§ 36.4503 [Amended]

8. In § 36.4503, paragraph (a), remove the numbers "8½" and "10", wherever they appear, and add in their place, the numbers "8" and "9½", respectively.

[FR Doc. 91-31132 Filed 12-27-91, 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-4089-3]

Prevention of Significant Deterioration of Air Quality; North Carolina: Partial Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On August 13, 1991, the State of North Carolina requested delegation of authority for implementing the NO_x increment portion of the Prevention of Significant Deterioration (PSD) regulations. EPA's review of North Carolina's pertinent laws and the rules and regulations thereof, indicates that they provide an adequate procedure for the implementation and enforcement of these federal standards, and the Agency has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is October 7, 1991.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at the following address:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

All reports required, pursuant to the newly delegated standards, should not be submitted to the EPA Region IV office, but should instead be submitted to the following address:

Mr. Lee A. Daniel, Jr., Chief, North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626-0535.

FOR FURTHER INFORMATION CONTACT: Andrew Fischer of the EPA Region IV Air, Pesticides and Toxics Management Division, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone 404/347-2864.

SUPPLEMENTARY INFORMATION: On November 24, 1976, the Agency's Region IV Administrator initially delegated to the State of North Carolina authority to perform the administrative and technical portions of the Federal program for PSD air quality. On December 22, 1978, the Region IV Administrator requested a letter that the delegations be amended to apply to 40 CFR 52.21 as revised by the 1977 Clean Air Act Amendments. The State of North Carolina responded with a letter on January 22, 1979, that the PSD program be amended as requested. On August 13, 1991, the State of North Carolina requested partial delegation of authority for implementing the NO_x increment portion of the PSD regulations. On October 7, 1991, the EPA determined that the pertinent laws of the State of North Carolina and the rules, and regulations thereof, provide an adequate procedure for the implementation of these regulations. Therefore, in its October 7, 1991 letter, the EPA, pursuant to 40 CFR 52.21, and the conditions and limitations set forth therein, relinquished its primary responsibilities for the NO_x increment portion of the PSD regulations, as described in 40 CFR 52.21, to the State of North Carolina.

Dated: December 16, 1991.

Patrick M. Tobin,

Acting Regional Administrator

[FR Doc. 91-31151 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-4089-2]

Prevention of Significant Deterioration of Air Quality; Tennessee: Partial Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On July 17, 1991, the State of Tennessee requested partial delegation of authority (technical review portion) for the implementation and enforcement for the Nitrogen Dioxide (NO_2) increment portion of the Prevention of Significant Deterioration (PSD) regulations. EPA's review of Tennessee's laws, rules and regulations showed that they provide for adequate and effective implementation of the technical portion of the NO_2 PSD program.

EFFECTIVE DATE: The effective date of the delegation of authority is August 19, 1991.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at the following address:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

All applications and reports pursuant to the NO_2 PSD newly delegated standards should be addressed to:

Mr. Harold E. Hodges, Technical Secretary of the Tennessee Air Pollution Control Board, Customs House, 701 Broadway, Nashville, Tennessee 37243.

FOR FURTHER INFORMATION CONTACT: Andrew Fischer of the EPA, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone 404/347-2864.

SUPPLEMENTARY INFORMATION: On June 15, 1981, EPA delegated the PSD program to the State of Tennessee. Prior to October 17, 1988, the PSD program required protection of PSD increments for only two pollutants: TSP and SO_2. On February 8, 1988, EPA proposed regulations to add NO_2 increments to the PSD program requirements. These regulations were promulgated by the EPA on October 17, 1988. The NO_2 increments regulation became effective November 19, 1990. On that date, the EPA Regional Office assumed the responsibility for reviewing the NO_2 increments portion of the PSD permit applications for States such as Tennessee that did not adopt requirements for the PSD NO_2 increments. On July 17, 1991, the State of Tennessee requested partial delegation of authority for the NO_2 increment portion of the PSD regulation. Therefore, in its August 19, 1991, letter, the EPA, pursuant to 40 CFR 52.01 and 52.21, and the conditions and limitations set forth therein, relinquished its primary responsibilities only for the technical portion of the Federal NO_2 PSD program, as described in 40 CFR 52.21, to the State of Tennessee.

Dated: December 16, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91-31152 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-4089-1]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for certain solid waste generated at Reynolds Metals Company (Reynolds), Gum Springs, Arkansas. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: December 30, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (Room M2427), Washington, DC. 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The reference number for this docket is "F–91–CMF–FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 920–9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the waste at levels of regulatory concern.

B. History of this Rulemaking

Reynolds Metals Company (Reynolds), located in Bauxite, Arkansas, petitioned the Agency to exclude from hazardous waste control its K088 spent potliner wastes treated at its R.P. Patterson facility in Gum Springs, Arkansas. After evaluating the petition, EPA proposed, on July 18, 1991 to exclude Reynolds' waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 56 FR 32993).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Reynolds' petition.

II. Disposition of Delisting Petition

A. Reynolds Metals Company, Gum Springs, Arkansas

1. Proposed Exclusion

Reynolds Metals Company (Reynolds), located in Bauxite, Arkansas, petitioned the Agency to conditionally exclude kiln residue derived from processing spent potliners using its rotary kiln treatment process. Reynolds plans to move its thermal treatment process from Bauxite, Arkansas to another Reynolds facility located in Gum Springs, Arkansas, and requested that the upfront exclusion apply to kiln residue generated at the new facility location. The kiln residue is presently listed, in accordance with 40 CFR 261.3(c)(2)(i) (*i.e.*, the "derived from" rule), as EPA Hazardous Waste No. K088—"Spent potliners from primary aluminum reduction". The listed constituent of concern for EPA Hazardous Waste No. K088 waste is cyanide (complexes) (see 40 CFR part 261, appendix VII).

In support of its petition, Reynolds submitted (1) Detailed descriptions of its waste treatment process; (2) a description of the processes generating spent potliners that were treated by the rotary kiln process; (3) total constituent analysis results for the eight metals listed in 40 CFR 261.24; (4) total constituent analysis results for antimony, beryllium, nickel, cyanide, and fluoride from representative samples of both the kiln residue and the untreated spent potliners; (5) EP leachate analysis results for the eight metals listed in 40 CFR 261.24, antimony, beryllium, nickel, cyanide, and fluoride from representative samples of the kiln residue; (6) TCLP leachate analyses for the metals in 40 CFR 261.24 (except mercury), antimony, beryllium, nickel, cyanide, and fluoride from representative samples of the kiln residue; (7) total constituent analysis results for volatile and semi-volatile organic compounds, dioxins, and furans from representative samples of the kiln residue; and (8) test results and information regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Reynolds in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used the modified EPA's Composite Model for Landfills (EPACML) and the Organic Leachate Model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the hazardous constituents in Reynolds' petitioned waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 56 FR 32993, July 18, 1991, for a more detailed description of the EPACML, the modifications made to this model for delisting, and an explanation of why EPA proposed to grant Reynolds' petition for its kiln residue.

2. Agency Response to Public Comments

The Agency received public comments on the use of the EPACML in delisting petition evaluations and the proposed decision to grant an exclusion to Reynolds Metals from ten different parties. All commenters were generally in favor of the Agency's proposal to use the EPACML for delisting evaluations. The majority of commenters believed that the EPACML was a distinct improvement over the Vertical and Horizontal Spread (VHS) model and believed that the EPACML provides a sounder basis for evaluating wastes under a reasonable worst-case disposal scenario. Two commenters clearly supported the Agency's proposed decision to delist the kiln residue from Reynolds' rotary kiln process. These commenters believed that the granting of the final exclusion would minimize the toxicity of spent potliners and will provide a safer alternative to direct disposal in a landfill. In addition, the commenters believed that this exclusion would provide a needed treatment technology for the industry as a whole.

The remainder of this section addresses specific comments received on the Agency's decision to grant an exclusion for Reynolds Metals.

a. Length of the Comment Period

Comment: One commenter requested that the comment period should be extended for a minimum of 60 days so that the necessary documents to develop comments could be obtained or that EPA should promulgate the EPACML

with additional information describing the model.

Response. The Agency believes that it is unnecessary to provide an extension of the comment period for this exclusion. The Agency believes that adequate information was provided in the proposed notice and in the RCRA public docket for the notice to allow individuals to develop comments on the use of the model in evaluating Reynolds' petition. The EPACML is not a new model and its general use in the delisting program has been suggested by the Agency in the past Specifically, the Agency first proposed and requested comments on the use of the EPACML in delisting evaluations on August 1, 1988 (see 53 FR 28892). In the promulgation of the Toxicity Characteristic (see 55 FR 11798 March 29, 1990), the Agency addressed the comments received and provided detailed descriptions of the development and use of the EPACML. Therefore, the Agency believes that at the time this exclusion was proposed there was adequate information publicly available on the EPACML from a variety of sources from which to develop comments on the use of the EPACML in evaluating Reynolds petition. The Agency believes that an extension of the comment period is unnecessary

The Agency also notes that it may consider incorporating the EPACML into the delisting regulations (40 CFR 260.22) as a key criterion in evaluating delisting petitions. At that time adequate information describing the model will again be provided.

b. Analytical Methods and Testing Requirements

Comment: One commenter noted that the extraction procedure used by Reynolds for cyanide was modified by substituting distilled water for the acetate buffer The commenter stated that they believed that the concentration of leachable cyanide would be decreased when using distilled water rather than the prescribed acetate buffer in the extraction procedure. The commenter questioned why distilled water was allowed as a reagent since complex cyanides are the hazardous constituents for which K088 waste was listed.

Response: The Agency acknowledges the commenter's concern about the replacement of the leaching solution during cyanide analysis. The primary reason for this change is that the liberation of hydrogen cyanide gas during the use of an acidic leaching medium will likely lower the concentration of cyanide that will be measured in the waste leachate. Secondly, as hydrogen cyanide gas is highly toxic, its release is a grave concern for the safety of laboratory workers and bystanders. As a result, the Agency has determined that it would be prudent to modify the leaching procedure to prevent the liberation of hydrogen cyanide gas.

To further address the commenter's concern regarding the levels of leachable cyanide in the waste, the Agency evaluated the total cyanide concentrations in Reynolds' petitioned waste. The Agency assumed a worst-case leaching scenario (*i.e.*, that during the TCLP leaching procedure there is a 20-fold dilution inherent in the procedure and that all the cyanide leaches from the waste). When the maximum total cyanide concentration in Reynolds' waste (16 ppm) was evaluated in this manner, the maximum leachable concentration of cyanide was estimated to be 0.8 ppm. Using this value as an input to the EPACML resulted in a maximum compliance-point concentration of 0.067 ppm of leachable cyanide which is below the delisting health-based level of 0.2 ppm. Thus, the Agency continues to believe that leachable cyanide will not be present in the kiln residues at levels of concern.

Comment: One commenter believed that the extensive analytical requirements for organic constituents in the conditional testing requirements are unnecessary due to low levels of organics found in the kiln residues. A second commenter believed that the testing requirements for polyaromatic hydrocarbons (PAHs) should be discontinued if they do not show up in initial verification testing. This commenter also suggested that as PAHs are among the more immobile and insoluble compounds in the environment, a much higher DAF (such as 1,000) should be used for establishing the delisting levels for those compounds. Another commenter believed that the subsequent verification testing conditions for organic constituents may be excessive and suggested that an alternate sampling and analytical plan for the solid residues be used which would require fewer analyses of semi-violatile organics based on a statistical sampling approach. This commenter further noted that since the SW-846 Methods 8250 and 8270 practical quantitation limits (PQLs) for the organic constituents of concern were no higher than 10 ppb, the regulatory levels should be based on the PQLs.

Response The Agency believes that the testing requirement for organics listed in Condition (4)(B) is reasonable As noted in Table 4 of the proposed exclusion, Reynolds untreated spent potliner contained several organic constituents at significant concentrations. The Agency agrees with the commenter that the Reynolds process appears to be effective in reducing levels of organic constituents in the kiln residue based on total constituent data. The Agency is concerned that the concentrations of organic constituents in the kiln residue may vary somewhat depending on the potliner treated and the facility generating the spent potliner. As noted in the proposal, the Agency addressed this concern by proposing initial and subsequent regular analyses of the petitioned kiln residue, prior to disposal. The Agency believes that the potential for variation of constituent concentrations in the spent potliner provides sufficient justification for requiring on-going testing to ensure that the Reynolds treatment process continues to consistently and effectively reduce organic constituent levels. The Agency believes that on-going testing is especially prudent considering the potentially large volume of waste generated by Reynolds (3,360 tons of kiln residue per week per kiln). A reduction from daily testing during initial verification to weekly testing during subsequent verification provides sufficient assurance that any waste exceeding the delisting levels set in the exclusion will be disposed of properly and provides a minimal amount of analytical burden on Reynolds. The Agency believes that this testing scheme is reasonable and will provide adequate protection to human health and the environment.

