b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 24, 2000.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 00–30870 Filed 12–4–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[OSD Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary is proposing to add an exemption rule for a Privacy Act system of records. The exemption is intended to increase the value of the system of records and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received on or before February 5, 2001 to be considered by this agency.

ADDRESSES: Send comments to the OSD Privacy Act Officer, Washington Headquarter Services, Correspondence and Directives Division, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4725.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 311

Privacy.

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 311.8 is amended by adding paragraph (c)(7) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(7) System identifier and name: DGC 20, DoD Presidential Appointee Vetting File.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to 5 U.S.C. 552a(k)(5) are subsections (d)(1) through (d)(5).

(ii) **Authority:** 5 U.S.C. 552a(k)(5).

(iii) Reason: From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

* * * * *

Dated: November 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense .

[FR Doc. 00–30472 Filed 12–4–00; 8:45 am]

BILLING CODE 5001–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6904–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is proposing to grant a petition submitted by Heritage Environmental Services, LLC (Heritage) to exclude (or ''delist'') treated Electric Arc Furnace Dust (EAFD) produced at Nucor Steel, Division of Nucor Corporation (Nucor) located in Crawfordsville, Indiana from the lists of hazardous wastes contained in Subpart D of Part 261.

The Agency has tentatively decided to grant the exclusion based on an evaluation of waste-specific information provided by Heritage. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

We conclude that Heritage's petitioned waste is nonhazardous with respect to the original listing criteria.

DATES: *Comments.* We will accept public comments on this proposed decision until January 19, 2000. 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.

Request for Public Hearing. Your request for a hearing must reach EPA by December 20, 2000. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: *Comments.* Please send two copies of your comments to Todd Ramaly, Waste Management Branch (DW–8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL, 60604.

Request for Public Hearing. Any person may request a hearing on this proposed decision by filing a request with Robert Springer, Director, Waste, Pesticides and Toxics Division (D–8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL, 60604.

Docket. The RCRA regulatory docket for this proposed rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at 312–353–9317.

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

I. Overview Information
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B. Why is EPA proposing to approve this delisting?
C. How will Heritage manage the waste if it is delisted?
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C. How does Heritage generate the petitioned waste?
D. How did Heritage sample and analyze the data in this petition?
E. What were the results of Heritage's analysis?
F. How did EPA evaluate the risk of delisting this waste?
G. What other factors did EPA consider in its evaluation?
H. What did EPA conclude about Heritage's analysis?
I. What is EPA's final evaluation of this delisting petition?
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D. What data must Heritage submit?
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V. Regulatory Impact
VI. Regulatory Flexibility Act
VII. Paperwork Reduction Act
VIII. Unfunded Mandates Reform Act
IX. Executive Order 12875
X. Executive Order 13045
XI. Executive Order 13084
XII. National Technology Transfer And Advancement Act

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing to grant Heritage's petition to have treated EAFD from the production of steel at Nucor excluded, or delisted, from the definition of a hazardous waste. Heritage petitioned EPA to exclude, or delist, the EAFD because Heritage believes that the petitioned waste does not meet the RCRA criteria for which EPA originally listed the waste. Heritage also believes there are no additional constituents or factors which could cause the waste to be hazardous.

Based on our review described below, we agree with the petitioner that the waste is nonhazardous with respect to the original listing criteria. Furthermore, EPA finds no additional constituents or factors which would cause the waste to be hazardous. If our review had found that the waste remained hazardous based on the factors for which we originally listed the waste, we would have proposed to deny the petition.

B. Why Is EPA Proposing To Approve This Delisting?

We believe that the petitioned waste does not meet the criteria for which the waste was originally listed and does not contain other constituents at levels which would cause it to be hazardous, and therefore, should be delisted. Our tentative decision to delist waste treated by Heritage at Nucor's Crawfordsville facility is based on the description of the process which generates the waste and the analytical data submitted to support today's proposed rule.

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR Part 260.22 (d)(2) through (4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (3).

We also evaluated the waste for other factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

C. How Will Heritage Manage the Waste If It Is Delisted?

If the petitioned waste is delisted, Heritage must dispose of it in a Subtitle D landfill licensed or permitted by a State to manage industrial waste. Heritage may also dispose of the delisted waste in a permitted Subtitle C landfill.

