a newspaper of record.
6. The Region has made all relevant documents available in the Regional Office and the local site information repository.

This **Federal Register** notice, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete the White Bridge Road property from the NPL. All critical documents needed to evaluate EPA's decision are included in the Administrative Record developed for the site, which is available for review at the information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary, if appropriate, for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the White Bridge Road property does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

### IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the White Bridge Road property of the Asbestos Dump Site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied:

#### *Background*

The Asbestos Dump Site is being addressed in three phases, referred to as Operable Units. OU1 is called the Millington Site; OU2 consists of two privately owned, residential properties located in Long Hill Township, New Jersey, called the New Vernon Road property and the White Bridge Road property. The White Bridge Road property is the subject of this Notice of Intent for Partial Deletion. The Dietzman Tract comprises OU3.

From 1945 through 1969, the White Bridge Road property was used for farming. In 1970, the parcel was purchased by the current residents. From 1970 to 1975, ACM, which included asbestos tiles and siding from the National Gypsum Company (NGC), was disposed of on the property. After these disposal activities, the current owner converted the property into a horse farm with stables. A horse riding

track was situated 350 feet from the house on a large ACM disposal area. Horse stables in the east-central portion of the property, along with a large grazing field, are located west of the horse riding track and wetland areas. Due to the risk to human health and the environment posed by the release of asbestos fibers, the Asbestos Dump Site was listed on the NPL on September 1, 1983.

#### *Selected Remedy*

On April 1, 1985, EPA issued an Administrative Order to the NGC to conduct the RI/FS at the four areas comprising the Asbestos Dump Site. Upon review of the draft May 1987 RI report prepared by NGC, EPA determined that the RI failed to adequately characterize the extent of contamination at the White Bridge Road property. In August and September of 1990, EPA collected and analyzed soil and dust samples at the White Bridge Road property and found high levels of asbestos. On September 30, 1990, the Agency for Toxic Substances and Disease Registry (ATSDR) issued a health consultation that concluded that the asbestos fill at the White Bridge Road property posed an imminent and substantial health and safety threat to residents and workers. On December 20, 1990, a Public Health Advisory was issued for the White Bridge Road property that required residents be dissociated from exposure to site-related asbestos. Based on this, an immediate removal action at the property was implemented.

Removal activities at the White Bridge Road property were conducted to temporarily reduce the potential for asbestos fibers to become airborne and to restrict access. These activities included: placement of signs and temporary fences to restrict access to areas of visible surface contamination, covering of areas of contamination with geotextile fabric (the riding track and portions of the access road were covered), and air sampling.

In conjunction with the removal activities, an RI/FS was initiated by EPA in the fall of 1990 to fully characterize the extent of asbestos. The RI included a hydrogeological investigation and sampling and subsequent laboratory analysis of subsurface soils, sediments, surface water, ground water, potable water, and air. RI field work was completed in the fall of 1990. The RI and FS Reports issued in June 1991 provided detailed summaries and discussion of sampling activities at the Site, the results of the risk assessment performed, and an analysis of remedial alternatives. The FS concluded that if

no action were taken at the White Bridge Road property, a potential health threat to the public and environment would result through inhalation of asbestos. The FS provided a detailed analysis of a number of remedial alternatives which were developed to address site contamination. On July 8, 1991, a Proposed Plan describing EPA's preferred remedy was released for a 30-day public comment period. EPA held a public meeting on July 17, 1991 to discuss the RI/FS results, remedial alternatives, and the Proposed Plan. The meeting was attended by members of the local community and other interested parties.

On September 27, 1991, after consideration of all comments received during the public comment period, EPA issued a Record of Decision (ROD) for the White Bridge Road property of the Asbestos Dump Site. The remedy selected through the ROD included: in-situ solidification/stabilization of asbestos contaminated soils (all ACM present above 0.5 percent by weight of asbestos was addressed); appropriate environmental monitoring to confirm the effectiveness of the remedy; and implementation of institutional controls to assure the integrity of the treated waste.