The Agency does not believe that DAFs as high as 1,000 should be used for PAHs based on constituent-specific dilution/attenuation factors in the subsurface environment. The Agency believes that it is inappropriate to consider extensive site-specific factors as such, because a waste once delisted is no longer subject to RCRA control and may therefore be transported to any disposal unit at an unknown location of unknown site conditions. As described in the proposed rule, the Agency therefore used a Monte Carlo method to account for the wide range of environmental conditions found at various disposal sites across the nation. In addition, the immobility and insolubility of organic compounds has already been considered in the proposed use of the EPACML for Reynolds waste through the incorporation of the TCLP leachate concentrations for establishing the delisting levels for PAHs. While the TCLP leachate concentrations reflect the leachable constituents that may migrate in the subsurface, immobile constituents

should not leach out using the TCLP. Although the commenter suggested the use of a DAF of 1,000 for PAHs, the commenter did not provide any quantitative basis for this number.

The Agency also does not believe that sufficient data are available in this case for use in determining sampling frequency using a statistical approach. While a statistical approach such as that presented by the commenter may have merits, the Agency does not believe that adequate information on the variable nature of the waste is available. Without such data on the variability of the waste, a statistical approach in developing a sampling plan for this waste stream may allow batches that have not been treated to the required levels to escape detection and be disposed in a manner that does not adequately protect human health and the environment. The sampling plan as proposed in the exclusion, in contrast, provides that each batch of waste be analyzed for constituents of concern prior to disposal. This procedure ensures that Reynolds consistently treats the spent potliners from various aluminum reduction facilities to the required levels and minimizes the risk of improper disposal of the petitioned waste.

The Agency recognizes that determination of some organic constituents using SW-846 analytical methods may be difficult. However, delisting levels for the leachable organics concentrations are not set at practical quantitation limits (PQL) in this case, because the PQLs are matrix-dependent and Reynolds did not provide any information in this regard. As described in the July 18 proposed rule (56 FR 33005), Reynolds only reported the total constituent concentrations of organic compounds in the kiln residue. The Agency did not require Reynolds to further quantify the leachable concentrations of those organic compounds, because the reported total constituent data reflected that leachable organic constituents were not expected to be present in the kiln residue samples analyzed at levels of concern. Without any specific information on the PQLs that would be associated with Reynolds' kiln residue for the analysis of leachable organic constituents of concern, the Agency, therefore, did not base the delisting levels for organics on the PQLs. The Agency understands that using current analytical methodologies, Reynolds may not be able to obtain quantitation levels for several constituents below the delisting levels set in Condition (4)(B). For these constituents, the Agency will accept data that are reported as "not detected" or "below detection limit" as long as an appropriate analytical method is used, the detection limit reported is reasonable for the analyzed matrix, and that all of the required QA/QC information is provided and is determined to be adequate.

C. Health-based Levels Used by Delisting

Comment: One commenter objected to some of the levels of regulatory concern, specifically lead, nickel, and cyanide, which are used in conjunction with the EPACML model to establish delisting levels. The commenter believed that the maximum contaminant level (MCL) for lead of 0.05 mg/l should be used, and that the Agency should not use the proposed MCLs for nickel and cyanide in the evaluation of the petitioned waste or setting the verification testing levels.

Response: The Agency believes that MCLs, when they exist, are the most appropriate health criteria to use for developing levels for use in this delisting decision. MCLs are promulgated under the Safe Drinking Water Act (SDWA) of 1974, as amended in 1986, and consider technology and economic feasibility as well as health effects. The exposure scenario evaluated for Reynolds' petitioned waste is based on the ingestion of contaminated drinking water and because MCLs are developed for regulation of drinking water, they are clearly useful for delisting evaluations. In the absence of formal MCLs, the Agency has also used proposed MCLs as health-based levels in delisting decisions, because proposed MCLs are typically the most up-to-date evaluation of the available toxicological and analytical data.

While the commenter is correct in stating that the existing MCL for lead is still 0.05 mg/l, this level will only remain effective until November 9, 1992. At that time, it will be replaced by a treatment standard with an action level of 0.015 mg/l, in accordance with the new drinking water regulations promulgated on June 7, 1991 (56 FR 26460). In the absence of a new formal MCL for lead, the Agency believes that prudence requires that the exclusion level be established using the more conservative action level of 0.015 mg/l. EPA established this new treatment standard for lead instead of an MCL because, as concluded in the preamble to the final rule, the threshold for various health effects associated with lead is difficult to determine. Given that the Agency's goal is to minimize lead exposure among sensitive populations, however, the treatment standard with an action level was established. While the action level is not a formal MCL, EPA stated in the preamble to the lead rule that the level of 0.015 mg/l is "associated with substantial public health protection" (see 56 FR 26477, June 7, 1991).

While the existing lead MCL of 0.05 mg/l will remain in effect until November 9, 1992, the Agency believes the use of this level in setting Reynolds' delisting level for lead would be inappropriate. The effective date for the action level and accompanying treatment standard for lead were delayed to allow public drinking water systems sufficient time to comply with this new rule. Such a delay is not warranted in the case of Reynolds' exclusion. Further, the Agency believes that to establish exclusion levels using an old MCL, that will soon be superseded by a more stringent standard, will not be sufficiently protective of human health.

For similar reasons, the Agency also believes that it is appropriate to use proposed MCLs in setting the delisting health-based levels for cyanide and nickel. As noted above, in the absence of final MCLs for nickel and cyanide, the Agency believes that exclusion levels established using the proposed levels of 0.1 and 0.2 mg/l for nickel and cyanide, respectively, will be appropriate for use in delisting evaluations.

Comment: One commenter believed that the delisting criteria should be expressed as a formula rather than a single concentration limit for each regulated metal of concern. The commenter suggested that the delisting concentration for a constituent should be expressed as the product of the health-based level (HBL) for that constituent multiplied by the dilution attenuation factor (DAF) for landfills that the EPACML specifies for the annual volume of waste generated by a facility.

Response: The Agency does not believe that it would be appropriate for the delisting criteria to be expressed as a formula. In setting verification testing conditions, the Agency provides specific concentrations for the facilities to meet in order for a petitioned waste to be excluded from hazardous waste control. The Agency actually uses the type of formula described by the commenter (*i.e.*, DAF x HBL) to calculate the acceptable delisting level. However, incorporating the formula into the verification testing conditions would not, by itself, provide specific delisting criteria necessary for Reynolds' conditional exclusion.

d. Site-specific Delisting/Disposition of Delisted Wastes

Comment: Several commenters believed that the Agency should consider site-specific information along with waste specific information when evaluating petitions, especially in the case where the petitioner is requesting the delisting of wastes which will remain in place at a particular site. One commenter believed that the Monte Carlo Procedure uses over-simplified unrealistic and conservative stimulation scenarios that are not applicable to delisting scenarios. Another commenter felt that the use of an affidavit as proof of disposal intent was sufficient to justify use of site specific information.

Response: The Agency maintains that a delisting decision should be based on waste-specific, not disposal-site-specific, information. The Agency believes that the use of waste-specific, rather than site-specific, information during petition evaluation is necessary to ensure that the potential risks associated with the wastes are adequately assessed. The Agency does not believe that delisting evaluations should be based on the prediction of future storage or disposal conditions (such as the waste remaining in place) at a particular site, because once delisted, a waste can typically be disposed of in any subtitle D facility. In the Agency's view, an exclusion should be based on the waste's characteristic, not on its location. Furthermore, an affidavit of site-specific disposal intent does not bind a facility in the future from disposing of an excluded waste at a different location or in a different manner. For these reasons, the Agency believes that it is appropriate to model a reasonable worst-case scenario.

In addition, in this case, Reynolds did not petition the Agency for a site-specific delisting, and did not provide any site-specific data that could be used in such an analysis. Thus, the Agency believes that a reasonable worst-case disposal scenario was appropriate for evaluating Reynolds' petitioned waste.

Comment: One commenter believed that since the delisted waste may be beneficially reused, recycled or reclaimed, and that the EPACML is based on simulating fate and transport from a waste management unit, the delisted wastes should be confined to regulated management units (subtitle D or State regulated).

Response: In the case of Reynolds' petitioned waste, the Agency considers a landfill scenario as a reasonable worst-case scenario. Reynolds has stated in its petition that it expects to dispose of the waste in an on-site or off-site landfill. Thus, the Agency believes that the EPACML fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste. In addition, spent potliners in general, have been recycled or beneficially reused only on a small scale in the U.S. The Agency believes that the kiln residue from spent potliner will also have little potential for recycle or reuse. For these reasons, the Agency believes that the EPACML models the reasonable worst-case disposal scenario for this waste.

However, the Agency does not wish to constrain the disposal of excluded wastes to a regulated waste management unit and thereby inhibit the beneficial reuse or recycling of the material. Reuse of hazardous waste materials in a manner constituting disposal is allowable under 40 CFR 266.20. Therefore, in the case of Reynolds exclusion, EPA does not believe the limitation suggested by the commenter is either necessary or appropriate.

Verification Testing

Comment: Two commenters believed that Condition (5), which requires Reynolds to reinstitute initial verification testing if they wish to add a new source of spent potliner, was extremely burdensome and had minimal corresponding benefit. Both commenters stated that the 20-day testing requirement would require approximately 3,360 tons of untreated spent potliner for processing in Reynolds' kiln. Many facilities would be required to stockpile (at a hazardous waste storage facility) spent potliner for over a year before being able to supply sufficient potliners to Reynolds to meet this testing requirement. Both commenters believed reinstituting verification testing for a three-day period (which would require approximately 500 tons of spent potliner) would be sufficient to demonstrate that Reynolds could treat spent potliners from another primary reduction facility effectively and provide the Agency with adequate data to document the effectiveness of the treatment process relative to the potliner source.

Response: The Agency agrees that it may be overburdensome to aluminum reduction facilities to stockpile spent potliner for over a year prior to treatment. To balance the Agency's need for sufficient data and to ease the storage and analytical burden on smaller volume aluminum reduction facilities, the Agency has decided to reduce the verification testing period to a minimum of four days for each new source of spent potliner, during which daily composite samples must be collected and analyzed. This requirement is consistent with 40 CFR 260.22(h) regarding collection of a minimum of four representative samples for the delisting demonstration. While the Agency believes that Reynolds will have likely resolved any start-up operational problems during the first 20 days of initial verification testing, some initial verification testing requirements are still necessary to ensure that a new potliner source will not pose any technical or operational problems for Reynolds. The Agency believes that a return to initial verification testing for four operating days will allow Reynolds sufficient time to determine if it can successfully treat spent potliners from other aluminum reduction facilities, allow resolution of any processing problems, and collect information that demonstrates whether Reynolds' process can successfully treat the spent potliner from the new source. Therefore, the Agency modified Condition (5) of the exclusion so that, if Reynolds successfully completes the four-day period of initial verification testing, Reynolds may return to the subsequent testing conditions in Condition (2)(B) for the new potliner source upon receiving notification from EPA. If this four-day testing is not successful, then Reynolds must continue to test the kiln residue beyond the four-day period as required by Condition (5).

f. Use of Models for Delisting

Comment: One commenter believed that EPA misstated its reliance on the use of models in reviewing delisting petitions. The commenter claimed that EPA always, not often, uses fate and transport models to make delisting decisions. The commenter believed that EPA intends to use the model as a sole deciding factor (*i.e.*, a rule) and that the proposal should be withdrawn and re-proposed to amend 40 CFR 260.22. Furthermore, the commenter believed that the Agency used the model as a rule and thus violated the Administrative Procedure Act (5 U.S.C. 550 *et seq.*) by failing to articulate a rational basis for this proposal. The commenter also suggested that the proposal does not conform to the direction given EPA in the decision in *McLouth Steel Products Corp.* v. *Thomas*, 838 F.2d 1317, 1319 D.C. Cir. 1988, namely that EPA fails to be open to comments on the model and its use in specific delisting cases.

Response: While the Agency used fate and transport models in many past delisting evaluations, the Agency has also considered various other factors in

making delisting decisions. For example, in some cases, the Agency has determined that petitioned wastes are characteristic wastes, relying on the criteria established under 40 CFR 261.24, not a fate and transport model. In other cases petitions have failed the Agency's evaluation on the basis of ground-water contamination that may have arisen from disposal of the petitioned waste. Regardless of the bases of any past decisions, the Agency believes that, in this case, the EPACML model is an appropriate tool to use in the evaluation of Reynolds' waste because, as noted in the proposal, the Agency believes that disposal in a landfill is a reasonable worst-case scenario for Reynolds' petitioned waste. Therefore, the Agency believes that it has appropriately used the EPACML model in evaluating Reynolds' petitioned waste. Furthermore, in evaluating Reynolds' petition the Agency also evaluated alternate exposure scenarios including inhalation exposure and contamination of surface water from runoff. The Agency believes that it did not violate the Administrative Procedure Act (APA). Consistent with the APA, the Agency proposed to use the EPACML as a tool in making the delisting determination for Reynolds, and accepted public comment. The Agency continues to believe that the model is appropriate and has presented justification for using the EPACML in evaluating Reynolds' petition.