D. When Would EPA Finalize the Proposed Delisting Exclusion?

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments (including any at public hearings,) on today's proposal.

Since this rule would reduce the existing requirements for a person generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with Section 3010 of RCRA as amended by HSWA. Therefore, the exclusion would become effective upon finalization.

E. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization 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. 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, we urge the petitioners to contact the state regulatory authority to establish the status of their waste under the state law.

EPA has also authorized some states to administer a 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. If Heritage transports the petitioned waste to or manages the waste in any state with delisting authorization, Heritage must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is the History of the Delisting Program?

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

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

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

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows a person to demonstrate 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. In a delisting petition, the petitioner must show that the waste generated at a particular facility do not meet any of the criteria for listed wastes. The criteria for which EPA lists a waste are in 40 CFR 261.11 and in the background documents for the listed wastes.

In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 U.S.C. 6921(f) and the background documents for a listed waste.)

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous.

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

Besides considering the criteria in 40 CFR 260.22(a), 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 we listed the waste if these additional factors could cause the waste to be hazardous. (See The Hazardous and Solid Waste Amendments (HSWA) of 1984.)

EPA must also consider as a hazardous waste, mixtures containing listed hazardous wastes and wastes derived from treatment of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion but remain hazardous wastes until excluded.

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

A. What Wastes Did Heritage Petition EPA To Delist?

August 3, 1999, Heritage petitioned EPA to exclude an annual volume of 30,000 cubic yards of K061 EAFD generated at Nucor Steel Corporation located in Crawfordsville, Indiana from the list of hazardous wastes contained in 40 CFR 261.32. K061 is defined as ''emission control dust/sludge from the primary production of steel in electric arc furnaces.'' The EPA reviews a petitioner's estimated volume and, on occasion, has requested a petitioner to re-evaluate the estimated waste generation rate. EPA accepts Heritage's estimate of annual volume of waste.

B. What Information and Analyses Did Heritage Submit To Support This Petition?

To support its petition, Heritage submitted (1) descriptions and schematic diagrams of the EAFD treatment system; (2) analyses for antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, vanadium, and zinc (a) for total concentration, (b) by the Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311, (c) by the Multiple Extraction Procedure (MEP), SW–846 Method 1312, and (d) using the TCLP and MEP procedures while substituting neutral and basic extraction fluids for the acidic extraction fluids specified in the method; (3) total constituent analyses for sulfide, and cyanide; (4) total constituent analyses for semivolatile organic compounds (SVOCs); (5) total constituent analyses for volatile organic compounds (VOCs); (6) total polychlorinated biphenyls (PCBs); and (7) total oil & grease.

C. How Is the Petitioned Waste Generated?

The treated EAFD proposed for exclusion has been generated at Nucor since the facility began steel manufacturing in 1989. Carbon and stainless steel are manufactured from scrap metal using two electric arc furnaces. The exhaust from the furnaces is conveyed via a capture system designed to capture emissions from the furnaces and the associated building. Larger particles are removed in a dropout chamber while the capture system conveys the smaller particles for capture in air pollution control devices (*i.e.,* baghouses). EAFD captured in the baghouses is conveyed by a screw conveyor system to two aboveground, cone bottom silos that accumulate the dust prior to introduction into the treatment process. The EAFD is conveyed from the accumulation silos either by screw conveyor or by gravity, to the treatment equipment.

The computer controlled treatment system weighs a predetermined amount of EAFD into a mixing device. Treatment reagents are added proportionally in sequential manner to the mixing device. The mixing device thoroughly blends the EAFD and the treatment reagents in precise amounts based on certain dust characteristics. Once the mixing operation is completed, the waste is conveyed to a dump truck for transportation to a landfill.

D. How Did Heritage Sample and Analyze the Data in This Petition?

In consultation with EPA Region 5, Heritage developed a list of analytical constituents based on a review of the EAFD and the treatment process. Three

randomly collected composite samples of treated carbon steel EAFD were collected for testing each week over a four week period for a total of twelve samples during an initial round of sampling. Each composite sample was comprised of four grab samples that were collected immediately after loading from a roll-off box containing treated EAFD. Heritage conducted a second round of random sampling over a four week period similar to the first round with the exception of stainless steel. A total of eight samples were collected during the second round of sampling and analysis. Treated stainless steel samples were collected on two days when the facility was generating EAFD from stainless steel production. Treated stainless steel samples were randomly collected during the two days of stainless steel production.