#### *Response Actions*

Prior to the implementation of the remedy, TRC Environmental Corporation (TRC), under contract to EPA, performed a treatability study. The objective of the study was to determine design specifications and to identify limitations and potential problems that could arise from solidification of ACM present at the White Bridge Road property. The Treatability Study Report, dated February 3, 1993, indicated that ACM would not be adequately solidified below the water table. Consequently, the ROD remedy was modified with an Explanation of Significant Differences (ESD) on October 20, 1993 to limit the extent of the solidification/stabilization to the ACM above the water table. In addition, the ESD provided for the addition of a synthetic membrane liner to cover the treated ACM and the placement of geotextile fabric in the trench around the solidified ACM.

The Remedial Design (RD) Report, including drawings and specifications, was prepared by TAMS Consultants, Inc. and TRC Environmental Corporation in January 1993. The design addressed details regarding: excavation and consolidation of ACM; solidification/stabilization of the ACM above the ground water table; construction of a final protective geomembrane/soil cover; construction

of a perimeter infiltration trench; and final grading, revegetation, drainage, and erosion controls.

In April 1994, EPA's contractor, CDM Federal Programs Corporation awarded the construction contract to Geo-Con, Inc. for the White Bridge Road construction activities.

EPA issued a Notice to Proceed to the contractor on April 4, 1994. Construction activities were performed in two phases. The first phase included work activities such as excavation, solidification, backfilling and construction of the impermeable cover. Confirmatory sampling of the limits of ACM and excavation of contaminants began in August of 1994. The solidification/stabilization of approximately 9,900 cubic yards (cy) of ACM was initiated on October 10, 1994. The final depth of the solidified ACM is approximately two and a half feet below the ground surface. The geomembrane installation process began on November 15, 1994.

The second phase of construction consisted of site restoration. Site restoration included topsoil placement, cap fence construction, monitoring well installation, stockpile removal, seeding, and landscape replacement. This phase was conducted between March and November 1995.

After implementation of the remedy, EPA discovered that some of the fill material which was used by the contractor on the White Bridge Road property, known as "ODAAT fill," had originated from a facility subject to the New Jersey Cleanup Responsibility Act, now the Industrial Site Recovery Act. On April 7, 1995, EPA issued a Cure Notice to CDM/FPC indicating that this material failed to meet the contract specifications for fill. Approximately 1,010 cubic yards of this unacceptable fill material was placed in three areas of the property.

To address this situation, on August 15, 1995, EPA approved CDM/FPC's Cure Notice Response Workplan for White Bridge Road. The work performed under the Cure Notice Response Workplan was completed on August 28, 1995, and was performed at no cost to EPA or the State.

The subcontractor completed remedial construction activities in October 1995. EPA, CDM/FPC, and Geo-Con, Inc. held a pre-final site inspection on October 26, 1995. As a result, low areas over the impermeable cover were filled and graded with topsoil. All site restoration work was completed in the fall of 1996.

In December 1997, EPA approved the Final Remedial Action Report, prepared

by CDM/FPC, which describes all construction activities.

#### *Community Involvement*

Public participation activities for the White Bridge Road property of the Asbestos Dump Site, OU2 have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. The Remedial Investigation Report, the Feasibility Study Report, the ROD, ESD, Final Remedial Action Report, as well as other documents and information which EPA relied on or considered in recommending that no further action is necessary at the White Bridge Road property, and that the property should be deleted from the NPL, are available for the public to review at the information repositories.

#### *Long Term Maintenance of the Remedy*

On January 5, 2001, the owners of the White Bridge Road property filed a Deed Notice with the Morris County Clerk. EPA and the State agreed on the terms of the Deed Notice, which require the property owners to conduct periodic maintenance activities on the cap. The State of New Jersey will be responsible for performing other Operation and Maintenance activities.

Based on the completion of the remedial action activities at the White Bridge Road property of the Asbestos Dump Site, OU2, there are no further response actions, other than maintenance activities, planned or scheduled for this property. Pursuant to CERCLA, if EPA selects remedies at sites which result in hazardous substances, pollutants or contaminants remaining at the site, five year reviews must be performed. A five year review was performed for the Asbestos Dump Site, including the White Bridge Road property in September 2000 and additional five year reviews will be conducted at the White Bridge Road property since asbestos contaminated materials remain on the property.

EPA does not believe that any future response actions, other than maintenance activities to be conducted by the site owners and by the State, will be needed. If future conditions warrant such action, the White Bridge Road property of the Asbestos Dump Site will remain eligible for future Fund-financed response actions. Furthermore, this partial deletion of the White Bridge Road property does not alter the status of the other properties comprising the Asbestos Dump site, which are not proposed for deletion at this time and will remain on the NPL.