The Agency also believes that using the EPACML model in evaluating Reynolds' petition is consistent with the *McLouth* decision. That decision allows the Agency to use delisting models as a non-binding policy so long as the Agency exercises discretion in individual delisting cases and remains open to challenges to its use. The Agency believes that it has treated the model as a non-binding policy in its evaluation of Reynolds' petition, that the model is appropriate to use in Reynolds' case, and that it has fully considered comments on the proposed use of the EPACML model. In today's notice, EPA has responded to each criticism of the EPACML model. EPA has carefully reviewed the commenter's concerns in what it believes is an open-minded fashion. In the future, the Agency may consider amending 40 CFR 260.22 to incorporate the use of the EPACML into the delisting regulations. However, the Agency believes it is still proper to use this model as a tool in evaluating individual delisting petitions, as appropriate.

Comment: One commenter believed that the proposal fails to meet statutory requirements of the Hazardous and Solid Waste Amendments (HSWA) to "consider other factors other than those for which the waste was listed." The commenter believed that the Agency has considered only "other constituents" but has failed to consider any other factors. The commenter believed that the proposed rule should be withdrawn and revised to reflect other factors to be considered in making the delisting petition decision.

Response: The Agency believes that it has fully complied with HSWA in evaluating this petition. HSWA requires the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. For example, the Agency evaluated whether the waste exhibited any of the hazardous waste characteristics of ignitability, reactivity, or corrosivity. In addition, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). As noted above, the Agency has also considered alternate exposure scenarios in its evaluation. In each case, the Agency determined that Reynolds' petitioned waste did not meet the criteria for classification as a hazardous waste and thus proposed an exclusion for the waste. As a result, the Agency believes that it has complied with HSWA and evaluated those factors which could cause the waste to be hazardous. The Agency notes that the commenter failed to mention any specific additional factors that it felt were ignored during the Agency's evaluation.

Comment: One commenter believed that the Agency should continue to use the Organic Leachate Model (OLM) in deriving delisting levels or predicting the leachate concentration from a waste source, and recommended that the Agency update the OLM to include more recent data.

Response: The OLM was initially developed by the Agency to provide a means of predicting the leachate concentration of organic constituents of concern in delisting petition review prior to the development of the TCLP method. The Agency relied on the OLM because, at the time, no reliable laboratory leaching technique had been accepted by the Agency. The OLM is an empirical model developed based on a data base of EP, modified EP, lysimeter, and other leachate data. The Agency developed the form of the model based on a theoretical leaching model and performed curve fitting regression analyses to determine that optimum model parameters. The results of the model are controlled by the total constituent concentration and the constituent solubility. Since the Agency has promulgated the TCLP method, the Agency believes that it is more appropriate, in most cases, to use the extraction method to determine actual leachable organic concentrations instead of estimating the mobility of hazardous constituents based on total constituent data. Nevertheless, in Reynolds' case, the Agency evaluated organic constituent data from Reynolds' petition, using the OLM to estimate the concentration of organic constituents leaching from the petitioned waste because TCLP data were not specifically requested. The estimated organic constituent leachable concentrations were then used as inputs to the EPACML. The Agency evaluated this data and determined that the compliance-point concentrations were below the health-based levels for delisting decision-making. However, EPA established the levels in Condition (4)(B) based on the TCLP because the TCLP will provide a more direct indication of the potential leachability of organic constituents from this waste matrix than an empirical model. The Agency still believes, however, that the OLM is a useful tool in estimating the leachable levels of organic constituents, and may use it, as appropriate, in future delisting decisions.

Comment: One commenter believes that a consistent fate and transport model should be used in all delisting and related waste characterization rulemaking. The commenter went on to question whether the results of the VHS and EPACML are "correlatable", and if the Agency planned to reconsider past delistings and other rulemakings (*i.e.*, the Toxicity Characteristic) using the EPACML.

Response: As stated in the proposal to exclude Reynolds' waste, the Agency intends to use the EPACML, when appropriate, as a tool to evaluate the potential for waste to contaminate ground water at levels of concern. The Agency notes that the EPACML was used to support the promulgation of the Toxicity Characteristic (TC). While the input to the model used in the TC rule was somewhat different (*i.e.*, the delisting version uses the volume of the petitioned waste as an input, while the volume (more specifically the area of the landfill) was allowed to vary in the Monte Carlo simulation used in the TC rule), the use of the same model in both programs does, in fact, provide a measure of consistency. The Agency

discussed the reason for the differences in the delisting and TC use of the EPACML in the proposal to today's rule.

While the results to the EPACML and VHS are similar in some ways (*e.g.*, both yield DAFs that decrease as waste volume increases), the EPACML yields somewhat higher DAFs than the VHS model for a given volume of waste. Therefore, the Agency believes that delistings granted in the past would likely be granted if re-evaluated using the newer model. EPA is evaluating the impact of the new model on conditional delistings (*i.e.*, delistings that require verification testing of the waste, similar to Reynolds exclusion) and will consider the need for re-evaluation on a case-by-case basis.

g. Scaling Factor of 20

Comment: One commenter stated that the Agency has not demonstrated that the average remaining life span of subtitle D landfills in the United States is 20 years. This commenter also claimed that the use of the scaling factor of 20 is biased against facilities petitioning, on a one-time basis, for the exclusion of a specific volume of waste. One commenter noted that the EPA believes the 20-year scaling factor would discourage "intermittently-generated batches of waste" from being delisted but gives no reason as to why delisting of such wastes must be discouraged.

Response: The Agency believes that the 20-year operating life of a landfill, and therefore, the scaling factor of 20 is fully supported by a nationwide Agency survey of landfills (see Ref. 7, 56 FR 32998). The purpose of the 20-year scaling factor is to account for the total waste volume for wastes generated on a continual basis, as well as for wastes generated in intermittent batches, that may be placed in the same landfill. If a waste were generated in intermittent batches, the total volume would exceed that of the initial batch generated. For example, a facility could petition for 8,000 yd^3 batches of waste every five years. If this were to continue for 20 years, the actual total volume of waste would be 32,000 yd^3 rather than the 8,000 yd^3 evaluated in each petition submitted intermittently. Therefore, delisting separate intermittent batches would not account for the total volume of waste and could underestimate the hazard to human health and the environment.

The Agency also notes that a provision is made for one-time generated wastes (56 FR 32998); "* * * if the petitioner can conclusively demonstrate that the waste is no longer being generated, it will not be generated in the future, and no other similar waste is stored or disposed of on-site, then the factor of 20 seems unwarranted. Therefore, the Agency intends to evaluate petitions for one-time exclusions on a case-by-case basis." Thus, as described in the proposal, the Agency does not believe that the scaling factor of 20 is biased against wastes generated on a one-time basis, rather it plans to investigate these petitions on a case-by-case basis.

Comment: One commenter stated that the EPACML, rather than the VHS model, should be used to establish generic delisting criteria, such as those for toxic metals present in residues generated by the high temperature metals recovery (HTMR) processing of high zinc K061. This commenter, however, believed that the scaling factor of 20 greatly exaggerates the potential ground-water contamination associated with the use of HTMR slag as a road base, since the slag will not be placed at the same site for a period of 20 years.

Response: EPA believes that this comment is not germane to Reynolds' delisting decision and notes that the comment seems to be based on information presented in a recent Agency rulemaking establishing treatment standards for K061 electric arc furnace dust (see 56 FR 41164, August 19, 1991). EPA has not proposed the use of EPACML in evaluating this disposal scenario, nor has it solicited comments on the use of waste as a road base material. Furthermore, the Agency notes that it has no indication that Reynolds' waste would be used as road base and therefore, believes that disposal at the same site for 20 years is the most reasonable worst-case assumption for Reynolds' waste.

h. Waste Volume Considerations for Stabilized Wastes

Comment: One commenter believed that the use of EPACML DAFs will make it more difficult to delist a waste that has been stabilized and that the disincentive to dilution will actually be a disincentive to stabilization when it increases the volume of a waste.

Response: The Agency believes that if the waste has been efficiently stabilized, any volume increase resulting from stabilization may not be significant. Proper stabilization should ensure that hazardous constituents will not leach out using the TCLP and allow the waste to qualify for delisting despite any increase in volume as a result of stabilization. However, the commenter provided no data suggesting that any increase in volume from stabilization would significantly impact the likelihood of delisting, therefore, the Agency could not conduct a more quantitative evaluation of the effects of stabilization of volume increases. In the case of Reynolds' waste, the treated material did not, in fact, exceed levels of regulatory concern based on the EPACML, despite the increase in volume.

i. Surface Impoundment Waste Volume

Comment: One commenter believed that the use of the "stored liquid volume" for surface impoundment wastes is arbitrary and capricious. The commenter stated that EPA should use only the volume of hazardous waste in the surface impoundment and that volume of liquid should not be included in the volume used in the modeling evaluation. The commenter stated that if the liquid and solid fractions are to be handled differently (such as by removing and dewatering the sludge), the delisting should be handled separately, *i.e.*, the volume evaluated should be the volume of the waste removed.

Response: The Agency notes that this comment is not germane to Reynolds' delisting petition because the Reynolds petition is for a solid (not liquid) waste, and the Agency views the landfill disposal scenario as the most reasonable, not surface impoundment disposal. The Agency intends, when appropriate, to evaluate one-time volumes of combined liquid and solid wastes disposed of in surface impoundments by sizing surface impoundments based on the reported volume of stored liquid and solid wastes. This approach is not arbitrary and capricious, but rather, based on actual reported volumes. The Agency also believes that it is expected that contaminants may mix with the entire volume of liquid present in the impoundment. The use of the "stored liquid volume" is therefore justified if a submitted petition is for combined liquid and solid wastes to be managed as a whole. The Agency notes that a facility can, in fact, submit a separate petition for a one-time exclusion for the solid fractions (*i.e.*, settled sludge) removed from an existing impoundment. In this case, the Agency agrees with the commenter that the petitioner could excavate and dewater the sludge, and then test the resulting solids and liquid separately in an attempt to delist the solid and liquid fractions separately. In this case, the Agency would likely evaluate the volume of the dewatered sludge under a landfill scenario, but would still evaluate the liquid phase under a surface impoundment scenario.

j. Disposal Scenario Assumptions

Comment: A few commenters noted the assumption that the landfill's liner and cap will completely fail, combined with many other worst-case assumptions, fails to account for highly engineered state-of-the-art landfills and represents an unrealistic scenario, not a reasonable worst-case scenario. Another commenter believed that the uncapped landfill assumption greatly exaggerates the degree of ground-water contamination that could result from the use of HTMR slag as road base. The commenters suggested that the Agency reconsider the use of these assumptions and try to establish more realistic assumptions.

Response: The Agency notes that the EPACML does incorporate effects of a landfill soil cap in the modeling analyses. This is done indirectly through the assignment of infiltration rates calculated with the HELP model (see Ref. 1, 56 FR 32996) using different types of solids (*e.g.*, silty loam, silty clay loam, sandy loam). The Agency agrees that highly engineered landfills exist, but believes that wastes may not always be disposed of in highly-engineered, lined landfill systems that would effectively preclude the vertical migration of leachate. The Agency believes that a reasonable worst-case scenario consists of a subtitle D municipal waste landfill disposal scenario, and that the more sophisticated liners may eventually fail with time. Therefore, the Agency believes that it is appropriate to use the EPACML to evaluate plausible scenarios which might enhance the migration potential of hazardous constituents.

k. Use of the Infinite Source Assumption

Comment: A few commenters believed that the use of the infinite source assumption is unnecessary because data and modeling techniques are available to determine the leaching potential of any constituent in a waste disposal unit. One commenter urged EPA to abandon the infinite source assumption and more accurately determine, on a site-specific basis, the total volume of a particular constituent in a waste management unit. Another commenter suggested that the Agency check the validity of the infinite source assumption for each constituent modeled for the volume of waste that is assumed to be disposed. The same commenter also suggested that EPA decrease the scaling factor of 20 used to estimate the accumulation of wastes over multiple years to reflect the real-world dissipation and decay process. This commenter proposed that a more accurate method for deriving a scaling factor would include an adjustment for the mass of chemical removed based on the surface area of the landfill, the amount of rainfall, and the projected leachate concentration.

Response: EPA recognizes that, under some specific site conditions, the infinite source assumption may not hold true for some constituents subject to degradation. However, the Agency does not believe that there are sufficient data available at present to support the use of a finite-source model. The Agency is currently evaluating methods to address finite-source constituents and may consider use of these methods when they become available. However, the Agency believes that since the large majority of contaminants are stable under most subsurface conditions and will behave as an infinite source, this is an appropriate reasonable worst-case assumption. Furthermore, the commenters did not provide any specific data that indicated that an infinite source assumption would not be appropriate for the constituents evaluated for Reynolds' waste.

l. Biodegradation, Adsorption, and Metals Speciation

Comment: Some commenters encouraged EPA to refine and upgrade the EPACML to incorporate the phenomenon of attenuation brought about by other minerals in the soil (such as iron oxides) in addition to that of organic carbon. Several commenters recommended that biodegradation be considered. Several commenters suggested that, since delisting is a waste-specific regulatory action, EPA should use chemical-specific adsorption isotherms when they are available.