To quantify the total constituent and extraction fluid concentrations, Heritage used the following SW–846 Methods: 7041/6010 for antimony; 6010B for arsenic, barium, beryllium, cadmium, chromium, lead, nickel, selenium, silver, thallium, vanadium, and zinc; 7470 for mercury; 9012 for total cyanide; 9034 for total sulfide; 8082 for PCBs; 8260 for volatile organic compounds, 8270 for semivolatile organic compounds, and 413.1 for Oil & Grease.

During the initial round of sampling and analysis, Heritage demonstrated that the treated EAFD was stable when using the TCLP. During the second round of sampling and analysis, Heritage demonstrated that the treated EAFD is stable over a range of pH values (acidic, neutral, and basic). In addition to the TCLP, Heritage analyzed the second round of samples using a modified TCLP procedure, in which the prescribed TCLP extraction fluid was substituted with (1) a neutral extraction fluid of reagent water (ASTM Type II water) adjusted to pH 6.5 ± 0.05 using 1 N NaOH and (2) a basic extraction fluid consisting of reagent water to which high calcium hydrated lime was added to reach a pH of 12.0 ± 0.05. Heritage removed dissolved oxygen from both the neutral and basic extraction fluids to less than 0.5 ppm by the addition of a stoichiometric amount of sodium hydrosulfite. Heritage believes it is appropriate to test stabilized waste using an oxygen depleted extraction fluid because it believes that the environment of a solid waste landfill is anaerobic or oxygen depleted. Furthermore, to more closely simulate the anaerobic environment of the landfill, Heritage performed the extraction procedure with zero headspace in the extraction vessel and performed the filtration step under a nitrogen blanket. Heritage submitted documentation to U.S. EPA supporting Heritage's belief that solid waste landfills are oxygen depleted. Heritage also submitted a summary of dissolved oxygen data for leachate from their two landfills in support of their assertion that the landfill environment is anaerobic. Heritage believes that the oxygen depleted environment of the buried waste in combination with appropriate stabilization reagents inhibits the mobilization of metallic species.

Heritage analyzed four samples following the Multiple Extraction Procedure (MEP), SW 846 method 1320, but substituting the TCLP procedure, Method 1311 for the EP Tox test, Method 1310. Heritage also analyzed four additional samples following the MEP method, but using a neutral extraction fluid for all ten extractions.

E. What Were the Results of Heritage's Analysis?

Table 1 presents the maximum total and leachate concentrations for 14 metals, total cyanide, and total sulfide. The concentrations of metals in the extract are the maximum obtained in any of the three extraction fluids (acidic, neutral, and basic).

Heritage analyzed one sample of petitioned waste for 57 volatile organic compounds, 72 semi-volatile organic compounds, and eight Arochlor mixtures of PCBs. There were no detections of these organic constituents in the treated EAFD samples. EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results. Heritage submitted a signed Certification of Accuracy and Responsibility statement presented in 40 CFR 260.22(i)(12).

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

For this delisting determination, we used information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. We used a fate and transport model to predict the release of hazardous constituents from the petitioned waste once it is disposed to evaluate the potential impact of the petitioned waste on human health and the environment. To accomplish this, we used a Windows based software tool, the Delisting Risk Assessment Software Program (DRAS), to estimate the potential releases of waste constituents and to predict the risk associated with those releases using several EPA models including the EPACMTP (EPA's Composite Model for leachate migration with Transformation Products) fate and transport model for groundwater releases. For a detailed description of the DRAS program and the EPACMTP model, see 65 FR 58015, September 27, 2000. A technical support document for the DRAS program is available in the public docket.

Revisions have been made to the DRAS program in order to improve the modeling which are being implemented for the first time in a draft exclusion. Specifically, the groundwater inhalation pathway was revised to reflect recent advances in modeling household inhalation from home water use (e.g., showering). The basis for estimating the concentration of constituents in the indoor air is based on the mass transfer of constituent from water to shower air. The initial version of DRAS used a fate and transport model described in T.E. McKone and K.T. Bogen's 1992 Uncertainties in Health-Risk Assessment: An Integrated Case Study Based on Tetrachloroethylene in California Groundwater, *Regulatory Toxicology and Pharmacology, 15: 86–103,* which predicted the highest waste concentration emitted from the water into the air during a given water use period (e.g., 10-minute shower). This method was revised to more accurately predict the average concentration occurring during the exposure event.