In a letter dated November 20, 2001, the New Jersey Department of

Environmental Protection concurred with EPA that all appropriate CERCLA response actions have been completed at the White Bridge Road property and protection of human health and the environment has been achieved. Therefore, EPA makes this proposal to delete the White Bridge Road property of the Asbestos Dump Site from the NPL.

Dated: November 26, 2001.

**William J. Muszynski,**

*Acting Regional Administrator—Region II.*

[FR Doc. 01–30740 Filed 12–12–01; 8:45 am]

BILLING CODE 6560–50–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1823, 1836 and 1852

#### Safety and Health; Notice

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the NASA FAR Supplement (NFS) by revising the prescription for the use of NASA Safety and Health solicitation provisions and contract clauses; removing references to the Service Contract Act (SCA) and Walsh-Healey Public Contracts Act regulations; adding references to the Occupational Safety and Health Act (OSHA) and Department of Transportation (DOT) regulations; and clarifying when a Safety and Health Plan is to be included in a contract or solicitation. This proposed rule would also require the use of NASA's safety and health provisions instead of the FAR Accident Prevention clause, and allow for oral notification, with written confirmation to the contractor, of Safety and Health noncompliance that may pose a serious or imminent danger to safety and health.

**DATES:** Comments should be submitted to NASA at the address below on or before February 11, 2002.

**ADDRESSES:** Interested parties should submit written comments to Jeff Cullen, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to [jcullen@hq.nasa.gov](mailto:jcullen@hq.nasa.gov).

**FOR FURTHER INFORMATION CONTACT:** Jeff Cullen, (202) 358–1784, [jcullen@hq.nasa.gov](mailto:jcullen@hq.nasa.gov).

**SUPPLEMENTARY INFORMATION:**

#### A. Background

Reductions in the number of incidents involving injury or death to personnel, and in lost or restricted workdays can result from an emphasis on safety and occupational health. These reductions enhance the probability of mission success by decreasing development time, cycle times, operational delays and costs. Since NASA contracts comprise approximately 80 percent of its budget, NASA recognizes that for it to achieve mission success, it is critically important that NASA contractors also emphasize safety and occupational health. Currently, NASA requires the inclusion of a NASA Safety and Health clause and submission of a contractor Safety and Health Plan for contracts that are greater than \$1 million, involve construction, or have hazardous deliverable end items or operations. Exclusion of the clause has been allowed when the Contracting Officer determined that Walsh-Healey or Service Contract Act (if applicable) regulations constituted adequate safety and health protection. This proposed rule removes the dollar threshold from the Safety and Health clause prescription since safety and health requirements should be determined by the risks rather than cost of the contract requirements. Furthermore, to assure that contractors are held to the same standards for mishap prevention as the Government, the proposed guidance requires use of a Safety and Health clause and submission of a Safety and Health Plan when performance is on a Government facility or when assessed risk warrants inclusion. This proposed rule further revises the conditions that must be met for excluding the clause from contracts, reflecting the greater Government and industry use of Occupational Safety and Health Administration (OSHA) and Department of Transportation (DOT), rather than Walsh-Healey or Service Contract Act safety and health regulations, and includes new NFS guidance on use of the NASA Safety and Health clause instead of the FAR Accident Prevention clause. Finally, this proposed rule makes the requirements for the use of the NASA Safety and Health clause for subcontracts consistent with prime contract requirements.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the

Office of Management and Budget under 41 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Parts 1823, 1836 and 1852

Government procurement.

**Tom Luedtke,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1823, 1836 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1823, 1836 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1)

#### PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Amend section 1823.7001 in the second sentence of paragraph (c) by removing “clause” and adding “provision” in its place; and revising paragraphs (a) and (b) to read as follows:

##### 1823.7001 NASA solicitation provisions and contract clauses.

(a) The clause at 1852.223–70, Safety and Health, shall be included in all solicitations and contracts when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded, regardless of place of performance, when the contracting officer, with the approval of the installation official(s) responsible for matters of safety and occupational health, determines that the application of OSHA and DOT regulations constitutes adequate safety and occupational health protection.

\* \* \* \* \*