Response: The EPACML already handles different types of sorption reactions, as long as they follow a linear equilibrium isotherm. At the present time, there are insufficient data available to the Agency for general soil minerals (*e.g.*, clay minerals, iron oxides) to accurately model nonlinear sorption processes. In addition, none of the commenters provided specific data or procedures to allow incorporation of such sorption mechanisms in delisting evaluations. Therefore, the Agency assumed a reasonable worst-case scenario. EPA also recognizes that biodegradation can occur in the subsurface and has finalized a testing protocol for the development of biodegradation rates for use in the EPACML. Although the protocol was published on June 15, 1988 (55 FR 22300), the Agency still does not have sufficient data to develop a nationwide distribution of biodegradation rates for any of the organic contaminants of concern.

Comment: One commenter believed that the use of the linear equilibrium adsorption isotherm is overly conservative and is based on very idealistic analysis of existing literature data. This commenter believes further that the equilibrium partitioning approach is misused as it does not take into consideration the heterogeneity of soil and aquifer material.

Response: The Agency agrees that the assumption of linear equilibrium sorption is a simplifying assumption, given the complexity of chemical adsorption reactions in heterogeneous soil and aquifer materials. As a result, it is expected that the use of a linear equilibrium adsorption isotherm may be conservative in some cases, depending more on the magnitude of the distribution coefficients used, rather than on the linearity assumption. Heterogenity in aquifer adsorption effects is implicitly considered in the application through the Monte Carlo incorporation of distribution coefficients. The Agency believes this conservative assumption is appropriate, especially given possible kinetic limitations on sorption reactions in flowing ground-water systems.

Comment: One commenter believed that the handling of metals transport by the EPACML model does not account for precipitation reactions in the subsurface and is therefore unrealistic. The commenter recognized that the Agency is considering the use of the Mineral Thermal Equilibrium (MINTEQ) model to predict metals concentrations in the subsurface and considers this a positive step.

Response: The Agency is currently conducting research on the methodology and developing data to use the MINTEQ model for metals in association with the EPACML. When these results are available, the Agency may consider its use, as appropriate.

m. Other Modeling Assumptions

Comment: One commenter suggested that EPA should ensure that unrealistic or impossible combinations of input variables are not used in the EPACML. The commenter stated that the pairing of inconsistent model parameters may produce unreasonable results and that information on the parameters generated is not publicly available. The commenter recommended that EPA identify sets of realistic parameter combinations and document that these are indeed realistic combinations.

Response: The Agency points out that the EPACML does check for impossible combinations of input variables and these are rejected in the Monte Carlo analysis; however, EPA does not have enough data to develop comprehensive cross-correlations of input variables for

use in the Monte Carlo analysis. The Agency believes that the 95th percentile DAF represents a conservative yet reasonable worst-case combination of input parameters, and that the Monte Carlo approach used will prevent unrealistic combinations of input parameters from controlling the output of the model. The Agency also points out that information on the input parameters is publicly available in the Background Document for the EPACML (see Ref. 2, 56 FR 32997). Moreover, as indicated in the proposal to today's rule (56 FR 32997), an independent review of the distributions of input parameters concluded that range of input parameter values and distributions used by the EPACML are similar to the results of an independent nationwide survey.

Comment: One commenter believed that the assumption of one-dimensional steady and uniform advective flow ignores the variable nature of precipitation and the resultant potential volumes of leachate that may be generated. The same commenter recommended that EPA compare the results of the Hydrologic Evaluation of Landfill Performance (HELP) model with more sophisticated numerical codes that more accurately predict the rate and movement of fluids in heterogenous landfill systems.

Response: The comment does not make clear whether it is directed to the unsaturated zone or saturated zone assumptions of EPACML. The assumption of steady state, one-dimensional flow is made in both the unsaturated and saturated modules of EPACML. The assumption of one-dimensional steady state flow through the unsaturated zone is reasonable provided that the area of the source (landfill) is not too small. There is a substantial body of literature that indicates that use of such an assumption for unsaturated zone flow is reasonable and will not lead to great errors in transport predictions. Site-to-site variations in precipitation rates and volumes of leachate are accommodated through the Monte Carlo analysis in which the precipitation rate is treated as a random parameter based on nation-wide data collected by the Agency.

The use of a steady state flow assumption for saturated zone ground-water flow is also justified, since the model considers transport over long-term average conditions. Actual temporal fluctuations of ground-water flow rates due to seasonal variations of precipitation will occur over much shorter time periods than considered in the model. The assumption of one-dimensional ground-water flow is justified for the landfill waste disposal scenario in which the rate of leakage through the facility is of the same order or less than the regional recharge rate. Under this assumption, the ambient ground-water flow is not greatly impacted by the effects of recharge.

While the Agency acknowledges that other numerical codes exist to predict contaminant migration through landfills, it believes that the HELP model is adequate for the purposes of the delisting EPACML modeling effort. The Agency has conducted several studies to validate and verify the HELP model results using both field-scale physical models and data from actual landfill sites. These studies have been directed towards evaluating both individual model components and the model as a whole and show reasonable agreement between model predictions and field data; no consistent trends of overestimation or underestimation of landfill water balance parameters were seen. See EPA publications EPA–600/2–87–049, "Verification of the Lateral Drainage Component of the HELP Model Using Physical Models", 1987a; and EPA–600/2–87–050, "Verification of the HELP Model Using Field Data", 1987b. Some researchers also supported the use of the HELP model (Schroeder, P. R. and R. L. Peyton, "Field Verification of Help Model for Landfills", Journal of Environmental Engineering, Vol. 114, No. 2, 1988). Considering this observation and the Monte Carlo approach to using the model in developing the TC regulations, it is likely that any errors associated with specific model runs will average out over the course of the Monte Carlo analysis.

n. Use of the 95th Percentile DAFs

Comment: One commenter believed that the use of the 95th percentile for all input parameters does not represent a reasonable worst-case disposal scenario, but rather an improbable or impossible scenario. One commenter believed that EPA's proposal of a 95th percentile cutoff level for the DAF (while an 85th level was used in the Toxicity Characteristic rule) is logically inconsistent and unnecessarily stringent. This commenter stated that under conditions of greater certainty (in the input parameters) the DAF percentile should be decreased to the 85th percentile. One 95th commenter recommended that the DAF for delisting should not be set below 100 and that DAFs below 100 are inconsistent with EPA's approach to listing hazardous wastes and are more conservative than DAFs used to identify wastes under the TC rule. The commenter stated that delisting employs risk levels when evaluating carcinogens that are in order of magnitude lower for delisting than for the TC. Another commenter believed that EPACML still produces a highly conservative estimate of contamination in a drinking water well and that selection of the upper 85th percentile DAF probability distribution is sufficiently conservative for delisting levels as it is for setting TC regulatory levels.

Response: The Agency would like to clarify that the Monte Carlo procedure used by the EPACML does not use 95th percentile values of each input parameter, but rather selects values from the entire range of possible values for each input parameter. The output resulting from multiple simulations using this full range of input parameter values is a single distribution of DAFs and the Agency selects the 95th percentile DAF from this distribution.

The use of the Monte Carlo procedure does account for the fact that some of the parameter values selected may represent 50th percentile values while the values of other parameters for the same simulation may represent different percentiles. The Agency points to an independent review of EPACML input parameters that concluded that the range of values used are sound (see Ref. 5 in 56 FR 32977).

The Agency maintains that the goals of the characteristics program are different from those of the delisting program and that it is appropriate for delisting to be more stringent than characteristics (56 FR 32998). Characteristics levels are those equal to or above which a waste is clearly hazardous, delisting regulatory levels are those below which a waste is clearly nonhazardous. The Agency believes that the 95th percentile DAFs developed for delisting are representative of reasonable worst-case disposal scenarios and are appropriate for use in delisting evaluations, such as in the case of Reynolds' petition. The commenters did not demonstrate that the 95th percentile cutoff level is inappropriate.

Comment: One commenter stated that the comparison of the DAF percentile to multiple well comparisons for ground-water monitoring data is a weak argument since the DAF percentile and ground-water data are derived in fundamentally different ways using scientifically and statistically different approaches.

Response: With regard to the confidence level or level of statistical significance, the Agency acknowledges that the approach used to estimate DAFs differs from the approach used for multiple ground-water monitoring well

comparisons. However, the Agency believes that the goals of each evaluation are similar: *i.e.* to state with a degree of statistical certainty that a statistical hypothesis holds true. In any case, the Agency continues to believe that use of the 95th percentile DAFs is appropriate in order to ensure delisted wastes are non-hazardous.

3 Final Agency Decision

For the reasons stated in the proposal and described above, the Agency believes that Reynolds' kiln residue should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Reynolds Metals Company, located in Bauxite, Arkansas, for its kiln residue to be generated at its R.P. Patterson facility in Gum Springs, Arkansas described in its petition as EPA Hazardous Waste No. K088.

This exclusion initially applies only to the kiln residue generated by one rotary kiln at Gum Springs, Arkansas, during the treatment of spent potliner produced by Reynolds' four primary aluminum reduction facilities (*i.e.*, Massena, New York; Longview, Washington; Troutdale, Oregon; and Baie Comeau, Quebec). This exclusion will apply to kiln residues generated from a second kiln at the site, or residues from the treatment of spent potliners from other primary aluminum production facilities, only if the requirements in Condition (5) are satisfied. The maximum annual volume of kiln residues covered by this exclusion is a total of 300,000 cubic yards for all treatment kilns operated by Reynolds.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective December 30, 1991. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide good cause for making this rule effective immediately under the Administrative Procedure Act, 5 USC 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 USC §§ 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 (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation 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 recordkeeping requirements associated with this final 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 USC § 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and Recordkeeping Requirements.

Dated: December 19, 1991.

Jeffrey D. Denit,

Deputy Director, Office of Solid Waste.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 USC 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Reynolds Metals Company	Gum Springs, Arkansas	Kiln residue (generated at a maximum annual volume of 300,000 cubic yards per year) from rotary kiln treatment of spent potliners (EPA Hazardous Waste No. K088). This exclusion was published on December 30, 1991. This exclusion does not apply to electrostatic precipitator dust generated by the rotary kiln. This exclusion initially applies only to the treatment by one rotary kiln of potliners generated by Reynolds Metals' four primary aluminum facilities (Massena, New York; Longview, Washington; Troutdale, Oregon; and Baie Comeau, Quebec) described in the petition. Reynolds may only accept spent potliners from other sources, or modify its treatment process, or add an additional rotary kiln in accordance with Condition (5). This exclusion is conditional upon the submission of data obtained from each rotary kiln after it is established at the R.P. Patterson facility in Gum Springs, Arkansas. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern while the treatment facility is in operation, Reynolds must implement a testing program. This testing program must meet the following conditions for the exclusion to be valid: (1) *Operating Conditions:* (A) *Initial Verification Testing:* During the first 20 days of full-scale operation of the rotary kiln, at typical operating conditions, Reynolds must monitor and submit to EPA the rotary kiln operating conditions (including, but not limited to: Temperature range of the kiln (hot and cold end), kiln residue exit temperature, spent potliner feed rate, brown sand feed rate, limestone feed rate, natural gas feed rate, oxygen/air feed rate, and rotary kiln residence time of the raw materials). The ratio of the spent potliner feed rate to the combined feed rates of the spent potliner, brown sand, and limestone must be no more than 0.35. Information on all other operating conditions should encompass all conditions used for preliminary testing runs and those anticipated for subsequent waste processing. During initial verification testing, the petitioner must also demonstrate to EPA how the range of operating conditions could affect the process (*i.e.*, submit analyses of representative grab samples, as specified under Condition (2), of the kiln residue generated under the expected range of operating conditions). The source of the brown sand must be from Reynolds' dry lake beds at the Bauxite, Arkansas facility. Reynolds must submit the information specified in this condition and obtained during this initial period no later than 90 days after the treatment of the first full-scale batch of spent potliner. (B) *Subsequent Verification Testing:* During subsequent verification testing, Reynolds must monitor the performance of the rotary kiln at all times to ensure that it falls within the range of operating conditions demonstrated during initial verification testing, to be adequate to maintain the levels of hazardous constituents below the delisting levels specified in Condition (4). The feed rates of spent potliner, lime and brown sand are to be as that described in Condition (1)(A). Records of the operating conditions of the rotary kiln (including, but not limited to: Temperature range of the kiln, kiln residue exit temperature, spent potliner feed rate, brown sand feed rate, limestone feed rate, natural gas feed rate, oxygen/air feed rate, and rotary kiln residence time of the raw materials) should be maintained on site for a minimum of five years. This information must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Arkansas. (2) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 methodologies. For fluoride, samples must be analyzed using Method 340.2 from "Methods for Chemical Analysis of Water and Waste". If the EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, Reynolds may replace the testing required in Condition (2)(A) with the testing required in Condition (2)(B). Reynolds must continue to test daily composites of kiln residue generated beyond the time period specified in Condition (2)(A) until and unless notified by EPA in writing that testing in Condition (2)(A) may be replaced by Condition (2)(B) (to the extent directed by EPA). (A) *Initial Verification Testing:* During the first 20 operating days of full-scale operation of the new on-line rotary kiln, Reynolds must collect and analyze daily composites of kiln residue. Daily composites must be composed of representative grab samples collected every 6 hours during each 24-hour kiln operating cycle. The kiln residue samples must be analyzed, prior to the disposal of the kiln residue, for all constituents listed in Condition (4). Reynolds must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch of untreated spent potliner. (B) *Subsequent Verification Testing:* Following notification by EPA, Reynolds may substitute the testing conditions in (2)(B) for (2)(A). Reynolds must collect and analyze both daily and weekly composites of kiln residue. Daily composites must be composed of representative grab samples collected every 6 hours during a 24-hour kiln operating cycle and these samples must be analyzed, prior to the disposal of the kiln residue, for leachable concentrations of cyanide and fluoride. Weekly composites must be composed of representative grab samples collected every 6 hours during a 24-hour kiln operating cycle for each day in the week that the kiln is operating. The weekly samples must be analyzed, prior to the disposal of the kiln residue, for the leachable concentrations of the inorganics listed in Condition (4)(A) and leachable levels of the semi-volatile organic compounds listed in Condition (4)(B). Analyses of both daily and weekly samples must be completed prior to the disposal of waste generated during that week as set forth in Condition (3). The analytical data, including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Arkansas. (3) *Waste Holding and Handling:* Reynolds must store, as hazardous, all kiln residue generated until verification testing (as specified in Condition (2)(A) and (2)(B)) is completed and compared, by the petitioner, with the delisting levels set forth in Condition (4). If the levels of hazardous constituents measured in the samples of kiln residue generated do not exceed any of the levels set forth in Condition (4), then the kiln residue is non-hazardous and may be managed and