The revised model used in this analysis is based on the equations presented in T.E. McKone's 1987 Human Exposure to Volatile Organic Compounds in Household Tap Water: The Indoor Inhalation Pathway, *Environmental Science and Technology, 21(12): 1194–1201.* The shower model estimates the change in the shower (or bathroom or household) air concentration based on the mass of constituent lost by the water (fraction emitted or emission rate) and the air exchange rate between the various model compartments (shower, the rest of the bathroom, and the rest of the house). The resulting differential equations were solved using finite difference numerical integration. The average air concentration in the shower and bathroom are obtained by averaging the concentrations obtained for each time step over the duration of the exposure event (shower and bathroom use). These concentrations and the durations of daily exposure are used to estimate risk from inhalation exposures to residential use of groundwater. Further, improvements were made to more accurately reflect the transfer efficiency of the waste constituent from

the groundwater to the air compartment. The fraction emitted from the bathroom or household water use is a function of the input transfer efficiency (or maximum fraction emitted) and the driving force for mass transfer (the differential between air saturation concentration at air/water interface and bulk air concentration). For example, in the shower compartment, the constituent emission rate is estimated from the change in the shower water concentration as the water falls through the air. The shower emissions can be modeled based on falling droplets as a means of estimating the surface-area-to-volume ratio for mass transfer and the residence time of the water in the shower compartment, assuming the constituent concentration in the gas phase is constant over the time frame of the droplet fall. By assuming the drops fall at terminal velocity, the surface-area-to-volume ratio and the residence time can be determined based solely on droplet size. A droplet size of approximately 1 mm (0.1 cm) was selected. The terminal velocity for the selected droplet size is approximately 400 cm/s. The fraction of constituent emitted from a water droplet at any given time can then be calculated.

The equations used to predict surface volatilization from a landfill have been modified to more accurately reflect true waste concentration releases. The previous version of DRAS used Farmer's equation to estimate the emission rate of volatiles from the surface of the landfill. Farmer's equation assumes that the emission originates as volatiles in liquids trapped in the pore spaces between solid particles of waste. The volatiles evaporate from the liquid and are emitted from the landfill following gaseous diffusion through the solid waste particles and soil cover to the surface of the landfill. Farmer's equation requires the mole fraction of a given volatile constituent in the liquid in order to calculate the emission. The previous version of DRAS used the TCLP value of a volatile constituent in the waste to approximate the mole fraction of a given constituent in the pore liquid. Since the TCLP test includes a 20-fold dilution, the calculation might underestimate the available concentration of volatiles in freshly deposited waste. The DRAS has been revised to use Shen's modification of Farmer's equation, described in U.S. EPA Office of Air Quality Planning and Standards' 1984 Evaluation and Selection of Models for Estimating Air Emissions from Hazardous Waste Treatment, Storage, and Disposal Facilities, EPA–450/3–84–020. Shen took the simplified version of Farmer's equation for vapor flux from a soil surface and converted it to an emission rate by multiplying it by the exposed landfill area. Shen's modification uses the total waste constituent concentration (weight fraction in the bulk waste) to approximate the mole fraction of that constituent in the liquid phase.

In estimating the amount of a given waste constituent that is released to surface water and eventually becomes freely dissolved in the water column, previous delisting petitions and the earlier version of the DRAS used the maximum observed TCLP concentration in waste as the total amount of the waste constituent available for erosion. Further, the former method assumed that all of the constituent mass that reached the stream, based on TCLP, became dissolved in the aqueous phase. Assuming complete conversion to a dissolved state is overly conservative and not in agreement with recent Agency methodology. In the revised DRAS, the total waste constituent concentration is used to estimate the constituent mass that reaches the stream. The portion of the waste constituent that becomes freely dissolved is determined by an estimate of partitioning between suspended solids and the aqueous phase. This methodology is described in U.S. EPA's 1998 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Volume One. Peer Review Draft, EPA530–D–98–001A.