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any daily or weekly sample exceed any of the delisting levels set in Condition (4), the kiln residue generated during the time period corresponding to this sample must be retreated until it meets these levels (analyses must be repeated) or managed and disposed of in accordance with Subtitle C of RCRA. Kiln residue which is generated but for which the required analysis is not complete or valid must be managed and disposed of in accordance with Subtitle C of RCRA, until valid analysis demonstrates that Condition (4) is satisfied. (4) *Delisting Levels:* All concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. (A) The leachable concentrations for metals may not exceed the following levels (ppm): arsenic, selenium, or silver—0.60; barium—12.0; antimony—0.12; lead—0.18; cadmium—0.06, chromium or nickel—1.2; mercury—0.024; beryllium—0.012; fluoride—48.0; and cyanide—2.4 (cyanide extraction must be conducted using deionized water). (B) The leachable constituent concentrations for organics may not exceed the levels listed below (ppm): Acenapthene—24 Benz(a)anthracene—$1.2x10^{-4}$ Benzo(b)fluoranthene—$2.4x10^{-4}$ Benzo(a)pyrene—$2.4x10^{-3}$ Chrysene—$2.4x10^{-3}$ Fluoranthene—12 Indeno (1,2,3-cd)pyrene—$2.4x10^{-3}$ Pyrene—12 (5) *Changes in Operating Conditions and Waste Sources:* If after completing the initial verification test period in Conditions (1)(A) and (2)(A), Reynolds decides to treat spent potliner from any other primary aluminum reduction facility; or use a new source for brown sand; or otherwise significantly change the operating conditions developed under Condition (1); then Reynolds must notify EPA in writing prior to instituting the change. Reynolds must also reinstitute the testing and reporting required in Conditions (1)(A) and (2)(A) for a minimum period of four operating days and fulfill all other requirements in Conditions (1) and (2), as appropriate. Reynolds may also add one additional kiln at its R.P Patterson facility in Gum Springs, Arkansas if it can demonstrate that the new kiln can successfully treat spent potliners. Reynolds must fulfill all requirements contained in Conditions (1) and (2) for the second kiln. Reynolds must continue to test any kiln residue generated beyond the time period specified in Condition (2)(A) until and unless notified in writing by EPA that testing Condition (2)(A) may be replaced by (2)(B) to the extent directed by EPA. (6) *Data Submittals:* Reynolds must notify in writing the Section Chief, Delisting Section (see address below) when the rotary kiln is on-line and two weeks prior to when waste treatment will begin. The data obtained through Conditions (1)(A) and (2)(A) must be submitted to the Section Chief, Delisting Section, OSW (OS-333), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. At the Section Chief's request, Reynolds must submit any other analytical data obtained through Conditions (1)(B) and (2)(B) within the time period specified by the Section Chief. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC § 1001 and 42 USC § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. "As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. "In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 91-31150 Filed 12-27-91; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 205, 209, 211, 214, 215, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 237, 239, 242, 243, 245, 249, 250, 252, 253, and Appendix G

[Defense Acquisition Circular (DAC) 91-1]

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final and interim rules.

SUMMARY: Defense Acquisition Circular (DAC) 91–1 amends the Defense FAR Supplement (DFARS) (1991 Edition) coverage on contractor identification systems, acquisition and distribution of commercial products, evaluation of acquisitions for services and uncompensated overtime, historically black colleges and universities and minority institutions, Pilot Mentor-Protege Program, hazardous material identification, drug-free work force, expiration of restrictions on Toshiba/Kongsberg, restriction on air circuit breakers for naval vessels, restriction on antifriction bearings, offset administrative costs, IR&D/B&P costs, customary progress payment rates, GAO protest regulations, contracting officer final decisions, parcel post eligible shipments, notifications of substantial impact on employment, plant clearance duties, and announcement of contract awards.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Hughes, Defense Acquisition Regulations System, OUSD(A), The Pentagon, Washington, DC 20301–3000, telephone (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in chapter 2 title 48 of the Code of Federal Regulations.

The December 31, 1991 revision of the CFR is the most recent edition of that title.

The interim rules included in DAC 91–1 (Items IV, V, XI, and XVII) were published previously in the **Federal Register** for public comment. Their publication in DAC 91–1 does not constitute a request for comment.

Item IV is a revision of the interim rule published April 12, 1991 (56 FR 18610).

Item V was published September 5, 1991 (56 FR 43986) and amended September 30, 1991 (56 FR 49506).

Item XI was published December 9, 1991 (56 FR 64211).

Item XVII was published October 18, 1991 (56 FR 52440).

B. Regulatory Flexibility Act

DAC 91–1 Items IV, V, VI, VII, IX, XII, XIII, XIV, XV, XVI, XVII, and XX

These rules were published as either interim or final rules in DAC 88–19 (56 FR 60066). They are included in this DAC in substantially the same form as in DAC 88–19, except for minor editorial revisions which do not constitute significant revisions within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply.

DAC 91–1, Items I, II, III, VIII, X, XVIII, XIX, XXI, XXII, and XXIII

These informational items and final rules do not constitute significant revisions within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply.

DAC 91–1 Item XI

This item was published for public comment on December 9, 1991 (56 FR 64211). Public comments received in response to that notice will be considered in development of the final rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this DAC do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 202, 204, 205, 209, 211, 214, 215, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 237, 239, 242, 243, 245, 249, 250, 252, 253, and Appendix G

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations System.

(Defense Acquisition Circular No. 91–1, dated December 31, 1991)

All Defense FAR Supplement and other directive material contained in this circular is effective December 31, 1991, unless otherwise specified in the Item summary.

Defense Acquisition Circular (DAC) 91–1 amends the Defense FAR Supplement (GFARS) 1991 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Revision of Activity Address Codes and Call/Order Codes

For information and planning purposes, a proposed revision of DFARS Subpart 204.70, Uniform Procurement Instrument Identification Numbers, is included in this DAC as Attachment I. Effective October 1, 1993, the Activity Address Codes contained in DFARS appendix G will be replaced by the DoD Activity Address Codes in DoD 4000.25–D, DoD Activity Address Directory, and the two position call/order code will be replaced by the numbering system specified in the proposed revision of DFARS subpart 204.70. Appendix G will be eliminated at that time. Formal notice of these proposed changes will be published for public comment at a later date.

Item II—Contractor Identification Systems

DFARS 204.7202–2 and 204.7204–2 are revised to incorporate the new contractor identification numbering system that will become effective in January 1992. Also, several editorial clarifications have been made in 253.204–70. Both the new system and the old system (DUNS numbers) may be used through the end of fiscal year 1992. The new system must be used for reporting in fiscal year 1993 and after.

Item III—Debarment Decisions

The eight factors in 209.406–1(d) of the 1988 edition of DFARS, that are to be considered in making a debarment decision are being incorporated in FAR by FAC 90–09 and for this reason do not appear in the 1991 edition of DFARS.

Item IV—Acquisition and Distribution of Commercial Products

Departmental Letter 91–020, issued September 26, 1991, advised that the clause at 252.211–7005, Limitation of Liability, may not be appropriate for use in all contracts for commercial items and shall not be used in part 211 contracts, pending issuance of the part 211 final rule. Consequently, the clause at 252.211–7005 and its prescription in 211.7005(a)(25) have been deleted.

Until final rule is published, in contracts for commercial automatic data processing equipment, contracting officers shall follow the guidance at FIRMR 201–39.4601 and shall use the clause at FIRMR 201–39.5202–6, "Warranty Exclusion and Limitation of Damages," unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

In contracts for all other commercial items, contracting officers are to follow the guidance at FAR subpart 46.8, and may use the Limitation of Liability clauses at FAR 52.246–23 and 52.246–24 or other liability clauses authorized for use by a Military Department or Defense Agency.

Item V—Evaluation of Acquisitions for Services and Uncompensated Overtime

Departmental Letter 91–017, dated August 19, 1991, revised DFARS subparts 215.6 and 237.1 and added a

solicitation provision entitled "Identification of Uncompensated Overtime" as interim implementation of section 834 of the FY 1991 DoD Authorization Act (Pub. L. 101-510). Section 834 requires the Secretary of Defense to issue regulations to ensure, to the maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours provided. These interim DFARS revisions include guidance on evaluation of service acquisitions and on factors to consider in evaluating proposals to ensure that the use of uncompensated overtime does not degrade the level of technical expertise required. Language and a solicitation provision have been added on the use of uncompensated overtime. The new provision at 252.237-7019 is to be used in all solicitations estimated at $100,000 or more for services to be acquired on the basis of the number of hours to be provided.

Item VI—Historically Black Colleges and Universities and Minority Institutions

DFARS 219.705-2, 226.7000, and 226.7002 are revised to implement section 832 of the FY 1991 DoD Authorization Act (Pub. L. 101-510). Section 832 provides for further enhancement of opportunities for participation of historically black colleges and universities and minority institutions in DoD programs.

Item VII—Pilot Mentor-Protege Program

Departmental Letter 91-016, dated July 31, 1991, revised DFARS 232.412 and added subpart 219.71 and a clause entitled Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, to implement section 831 of the FY 1991 Defense Authorization Act (Pub. L. 101-510), as amended. Section 831 required that DOD establish a test program offering incentives to major contractors which provide developmental assistance to small disadvantaged businesses. Policy and procedures for operation of the test program are described in detail in a DoD policy document entitled "DoD Policy For the Pilot Mentor-Protege Program," a copy of which was included in Defense Acquisition Circular 88-19.

Item VIII—Hazardous Material Identification

DFARS 223.302 and 223.303 are revised and 223.71 and the clauses at 252.223-7000 and 252.223-7004 are deleted as the language was incorporated in FAR by Item IV of FAC 90-08.

Item IX—Drug-Free Work Force

This final rule replaces the interim rule at subpart 223.5 and 252.223-7005, which is redesignated as 252.223-7004. It removes all language that duplicated the Drug-Free Workplace rule in FAR subpart 23.5 and it eliminates any ambiguity as to whether drug testing is required.

Item X—Expiration of Restrictions on Toshiba/Kongsberg

DFARS subpart 225.10 is deleted in consonance with the deletion of FAR subpart 25.10.

Item XI—Restriction on Air Circuit Breakers for Naval Vessels

DFARS Subpart 225.70 is amended to add the restriction on acquisition of air circuit breakers for naval vessels imposed by section 1421 of the fiscal year 1991 Defense Authorization Act (Pub. L. 101-510).

Item XII—Restriction on Antifriction Bearings

The restriction in the 1988 edition of the DFARS at 208.7902 on the acquisition of antifriction bearings has been extended from September 30, 1991 until December 31, 1992. DFARS 225.7103 is amended by adding paragraph (h) to recognize the December 31, 1992 limitation on the restriction.

Item XIII—Offset Administrative Costs

DFARS subpart 225.73 language on cost of doing business with a foreign government was revised on an interim basis by Departmental Letter 91-015, dated July 15, 1991, to permit defense contractors to recover allowable offset administrative costs from foreign governments under foreign military sales contracts. This revision of DFARS 225.7303-2(a)(2)(iii) supersedes and finalizes the interim rule.