Recent developments in mercury partitioning described in the Mercury Report to Congress, Volume III: Fate and Transport of Mercury in the Environment, EPA–452/R–97–005, led to another revision to the surface water pathway. The DRAS was modified to account for bioaccumulation of methyl mercury as a result of the release of mercury into the surface water column. The primary human health hazard posed by the release of mercury into surface water is through bioaccumulation of methyl mercury in fish followed by human consumption of the contaminated fish. Biological processes in surface water cause the conversion, or methylation, of elemental mercury to methyl mercury. In accordance with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Volume One. Peer Review Draft, 15% of mercury in the water column is assumed to be converted to methyl mercury. This fraction is then used, along with the current bioaccummulation factor, to determine the predicted concentration of methyl mercury in fish tissue.

The maximum allowable leachate concentrations and the point of exposure (POE) concentrations of concern in groundwater are also presented in Table 1. For inorganic constituents, the maximum reported leachate concentrations for metals in the treated EAFD were well below the health-based levels of concern used in decision-making for delisting. No organic constituents were detected. We believe that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in our modeling efforts if the non-detectable value was obtained using the appropriate analytical method. For constituents which are not detected in the extract but are detected as a total concentration, the DRAS model requires that the detection level be entered along with the other data. For these constituents, the DRAS uses one-half of the detection level to calculate risk.

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

We also considered the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, we determined that it would be inappropriate to request ground-water monitoring data because the waste is currently disposed off-site. For a petitioner using off-site management, EPA believes that, in most cases, the ground water monitoring data would not be meaningful. Most commercial land disposal facilities accept waste from numerous generators. Any ground water contamination or leachate would be characteristic of the total volume of waste disposed of at the site. In most cases, EPA believes that it would be impossible to isolate ground water impacts associated with any one waste disposed of in a commercial landfill. Therefore, we did not request ground water monitoring data from Heritage. Potential impacts of the petitioned waste via air emission and storm water run-off are also addressed in the DRAS.

H. What Did EPA Conclude About Heritage's Analysis?

After reviewing Heritage's petition, the EPA concludes that (1) no hazardous constituents are likely to be present above health based levels of concern in the waste generated at Nucor Steel; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively.

The total cumulative risk posed by the waste is approximately 1.6×10^{-5}. Although this value exceeds the Region 5 Delisting Program's target risk level of

1×10^{-6} for delisting hazardous waste, EPA believes that this risk is acceptable because the estimated risk is almost entirely associated with a single contaminant/pathway which may be evaluated in more than one way. Furthermore, EPA has considered cancer risks in the range of 1×10^{-4} to 1×10^{-6} to be acceptable in other programs and the Region 5 Delisting Program has considered risks in this range acceptable if there are reasons to do so.

In this case, exposure to carcinogenic arsenic through ingestion of contaminated drinking water accounted for almost all of the risk estimated from disposal of the petitioned waste at a Subtitle D landfill. If the POE target concentration was set at the Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL), the maximum allowable waste leachate concentration would be 0.96 mg/L TCLP arsenic, over 60 times higher than the maximum observed leachate concentration in the waste. EPA's July 1996 Soil Screening Guidance: User's Guide, EPA/540/R–96/018, states that acceptable levels of contaminants in soils for the ground-water pathway could be derived from SDWA Maximum Contaminant Level Goals or MCLs. Given that the difference between the MCL for arsenic and the health-based POE concentration is three orders of magnitude and that, according to EPA's May 2000 Technical Fact Sheet: Proposed Rule for Arsenic in Drinking Water and Clarifications to Compliance and New Source Contaminants Monitoring, EPA 815–F–00–011, naturally occurring levels of arsenic are often higher than these levels, we believe that some allowance can be exercised in setting the allowable level for arsenic in the leachate. EPA proposes to set the allowable arsenic leachate level at a concentration which corresponds to a total waste cancer risk of 1×10^{-4} (which is still within the generally acceptable range of 1Qtimes10^{-4} to $\times10^{-6}$). Delisting levels for constituents other than arsenic will still be set at concentrations corresponding to the original Region 5 target of 1×10^{-6}. By this method, the delisting level for leachable arsenic in this proposed exclusion will be set at a value which corresponds to a POE concentration of approximately one-tenth of the existing MCL. The EPA has recently proposed to lower the arsenic MCL to one-tenth its current value and thus, if finalized, it would correspond well with the delisting level we are setting.

The aggregate hazard index for this waste is estimated to be 0.965, which does not exceed the EPA Region 5 Delisting Program's target of 1.0. The majority of this aggregate hazard index, 0.774, occurs as a result of migration of mercury to surface water followed by ingestion of fish by humans. For this reason, a delisting level for total mercury in the waste will also be imposed. All other delisting levels imposed in this exclusion are based on the concentration of constituents in leachate.

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

We have reviewed the sampling procedures used by Heritage and have determined they satisfy EPA criteria for collecting representative samples of the treated EAFD. The descriptions of the hazardous waste treatment process and the analytical data, together with the proposed verification testing requirements, provide a reasonable basis for EPA to grant the exclusion. We believe the data submitted in support of the petition show that the waste will not pose a threat when disposed of in a Subtitle D landfill. We therefore, propose to grant Heritage an exclusion for the EAFD generated at Nucor.

If we finalize this proposed exclusion, the Agency will no longer regulate the petitioned waste under 40 CFR Parts 262 through 268 and the permitting standards of Part 270.

IV. Conditions for Exclusion

A. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?

The following table summarizes delisting levels for Nucor's waste. The EPA calculated maximum allowable concentrations in the extract for detected constituents using the DRAS program. The allowable leachate concentrations were derived either from the health-based calculation within the DRAS program, from MCLs, treatment technique (TT), or toxicity characteristic values, whichever resulted in a lower delisting level, with the exception of arsenic as discussed in Section III. H. of this preamble. In addition, the concentration of total mercury in the waste shall not exceed 1 mg/kg.

TABLE 1.—CONSTITUENT CONCENTRATIONS AND DRAS MAXIMUM ALLOWABLE LEACHATE AND POINT OF EXPOSURE LEVELS

Constituent	Maximum [1] Observed Total Concentration (mg/kg)	Maximum [1] Observed Leachate Concentration (mg/L TCLP)	Maximum Allowable Leachate Concentration (mg/L TCLP)	Maximum Allowable Point of Exposure Concentration (mg/L in groundwater)
Antimony	<25	0.0082	[2] 0.206	[2] 0.006
Arsenic	30	0.015	0.0936	0.005
Barium	56	0.83	[2] 55.7	[2] 2.0
Beryllium	10	<0.002	[2] 0.416	[2] 0.004
Cadmium	130	<0.001	[2] 0.15	[2] 0.005
Chromium	2,880	0.11	[2] 1.55	[2] 0.1
Lead	4,600	2.4	[3] 5	[2] 0.015
Mercury	0.72	<0.002	[2] 0.149	[2] 0.002
Nickel	130	<0.020	28.3	0.753
Selenium	8.8	0.056	[2] 0.58	[2] 0.05
Silver	47	0.023	3.84	0.187
Thallium	<30	<0.05	[2] 0.088	[2] 0.002
Vanadium	160	<0.01	21.1	0.263
Zinc	240,000	2.7	280	11.25
Cyanide	<0.23	NR	NA	[2] 0.2

TABLE 1.—CONSTITUENT CONCENTRATIONS AND DRAS MAXIMUM ALLOWABLE LEACHATE AND POINT OF EXPOSURE LEVELS—Continued

Constituent	Maximum [1] Observed Total Concentration (mg/kg)	Maximum [1] Observed Leachate Concentration (mg/L TCLP)	Maximum Allowable Leachate Concentration (mg/L TCLP)	Maximum Allowable Point of Exposure Concentration (mg/L in groundwater)
Sulfide	31	NR	NA	NA

[1] These levels represent the highest constituent concentration found in any sample and are not necessarily the specific levels found in any one sample.
[2] The concentration is based on the MCL or TT action level.
[3] The concentration is based on the toxicity characteristic level in 40 CFR 261.24.
< The constituent was not detected at the stated concentration.
NA Not applicable
NR Analysis not run.

B. How Frequently Must Heritage Test the Waste?

Heritage must demonstrate on a monthly basis that the constituents of concern in the petitioned waste do not exceed the levels of concern in section IV.A. above. Heritage must collect two representative samples of the treated EAFD per month and analyze the samples using a) the TCLP method, b) the TCLP procedure with an extraction fluid of pH 12 ± 0.05 standard units and c) SW–846 Method 7470 for mercury. The alkaline extraction fluid will consist of reagent water to which high calcium hydrated lime is added to reach a pH of 12.0 ± 0.05. Appropriate detection levels and quality control procedures are required.