Item XIV—IR&D/B&P Costs

DFARS parts 225, 231, and 242 were revised by a final rule issued by Departmental Letter 91-018. The rule implements Section 824 of the FY 1991 DoD Authorization Act (Pub. L. 101-510) by incorporating the new, broader standard for IR&D/B&P projects which are of "potential interest to DoD." DFARS 225.7303-2(b) was revised to remove an inconsistency that currently exists with 255.7303-2(c). DFARS 225.7303-2(c) was revised to correct an erroneous reference to IR&D/B&P ceiling limitations or formula constraints as being contained in DFARS part 231, rather than in FAR part 31. DFARS 231.205-18 incorporates the new, broader legislative standard for IR&D/B&P projects which are of "potential interest to DoD," including the specific examples of such projects listed in 10 U.S.C. 2372(c). DFARS 242.1005(a) was added to clarify that the DoD IR&D Technical Evaluation Group is responsible for providing appropriate guidance to contractors for submission of technical information to support IR&D proposals. DFARS 242.1005(b) was revised to clarify that the DoD IR&D Technical Evaluation Group is responsible for providing contracting officers with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD. DFARS 242.1005(c), 242.1006, and 242.1007 were revised to incorporate the new standards of "potential interest to DOD" and to otherwise satisfy the requirements of 10 U.S.C. 2372.

Item XV—Customary Progress Payment Rates

DFARS 232.5 was revised and a clause entitled DoD Progress Payment Rates was added by Departmental Letter 91-014 to implement DoD's customary uniform progress payment rates for contracts awarded July 1, 1991 through March 31, 1992. Rates for subsequent years will be published in the first quarterly DAC for the calendar year. The customary uniform rates for July 1, 1991 through March 31, 1992, are 85 percent for large business, 90 percent for small business, and 95 percent for small disadvantaged business. This change does not affect progress payment rates for the repair, maintenance, or overhaul of naval vessels which are governed by rates established by the Secretary of the Navy in accordance with 10 U.S.C. 7312, as amended. For flow-down to subcontractors, refer to (j)(4) of the progress payments clause at FAR 52.232-16.

Item XVI—GAO Protest Regulations

This is a final rule which implements the General Accounting Office's (GAO) revised protest procedures (4 CFR part 21), which went into effect on April 1, 1991. The DFARS language covers only those portions of GAO's revised rules which pertain to contracting officers and is to be used until a permanent FAR change is made.

DFARS 233.104, which is a substantial rewrite and is to be used in lieu of FAR 33.104, implements GAO's revised procedures, presents procedures in a more logical order, and makes other editorial improvements. The most significant procedures address the information an agency is required to provide to GAO, protective orders

issued by GAO, and formal fact-finding hearings.

Agency reports to the GAO must now include all evaluation documents. In addition, agencies must also make available to GAO any document specifically requested by the protestor. GAO's new rules provide interested parties with easier access to documents. Accordingly, DFARS 233.104(a)(5) addresses requests for, and GAO issuance of, protective orders to limit the right to use and disclose released documents. DFARS 233.104(e) gives notice of GAO's formal fact-finding hearings, with minimal discussion of the detailed procedures.

Item XVII—Contracting Officer Final Decisions

This interim rule was issued by Departmental Letter 91–021. It adds section 233.211 to require contracting officers to insert a "note" in all contracting officer final decisions, immediately following the paragraph required by FAR 33.211(a)(4)(v). The note advises the contractor to refer to a recent Circuit Court decision which may affect the contractor's choice of a forum for appeal.

Item XVIII—Effective Date of DFARS Part 241

DFARS part 241, Acquisition of Utility Services, included in the 1991 edition, shall not be used until publication of FAR part 41, Acquisition of Utility Services, in a Federal Acquisition Circular. The effective date of DFARS part 241 will be announced in a forthcoming Defense Acquisition Circular. It is anticipated that the final rule on FAR Part 41 will be published by April 15, 1992. Until DFARS part 241 becomes effective, continue to use ASPR Supplement #5, Procurement of Utilities Services, with the provisions and clauses prescribed by FAR and DFARS, as appropriate for each acquisition.

Item XIX—Parcel Post Eligible Shipments

DFARS 242.1404–1 is added to provide a reference to DoD 4525.8–M, DoD Official Mail Manual.

Item XX—Notification of Substantial Impact on Employment

DFARS subparts 243, 249, 252, and 253 are revised to implement section 4201 of the FY 1991 DoD Authorization Act (Pub. L. 101–510). Section 4201 requires the Secretary of Defense to notify the Secretary of Labor if the modification or termination of a major defense contract or subcontract will have a substantial impact on employment.

The rule requires reporting on modifications or convenience terminations of prime contracts valued at $5 million or more, or subcontracts of $500,000 or more, which will have a substantial impact on employment. Contracting officers must either modify existing contracts to incorporate the clause at 252.249–7001, Notification of Substantial Impact on Employment, or tailor any termination notices that are subsequently issued against these contracts to request the contractor to provide a statement of impact on employment.

Item XXI—Plant Clearance Duties

DFARS 245.603–70(a) is amended to eliminate the requirement for a plant clearance officer to be on site in order to authorize the contractor to perform plant clearance functions.

Item XXII—Announcement of Contract Awards

DFARS 205.303(a) is revised to change the instructions on reporting awards for public announcement. The basis for determining whether an award must be reported has been changed from contract obligations to contract face value.

Item XXIII—Editorial Revisions

(a) The name of the Defense Communications Agency has been changed to the Defense Information Systems Agency. DFARS has been amended to reflect the name change.

(b) The definition of "contracting activity" at DFARS 202.101 is amended to correct the name of the Defense Mapping Agency's contracting activity.

(c) DFARS 204.670–8 is amended to update an address.

(d) DFARS 209.403(1) is amended to update the designation of the Navy debarring official.

(e) DFARS 215.811–70(a)(3) is amended to revise "252.215–7001" to read "252.215–7002."

(f) DFARS 215.811–70(c)(1)(i) is amended to revise "252.215–7001" to read "252.215–7002."

(g) DFARS 217.502 is revised to clarify the language.

(h) DFARS 217.7404–4 is amended to change the word "obligations" to read "expenditures."

(i) DFARS 222.101–3(3) is amended to revise "RCS DD I&L (AR) 1153" to read "RCS DD P&L (AR) 1153."

(j) DFARS 225.102(b)(ii) is amended for clarification.

(k) DFARS 225.703 is amended for clarification.

(l) DFARS 225.802–70(a) and (b)(1) are amended to revise "administrtion" to read "administration."

(m) DFARS 225.7101 is amended to revise "252.225–7022" to read "252.225–7025."

(n) DFARS 227.403–77 is amended for clarification.

(o) DFARS 231.7003–1(a)(2)(i) is amended by changing "or" to "and."

(p) DFARS 245.104(a) is amended by revising "DoD 4275.5–M" to read "DoD 4161.2–M."

(q) DFARS 250.201–70(b)(2) is amended to update the approval authority for indemnification against unusually hazardous or nuclear risks.

(r) The date "May 1991" is added to the clause at 252.211–7019.

(s) DFARS 252.211–7019 is amended by changing the designation paragraph "a)" to read paragraph "(a)".

(t) DFARS 252.225–7006 is amended by revising in paragraph (c)(1)(i) the words "Trade Agreements Act" to read "Buy American Act and Balance of Payments Program".

(u) DFARS 252.225–7009 is amended in paragraph (f)(2)(iv) by removing the quotation marks at the end of the second sentence.

(v) DFARS 252.228–7001 is amended by revising in paragraph (i)(2)(ii) the word "damage" to read "damaged".

(w) DFARS 252.234–7000 is amended by revising the clause title to read "Notice of Cost/Schedule Control Systems (Dec 1991)" in lieu of "Cost/Schedule Control Systems (Dec 1991)"

(x) Paragraph (a)(1) of the clause at 252.239–7000 is amended by revising "NACSIM" to read "NACSEM."

(y) DFARS 253.204–70(d)(5)(i)(H) is amended by revising "Enter Code H" to read "Enter code N."

(z) DFARS 253.204–70(d)(5)(xi)(B)(*1*) is amended by revising "52.219–7019" to read "52.219–19."

(aa) Part 253 is amended by updating the DD Form 350 and DD Form 1057.

(bb) Appendix G, part 7, is amended by adding an activity address number.

Amendments to Defense FAR Supplement

Therefore, the Defense FAR Supplement is amended as set forth below.

1. The authority for 48 CFR parts 202, 204, 205, 209, 211, 214, 215, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 237, 239, 242, 243, 245, 249, 250, 252, 253, and appendix G continues to read as follow:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, and FAR subpart 1.3.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101 is amended by revising under the definition entitled "Contracting activity" the entry "*Defense Communications Agency*, Headquarters, Defense Communications Agency" to read "*Defense Information Systems Agency*, Headquarters, Defense Information Systems Agency"; by revising under the definition entitled "Contracting activity" the entry *Defense Mapping Agency*, "Headquarters, Logistics Office" to read "Headquarters, Office of Acquisition, Installations and Logistics"; by revising under the definition entitled "Departments and agencies" the entry "Defense Communications Agency" to read "Defense Information Systems Agency."

PART 204—ADMINISTRATIVE MATTERS

3. Section 204.670–8 is revised to read as follows:

204.670–8 Security classification.

Submit DD Forms 350 as unclassified documents. Classified contracts are not exempt from reporting solely because the contract is classified. Contact the appropriate departmental data collection points for special instructions if security reasons indicate that it is necessary to modify coding of all or any individual blocks on the DD Form 350. If such contact cannot be made for security reasons, obtain instructions from the Office of the Assistant Deputy Under Secretary of Defense for Security Policy, Attn: Assistant for Special Programs. Telephone number is (703) 614–0578/9 or DSN 224–0578/9.

204.7000 [Amended]

4. Section 204.7000 is amended by revising in paragraph (a) the words "Defense Communications Agency" to read "Defense Information Systems Agency."

204.7003 [Amended]

5. Section 204.7003 is amended by revising paragraph (a)(1)(i)(D) to read "Defense Information Systems Agency DISA" in lieu of "Defense Communications Agency DCA."

204.7102 [Amended]

6. Section 204.7102 is amended by revising in paragraph (b)(3) the words "Defense Communications Agency" to read "Defense Information Systems Agency."

204.7202–2 [Amended]

7. Section 204.7202–2 is amended by adding two new sentences after the first sentence in the introductory paragraph to read "For Reporting in Fiscal Year 1992, the CEC may be either a DUNS number or the alphanumeric number in the Government-owned system operated by Dun & Bradstreet. The DUNS number will not be reported beyond FY 1992."; by revising paragraph (c)(1)(i) to read "Telephone (215) 865–0204."; by revising paragraph (c)(1)(ii) to read "Facsimile (215) 882–7295."; by revising paragraph (c)(1)(iii) to read "Writing to FPDC Department, Dun & Bradstreet Information Services, 899 Eaton Avenue, Bethlehem, PA 18025–0013."; by revising paragraph (c)(2)(ii) to read "Contracting office code assigned by the departmental data collection point and appropriate Agency code as follows: (A) Army activities—2100; (B) Navy activities—1700; (C) Air Force activities—5700; (D) Defense Logistics Agency—97AS; and (E) Other DoD contracting activities—9700."; and by revising paragraph (c)(2)(vi) to read "Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, ZIP code, and telephone number, if applicable."

8. Section 204.7204–2 is revised to read as follows:

204.7204–2 Maintenance of the CEC codes.

Changes, except name changes, may be submitted in writing using company letterhead by the entity identified by the code through the contract administration office, by the contracting office or the contract administration office (see also FAR Subpart 42.12, Novation and Change-of-Name Agreements), using the agency letterhead, by mail, facsimile or electronic equivalent to FPDC Department, Dun & Bradstreet Information Services, 899 Eaton Avenue, Bethlehem, PA 18025–0013.

Part 205—PUBLICIZING CONTRACT ACTIONS

8.a. Section 205.303 is amended by revising paragraph (a)(i) and paragraph (a)(ii)(D) *(1)* and *(3)* to read as follows:

205.303 Announcement of contract awards.

(a) *Public Announcement.*

(i) The threshold for DoD awards is $5 million. Report all contractual actions, including modifications, that have a face value, excluding unexercised options, of more than $5 million.

(A) For undefinitized contractual actions, report the not-to-exceed (NTE) amount. Later, if the definitized amount exceeds the NTE amount by more than $5 million, report only the amount exceeding the NTE.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, report the initial award if the estimated face value, excluding unexercised options, is more than $5 million. Do not report orders up to the estimated value, but after the estimated value is reached, report subsequent modifications and orders that have a face value of more than $5 million.

(C) Do not report the same work twice.