C. What Must Heritage Do if the Process Changes?

If Nucor significantly changes the manufacturing process or Heritage significantly changes the treatment process or the chemicals used in the treatment process, Heritage may not handle the EAFD generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the levels set in Section IV.A and that no new hazardous constituents listed in Appendix VIII of 40 CFR Part 261 have been introduced. Heritage must manage wastes generated after the process change as hazardous waste until Heritage has received written approval from EPA.

D. What Data Must Heritage Submit?

Heritage must submit an annual summary of the data obtained through monthly verification testing to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604, by February 1 of each year for the prior calendar year. Heritage must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Heritage must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

E. What Happens if Heritage Fails To Meet the Conditions of the Exclusion?

If Heritage violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion.

If the monthly testing of the waste does not meet the delisting levels described in Section IV.A above, Heritage must notify the Agency according to Section IV.D. The exclusion will be suspended and the waste managed as hazardous until Heritage has received written approval for the exclusion from the Agency. Heritage may provide sampling results that support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* (APA), to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated.

V. Regulatory Impact

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

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

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

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, the Agency certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

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

VIII. Unfunded Mandates Reform Act

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

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

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

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

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

IX. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

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

If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, *etc.*) that are developed or adopted by voluntary consensus standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

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

List of Subjects in 40 CFR Part 261

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

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

Dated: November 8, 2000.

Willie H. Harris,

Acting Director, Waste, Pesticides and Toxics Division.

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.

Appendix IX of Part 261—[Amended]

2. In Table 2 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—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Heritage Environmental Services, LLC., at Nucor Steel.	Crawfordsville, Indiana	Treated electric arc furnace dust (EAFD), K061, that is generated by Heritage Environmental Services, LLC (Heritage) and Nucor Steel, Division of Nucor, Corporation (Nucor) at Nucor's Crawfordsville, Indiana plant at a maximum annual rate of 30,000 cubic yards per year and disposed of in a Subtitle D landfill, after (insert publication date of the final rule). (1) *Delisting Levels:* (A) The constituent concentrations measured in either of the extracts specified in Paragraph (2) may not exceed the following levels (mg/L): Antimony—0.206; Arsenic—0.0936; Barium—55.7; Beryllium—0.416; Cadmium—0.15; Chromium (total)—1.55; Lead—5.0; Mercury—0.149; Nickel—28.30; Selenium—0.58; Silver—3.84; Thallium—0.088; Vanadium—21.1; Zinc—280.0. (B) Total mercury may not exceed 1 mg/kg. (2) *Verification Testing:* On a monthly basis, Heritage or Nucor must analyze two samples of the waste using the TCLP method, the TCLP procedure with an extraction fluid of pH 12 ± 0.05 standard units and SW–846 Method 7470 for mercury. The constituent concentrations measured must be less than the delisting levels established in Paragraph (1). (3) *Changes in Operating Conditions:* If Nucor significantly changes the manufacturing process or chemicals used in the manufacturing process or Heritage significantly changes the treatment process or the chemicals used in the treatment process, Heritage or Nucor must notify the EPA of the changes in writing. Heritage and Nucor must handle wastes generated after the process change as hazardous until Heritage or Nucor has demonstrated that the wastes continue to meet the delisting levels set forth in Paragraph (1) and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced and Heritage and Nucor have received written approval from EPA. (4) *Data Submittals:* Heritage must submit the data obtained through monthly verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 by February 1 of each calendar year for the prior calendar year. Heritage or Nucor must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Heritage or Nucor must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (5) *Reopener Language*—(A) If, anytime after disposal of the delisted waste, Heritage or Nucor possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent identified in Paragraph (1) is at a level in the leachate higher than the delisting level established in Paragraph (1), or is at a level in the groundwater higher than the maximum allowable point of exposure concentration predicted by the CMTP model, then Heritage or Nucor must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (5)(A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify Heritage and Nucor in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Heritage and Nucor with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Heritage and Nucor shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days Heritage or Nucor presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	* * * * * *	*

* * * * *

[FR Doc. 00–29647 Filed 12–4–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

42 CFR Part 36

Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee

AGENCY: Indian Health Service (IHS), Department of Health and Human Services (DHHS).

ACTION: Notice of intent to establish negotiated rulemaking committee.

SUMMARY: As required by section 3 of the Negotiated Rulemaking Act of 1990, 5 U.S.C. 564, the Department of Health and Human Services, (DHHS) is giving notice of the intent to establish a Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing Title V of the Tribal Self-Governance Amendments of 2000; Public Law 106–260, (the Act). DHHS invites any interested party to comment on the proposal to create this negotiated rulemaking committee and on the proposed membership of the committee, which is subject to the requirements of the Act. In addition, DHHS invites persons who believe that they will be significantly affected by the proposed rule to apply or nominate other persons for membership on the negotiated rulemaking committee.

DATES: Written comments concerning this notice must be received on or before January 4, 2001. Nominations or applications for membership on the committee may be made by submitting applications on or before January 4, 2001. Each application must contain the information described in the ''Application for Membership'' section below.

ADDRESSES: Please submit comments and applications to: Paula K. Williams, Director, Office of Tribal Self-Governance, Indian Health Service, 5600 Fishers Lane, Room 5A–55, Rockville, MD 20857. Comments and applications received will be available for inspection at the address above from 9:00 a.m. to 3:00 p.m., Monday through Friday, beginning approximately two weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Paula K. Williams, Director, Office of Tribal Self-Governance, Indian Health Service, at the address listed above, or by telephone at 301–443–7821. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: Section 517 of Title V of the Act, requires the Secretary, not later than 90 days after the date of the enactment of the Act, to initiate procedures under the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq*. to negotiate and promulgate the regulations necessary to carry out Title V. The Act calls for a negotiated rulemaking committee to be established pursuant to 5 U.S.C. 565, comprised only of Federal and tribal representatives, with a majority of the tribal government representatives representing Self-Governance tribes. The Committee will confer with and allow representatives of Indian tribes, inter-tribal consortiums, tribal organizations, and individual tribal members to actively participate in the rulemaking process. The Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of Self-Governance and the government-to-government relationship between the United States and Indian tribes.

Copies of the Committee's charter will be filed with the appropriate committees of Congress and with the Library of Congress in accordance with section 9(c) of the Federal Advisory Committee Act, (FACA), 5 U.S.C. Appendix.

Scope of the Proposed Rule

The proposed rule generally will include provisions governing how DHHS/IHS carries out its responsibility to tribes under the Act and how tribes carry out their responsibility under the Act. Because of the detailed provisions contained in the Act, it is anticipated that regulations can be kept to a minimum. Examples of some areas where procedures may be required are for regulations waivers, appeals of rejection of final offers, or where regulations would be required, such as under sec. 507(a) which specifies that reporting requirements can only impose minimal burdens on a tribe and may only be imposed if they are contained in regulations developed under negotiated rulemaking. It is anticipated that the negotiated rulemaking committee will develop proposed regulations in any other areas that may be suggested during the process.

Interests Significantly Affected

A limited number of identifiable interests will be significantly affected by the rule. Those parties are Indian tribes, tribal organizations as defined in section 4(1) of the Indian Self-Determination and Education Assistance Act, and individual tribal members.

Proposed Agenda and Schedule for Publication of Proposed Rule

It is the Secretary's intent to publish the proposed rule for notice and comment no later than 1 year after the date of the enactment of the Act (August 18, 2000 + 1 year), as required by section 517(a)(2) of the Act.

The charter will specify that a minimum of three meetings will be held. The first meeting will serve as an organizational meeting to establish procedures, deadlines and a work schedule in order for the 12–month time period to be met.

Negotiated Procedures

The following procedures and guidelines will apply to the negotiated rulemaking committee, unless they are modified as a result of comments received on this notice or during the negotiation process.

The committee may use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to help the negotiation process run smoothly, and help participants define and reach consensus.

The members of the committee, with the assistance of the facilitator, may adopt procedures for committee meetings which they consider most appropriate.

The goal of the negotiating process is for the committee to reach consensus on the proposed rule. Consensus means unanimous concurrence among the interests represented unless the committee agrees to define such term to mean general but not unanimous