(ii) * * *

(D) * * *

(1) Contract data. Contract number, modification number, or delivery order number, face value of this action, total cumulative face value of the contract, description of what is being bought, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

* * * * *

(3) Contractor data. Name, address, and place of performance (if significant work is performed at a different location);

* * * * *

PART 209—CONTRACTOR QUALIFICATIONS

209.202 [Amended]

9. Section 209.202 is amended in paragraph (a)(1) by revising Defense Communications Agency—Director, Acquisition Management." to read "Defense Information Systems Agency—Director, Acquisition Management".

209.403 [Amended]

10. Section 209.403 is amended by revising under the definition entitled "Debarring official" the entry "Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition)" to read "Navy—the General Counsel of the Department of the Navy"; and by revising the entry "Defense Communications Agency—The General Counsel" to read "Defense Information Systems Agency—The General Counsel."

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

211.7005 [Amended]

11. Section 211.7005(a)(25) is revised to read " (25) 252.211–7005 Reserved."

214.406–3 [Amended]

12. Section 214.406–3 is amended by revising paragraph (e)(ii)(B) to read "Defense Information Systems Agency: General Counsel, DISA." in lieu of

"Defense Communications Agency: General Counsel, DCA."

PART 215—CONTRACTING BY NEGOTIATION

13. Section 215.605 is amended by adding paragraph (c) to read as follows:

215.605 Evaluation factors.

* * * * *

(c) In competitive acquisitions of services—

(i) Evaluation and award should be based, to the maximum extent practicable, on best overall value to the Government in terms of quality and other factors.

(ii) The weighting of costs must be commensurate with the nature of the services being acquired.

(A) It may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price when—

(1) The effort being contracted for departs from clearly defined efforts; and

(2) Highly skilled personnel are required.

(B) It may be appropriate to award to the technically acceptable offeror with the lowest price when—

(1) Services being acquired are of a routine or simple nature;

(2) Highly skilled personnel are not required; and

(3) The product to be delivered is clearly defined at the outset of the acquisition.

14. Section 215.608 is amended by adding paragraph (a) to read as follows:

215.608 Proposal evaluation.

(a) Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided (see 237.170) will not degrade the level of technical expertise required to fulfill the Government's requirements. When acquiring such services, contracting officers shall conduct a risk assessment, and evaluate for award on that basis, any proposals received that reflect factors such as—

(i) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(ii) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

* * * * *

215.811-70 [Amended]

15. Section 215.811-70 is amended by revising the reference in paragraph (a)(3) to read "252.215-7002" in lieu of "252.215-7001"; and by revising the reference in paragraph (c)(1)(i) to read "252.215-7002" in lieu of "252.215-7001".

PART 217—SPECIAL CONTRACTING METHODS

16. Section 217.502 is revised to read as follows:

217.502 General.

Unless otherwise stated in department or agency regulations, the agency head designee is the contracting officer.

217.7404-4 [Amended]

17. Section 217.7404-4 is amended by revising in the second sentence the word "obligations" to read "expenditures".

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

18. Section 219.705-2 is revised to read as follows:

219.705-2 Determining the need for a subcontracting plan.

(d) The extent to which offerors identify and commit to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as joint venture, teaming arrangement, or subcontractor, shall be an evaluation factor in source selection for research and development acquisitions, major systems acquisitions, and other complex or sensitive acquisitions which use formal or alternative source selection procedures.

219.708 [Amended]

19. Section 219.708 is amended by adding a new sentence at the end of paragraph (c)(1)(A) to read "Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistance credit under the Pilot Mentor-Protege Program (see Subpart 219.71).

20. A new subpart 219.71 is added to read as follows:

Subpart 219.71—Pilot Mentor-Protege Program

Sec.

219.7100 Scope.
219.7101 Policy.
219.7102 General.
219.7103 Procedures.
219.7103-1 General.
219.7103-2 Contracting officer responsibilities.
219.7104 Developmental assistance costs eligible for reimbursement or credit.
219.7105 Other forms of assistance.
219.7106 Reporting.

Subpart 219.71—Pilot Mentor-Protege Program

219.7100 Scope.

This subpart implement the Pilot Mentor-Protege Program (the Program), established under section 831 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, as amended. The purpose of the Program is to provide incentives for DoD contractors to assist small disadvantaged businesses in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

219.7101 Policy.

DoD policy for implementation of the Program is contained in a policy statement entitled, "DoD Policy for the Pilot Mentor-Protege Program." This statement addresses the program purpose, general procedures, duration, eligibility requirements, the selection/approval process, the mentor-protege agreement, advance agreements on the treatment of developmental assistance costs, and reporting requirements. A copy of the statement may be obtained from the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition, OUSD(A) SADBU, room 2A340, The Pentagon, Washington, DC 20301-3061, (703) 697-1688.

219.7102 General.

The Program consists of:

(a) Mentor firms, which are prime contractors with at least one active subcontracting plan negotiated under FAR subpart 19.7.

(b) Protege firms, which are small disadvantaged business (SDB) concerns, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements which establish a developmental assistance program for a protege firm.

(d) Incentives, which may be provided to mentor firms by the DoD including:

(1) Reimbursement for developmental assistance costs through a modification to an existing cost reimbursement contract to establish a separately priced contract line item; or

(2) Credit toward SDB subcontracting goals, established under a subcontracting plan negotiated under FAR subpart 19.7, for developmental assistance costs not reimbursed; or

(3) A combination of reimbursement and credit.

219.7103 Procedures.

219.7103-1 General.

(a) In accordance with the DoD policy statement, a prospective mentor firm shall:

(1) Apply to OUSD(A) SADBU when seeking credit only or when funding is made available from a DoD program manager to implement a mentor-protege agreement; and

(2) Subsequent to approval as a mentor firm, submit a signed mentor-protege agreement(s) to OUSD(A) SADBU for approval before developmental assistance costs may be reimbursed through an existing DoD contract or credited against SDB subcontracting goals.

(b) OUSD(A) SADBU shall have responsibility for:

(1) Approving contractors as mentor firms;

(2) Approving mentor-protege agreements; and

(3) Forwarding the approved mentor-protege agreement to contracting officer(s) when program funding is available through a DoD program manager.

219.7103-2 Contracting Officer Responsibilities.

Contracting officers shall:

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for credit, reimbursement, or both, if the mentor firm proposes such an agreement or delegate this authority to the administrative contracting officer (see FAR 31.109).

(b) Modify (without consideration) applicable contract(s) to incorporate the clause at 252.232-7009, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments are provided by a mentor firm to a protege firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify (without consideration) applicable contract(s) to incorporate other than customary progress payments for small disadvantaged businesses in accordance with FAR 32.504(c) if such payments are provided by a mentor firm to a protege firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs—

(1) When funds have been made available for that purpose by a DoD program manager; and

(2) The contractor has an approved Mentor-Protege Agreement.

(e) Advise contractors of reporting requirements (see 219.7106).

219.7104 Developmental Assistance Costs eligible for Reimbursement or Credit.

(a) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and shall not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter shall be accumulated and charged in accordance with the contractor's approved accounting practices. The following costs incurred by mentor firms are eligible for reimbursement or credit:

(1) Assistance to the protege firm by mentor firm personnel in—

(i) General business management including organizational management;

(ii) Financial management;

(iii) Personnel management;

(iv) Marketing;

(v) Business development and overall business planning;

(vi) Engineering and technical matters such as production, inventory control and quality assurance;

(vii) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Assistance to the protege firm provided by—

(i) Small Business Development Centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

(ii) Entities providing technical assistance pursuant to chapter 142 of title 10 U.S.C.;

(iii) Historically Black Colleges and Universities (HBCUs) as defined by 34 CFR 608.2; and

(iv) Minority Institutions of Higher Education with a student body as specified in 20 U.S.C. 1058(b)(3), (4), and (5).

(b) No profit may be associated with the reimbursement of developmental assistance costs.

(c) Before incurring any costs under the Program, mentor firms need to establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, costs must be incurred before October 1, 1996.

(d) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(e) Developmental assistance costs incurred before October 1, 1999 by a mentor firm pursuant to an approved mentor-protege agreement, that are not funded either directly or indirectly under any other DoD contract, may be credited towards subcontracting plan goals as follows:

(1) Four times the total amount of developmental assistance costs provided to protege firms by small business development centers, HBCUs, MIs, and entities providing technical assistance (see paragraph (a)(2) of this section);

(2) Three times the total amount of developmental assistance costs incurred by mentor firm personnel (see paragraph (a)(1)(i) through (vi) of this section); or

(3) Two times the total amount of other developmental assistance costs (see paragraph (a)(1)(vii) of this section).

219.7105 Other Forms of Assistance.

(a) Mentor firm subcontracts with protege firms may contain provisions for progress payments up to 100 percent (see FAR 32.504(c)) or advance payments (see 232.412(S-72)). However, DoD will reimburse the mentor firm for advance payments only when such payments have been provided under subcontract terms and conditions similar to FAR 52.232-12, Advance Payments.

(b) In accordance with paragraph (f) of section 831 of Public Law 101-510, mentor firms may award subcontracts to protege firms on a non-competitive basis under DoD or other contracts.

219.7106 Reporting.

(a) Mentor firms shall report on the progress made under active mentor-protege agreements semi-annually by including with their SF 295, Summary Subcontract Report,

(1) An attachment which identifies—

(ii) The progress in achieving the developmental assistance objectives under each mentor-protege agreement, including whether the objectives of the Program set forth in the DoD policy statement were met, any problem areas encountered, and any other appropriate information; and

(2) A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement in Block 18 of the SF 294 identifying:

(i) the amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program;

(ii) An explanation as to the relationship between the developmental

assistance provided the protege firm(s) under the Program and the activities under the contract covered by the SF 294(s); and

(iii) The number and dollar value of subcontracts awarded to the protege firm(s).

(b) Mentor firms, which are also participants in DoD's comprehensive subcontracting plan test program (see 219.702(a)), shall indicate in Block 16 of the SF 295, Summary Subcontract Report;

(1) the total dollars credited to the SDB goal as a result of developmental assistance provided a protege firm(s) under the Program; and

(2) The total dollar amount of subcontracts awarded to the protege firm(s).

(c) OUSDA(A) SADBU will conduct an annual performance review of the progress and accomplishments realized under approved mentor-protege agreements.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.101-3 [Amended]

21. Section 222.101-3 is amended by revising the reference in paragraph (3) to read "RCS DD P&L (AR) 1153." in lieu of "RCS DD I&L (AR) 1153."

PART 223—HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

22. Section 223.302 is revised to read as follows:

223.302 General.

(b) Successful offerors are also required to submit hazard warning labels under the clause at 252.223-7001, Hazard Warning Labels.

(e) The contracting officer shall also provide hazard warning labels received from apparent successful offerors to the cognizant safety officer or other designated official in order to facilitate—

(i) Inclusion of relevant data in the department/agency's material safety data sheet information system or label information system; and

(ii) Other control, safety, or information purposes.

23. Section 223.303 is revised to read as follows:

223.303 Contract clause.

Use the clause at 252.223-7001, Hazard Warning Labels, in solicitations and contracts which require submission of hazardous material data sheets (see FAR 23.302(c)).

223.371 thru 223.371-3 [Removed]

24. Sections 223.371 through 223.371-3 are removed.

25. Subpart 223.5 is revised to read as follows:

Subpart 223.5 Drug-Free Workplace

Sec.

223.570 Drug-free work force
223.570-1 Policy
223.570-2 Definitions
223.570-3 Contract clause.

Subpart 223.5—Drug-Free Workplace

223.570 Drug-free work force.

223.570-1 Policy.

The unlawful use by contractor employees of controlled substances threatens national security and the safety of personnel and equipment. Therefore, DOD policy is to ensure that DOD contractors have a program for eliminating the unlawful use of controlled substances by employees whose duties affect health, safety, national security, or accomplishment of the DOD mission.

223.570-2 Definitions.

As used in this section—

Controlled substance and *employee* are as defined in FAR 23.503. "Employee in a sensitive position" is as defined in the clause at 252.223-7004, Drug-Free Work Force.

223.570-3 Contract clause.

(a) Use the clause at 252.223-7004, Drug-Free Work Force, in all solicitations and contracts that require contractor employees to perform in sensitive positions.

(b) Do not use the clause in solicitations and contracts—

(1) Below the small purchase limitation in FAR Part 13;

(2) For performance or partial performance (but only to the extent of the partial performance) outside the United States, its territories, and its possessions, unless the contracting officer determines inclusion to be in the best interest of the Government; or

(3) For law enforcement agencies when the head of such agency or designee determines that application of the requirements of this section would be detrimental to the law enforcement agency's undercover operations.

PART 225—FOREIGN ACQUISITION

225.102 [Amended]

26. Section 225.102 is amended by revising the introductory sentence in paragraph (b)(ii) to read "Except as provided in FAR 25.102(b)(1), the determination must be approved—".

225.302 [Amended]

27. Section 225.302 is amended by revising under paragraph (b)(i) the entry "Defense Communications Agency" to read "Defense Information Systems Agency."

28. Section 225.703 is revised to read as follows:

225.703 Exceptions.

The Secretary of Defense, or designee, may waive the restriction in 225.702(2) if the Secretary or designee determines it to be in the best interest of the Government. Designees for this waiver authority are—

(1) Army—Assistant Secretary of the Army (Research, Development, and Acquisition).

(2) Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition).

(3) Air Force—Deputy Assistant Secretary of the Air Force (Contracting).

(4) Defense agencies—Director of Defense Procurement.

(a) For other than small purchases, the Secretary of the Department concerned may approve an exception. Before approving an exception for other than small purchases, the Secretary shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs), except—

(i) For emergency purchases; or

(ii) Where supplies are not available from other source and substitute supplies are not acceptable.

225.872-7 [Amended]

29-30. Section 225.872-7 is amended by revising the words "Defense Communications Agency" to read "Defense Information Systems Agency"

225.10 [Removed]

31. Subpart 225.10 is removed in its entirety.

32. Sections 225.7016 through 225.7016-5 are added to read as follows

225.7016 Restriction on air circuit breakers for naval vessels.

225.7016-1 Restriction.

In accordance with 10 U.S.C. 2507(f), do not purchase air circuit breakers for naval vessels unless—

(a) They are manufactured in the United States; and

(b) The cost of their U.S. components exceeds 50 percent of the cost of all their components.

225.7016-2 Exceptions.

This does not prevent the purchase of spares and repair parts needed to support air circuit breakers manufactured outside the United States.

Support includes the purchase of spare air circuit breakers where those from alternate sources are not interchangeable.

225.7016-3 Waiver.

Subsequent to the notification at 225.7016-4, the Secretary of the Navy and the Director of the Defense Logistics Agency may waive the restriction on a case-by-case basis if it is determined that applying the restriction in a proposed acquisition—

(a) Is not in the national security interests of the United States;

(b) Will have an adverse effect on a U.S. company; or

(c) Will result in purchase from a U.S. company that, with respect to the sale of air circuit breakers for naval vessels, fails to comply with applicable Government procurement regulations or the anti-trust laws of the United States.

225.7016-4 Waiver notification.

A notice of proposed waiver, with a justification must be received by the Armed Services and Appropriations Committees of the Senate and House at least 30 days before a waiver can be granted.

225.7016-5 Contract clause.

Use the clause at 252.225-7029, Restriction on Acquisition of Air Circuit Breakers, in all solicitations and contracts requiring air circuit breakers for naval vessels, unless—

(a) An exception under 225.7016-2 is known to apply; or

(b) A waiver has been granted in accordance with 225.7016-3.

225.7101 [Amended]

33. Section 225.7101 is amended by revising "252.225-7022" to read "252.225-7025".

225.7103 [Amended]

34. Section 225.7103 is amended by adding paragraph (h) to read "(h) For antifriction bearings for contracts awarded after December 31, 1992."

35. Section 225.7303-2 is amended by revising paragraph (a)(2)(iii) and paragraphs (b) and (c) to read as follows:

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(2) * * *

(iii) Offset administrative costs.

(A) A U.S. defense contractor may recover, under an FMS contract, costs incurred to implement specific requirements of its offset agreement with a foreign government or international organization if the foreign military sale Letter of Offer and Acceptance (LOA) contains a note that—

(1) Specifically addresses offsets;

(2) Advises foreign governments that the price of contracts awarded in support of the LOA may include administrative costs associated with implementing the foreign purchaser's offset agreement with the contractor; and

(3) Includes a statement that the U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(B) Offset administrative costs must be reasonable and readily identifiable. Estimated offset administrative costs must be included in foreign military sales pricing information provided to the foreign government as early as possible, but before submittal of the LOA.

(C) Some examples of offset administrative costs—

(1) In-house and/or purchased: organizational, administrative and technical support, including offset staffing; quality assurance, manufacturing, purchasing support; data acquisition; proposal, transaction and report preparation; broker/trading services; legal support; and similar support activities;

(2) Off-shore operations for technical representative and consultant activities, office operations, customer and industry interface, capability surveys;

(3) Marketing assistance and related technical assistance, transfer of technical information and related training;

(4) Employee travel and subsistence costs; and

(5) Taxes and duties.

(iv) * * *

(b) Costs not allowable under FAR Part 31 are not allowable in pricing foreign military sale contracts, except as noted in paragraph (c) of this subsection.

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales.Therefore, the ceiling limitations or the formula constraints on independent research and development and bid and proposal (IR&D/B&P) costs in FAR Part 31 do not apply to contracts for foreign military sales. IR&D/B&P costs allowed on contracts for foreign military sales shall be limited to their allocable share of the total expenditures. In pricing contracts for foreign military sales—

(1) Use the best estimate of reasonable costs in forward pricing.

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

36. Section 226.7000 is revised to read as follows:

226.7000 Scope of subpart.

This subpart implements the historically black college and university (HBCU) and minority institution (MI) provisions of section 1207 of Public Law 99-661, section 806 of Public Law 100-180, section 831 of Public Law 101-189, and section 832 of Public Law 101-510. These laws—

(a) Set a goal for DoD for each of fiscal years 1987-1993 to award five percent of contract and subcontract dollars to small disadvantaged business concerns and HBCU/MIs; and

(b) Require a separate goal, for each of fiscal years 1991-1993, as a subset of the five percent goal, for the participation of HBCUs and MIs.

37. Section 226.7002 is revised to read as follows:

226.7002 General policy.

The DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goal for use of HBCUs and MIs. In addition, DoD will establish "infrastructure assistance" (e.g., scholarships, faculty development, teaming agreements with defense laboratories, and laboratory renovation) at colleges, universities, and institutions that agree to bear a substantial portion of the costs associated with the progams.

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.403-77 [Amended]

38. Section 227.403-77 is amended by revising paragraph (a)(1)(iii)(B) to read "Information in which the Government has unlimited rights; or" and by adding paragraph (a)(1)(iii)(C) to read "Information which is in the public domain;".

227.7004 [Amended]

39. Section 227.7004 is amended by revising paragraph (c)(5) to read "For the Defense Information Systems Agency—the Counsel;" in lieu of "For the Defense Communications Agency—the Counsel;".

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

40. Section 231.205–18 is revised to read as follows:

231.205–18 Independent research and development and bid and proposal costs.

(c)(1)(iii)*(1)* Total incurred IR&D/B&P costs, including total IR&D/B&P ceiling amounts which are negotiated pursuant to FAR 31.205–18(c)(1), are fully allocable to all final cost objectives of the contractor. The amount of IR&D/B&P costs allowable under contracts which are subject to advance agreements negotiated by DoD shall not exceed the lesser of—

(i) Such contracts' allocable share of incurred IR&D/B&P costs;

(ii) Such contracts' allocable share of the total IR&D/B&P ceiling; or

(iii) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(2) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to DoD, including activities that—

(i) Strengthen the defense industrial and technology base of the United States;

(ii) Enhance the industrial competitiveness of the United States;

(iii) Promote the development of technologies identified as critical in the plan required under 10 U.S.C. 2508;

(iv) Increase the development of technologies useful for both the private commercial sector and the public sector; or

(v) Develop efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution-reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(3) The contracting officer will—

(i) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(ii) Provide the results of the determination to the contractor.

(4) See 225.7303 for additional allowability provisions affecting foreign military sale contracts.

231.7003–1 [Amended]

41. Section 231.7003–1 is amended by revising paragraph (a)(2)(i) to read "A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, (see FAR 42.705–2) which the contractor elected not to appeal and was not withdrawn by DCAA."

PART 232—CONTRACT FINANCING

232.412–70 [Amended]

42. Section 232.412–70 is amended by adding paragraph (c) to read "Use the clause at 252.232–7005, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments will be provided by the contractor to a subcontractor pursuant to an approved mentor-protege agreement (See subpart 219.71).

43. Section 232.501–1 is amended by revising paragraph (a)(i) to read as follows:

232.501–1 Customary progress payment rates.

(a)(i) The customary uniform progress payment rate for DoD contracts is 85 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses.

* * * * *

44. Section 232.502–1–71 is amended by revising paragraphs (a)(7) and the table and (b)(5) to read as follows:

232.502–1–71 Customary flexible progress payments.

(a) * * *

(7) Table 32–1, Customary Uniform Progress Payment Rates, shows the customary uniform progress payment rates for other than small or small disadvantaged businesses (see also 232.501–1), minimum contractor investment (except for contracts funded with FY87 appropriations), and the applicable DoD Cash Flow Computer Model. For contracts or line items that are funded with FY87 appropriations, a contractor must retain at least a 25 percent investment in work in process inventory over the life of the contract or over the contract performance period applicable to the contract line item.

TABLE 32–1.—CUSTOMARY UNIFORM PROGRESS PAYMENT RATES

Contract award date	Uniform rate (percent)	Investment percentage	Cash flow model
Prior to May 1, 1985	90	5	CASH–II.
May 1, 1985 through October 17, 1986	80	15	CASH–III.
October 18, 1986 through September 30, 1988	75	25	CASH–IV.
October 1, 1988 through June 30, 1991	80	20	CASH–V.
After June 30, 1991	85	20	CASH–VI. (see note below).

Note: See paragraph (b)(5)(ii) for implementation instructions.

(b) * * *

(5) Prior to contract award, the contracting officer shall determine the customary flexible progress payment rate by applying the appropriate version of the DoD Cash Flow Computer Model.

(i) The model takes into account key cash flow factors including contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. For contracts funded with FY87 appropriations, use the CASH–IV model.

(ii) From time to time the Department of Defense may change the uniform progress payment rate and/or the minimum contractor investment rate, which may have an effect upon the variables within the DoD Cash Flow Computer Program. In order to avoid frequent revision and redistribution of the computer program, the program is designed to permit use of either a particular model (CASH–II, CASH–V, etc.) or a program option to input the equivalent uniform progress payment rate and minimum contractor investment rate (90%/5%, 80%/20%, etc.), as shown in the table at (a)(7). Either method will result in the same flexible progress payment rate calculation. When the Cash Flow Computer Program does not contain the model needed for a particular situation, the contracting officer shall use the program option.

* * * * *

232.502–4 [Amended]

45. Section 232.502–4 is amended by removing paragraph (b).

46. Section 232.502–4–70 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

232.502–4–70 Additional clauses.

(a) * * *

(b) Use the clauses at 252.232–7003, Flexible Progress Payments, and 252.232–7004, DoD Progress Payment Rates, in contracts using a customary flexible progress payment rate.

(c) Use the clause at 252.232–7004, DoD Progress Payment Rates, in addition to the clauses prescribed at FAR 32.502–4.

PART 233—PROTESTS, DISPUTES, AND APPEALS

47. A new subpart 233.1 is added to read as follows:

Subpart 233.1—Protests

Sec.
233.104 Protests to GAO.

Subpart 233.1—Protests

233.104 Protests to GAO.

The GAO revised its protest procedures (4 CFR part 21) effective April 1, 1991. Use the procedures in this section instead of those in FAR 33.104 until the FAR is amended to implement GAO's revised procedures.

(a) *General Procedures.* (1) A protestor is required to furnish a copy of its complete protest to the official or location designated in the solicitation or, in the absence of such a designation, to the contracting officer, no later than one work day after the protest is filed with the GAO. The GAO may dismiss the protest if the protestor fails to furnish a complete copy of the protest within one work day.

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the department/agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving award if the protest is denied. The department/agency shall also advise these parties that they may submit their views and relevant information directly to the GAO with a copy to the contracting officer and to other participating interested parties within a specified period of time. Normally, the time specified will be one week.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The department/agency shall submit a complete report to the GAO within 25 work days after the GAO notifies the department/agency by telephone that a protest has been filed, or within ten work days after receipt from the GAO of a determination to use the express option (4 CFR 21.8), unless the GAO—

(A) Advises the department/agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to a department/agency's written request for an extension. Any new date shall be documented in the department/agency's protest file.

(ii) The department/agency report to the GAO shall include a copy of—

(A) The protest;

(B) The offer submitted by the protesting offeror;

(C) The offer which is being considered for award or which is being protested;

(D) All evaluation documents;

(E) The solicitation, including the specifications or portions relevant to the protest;

(F) The abstract of offers or relevant portions;

(G) Any other documents that the department/agency determines are relevant to the protest;

(H) The contracting officer's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the contract action or contract performance continues after receipt of the protest, the report will include the determination(s) prescribed in paragraphs (b) or (c) of this section;

(I) A list identifying the other parties who are being provided copies of the report; and

(J) A list of the documents withheld from the protestor or other interested parties, and the reasons for withholding them. The list shall identify any documents specifically requested by, and withheld from, the protestor.

(iii) In addition to the documents contained in the report, the department/agency shall make available to the GAO any documents specifically requested by the protestor.

(4)(i) At the same time the department/agency submits its report to the GAO, it shall furnish copies of its report to the protestor and other interested parties who have responded to the notice given under paragraph (a)(2) of this section. A party shall receive all relevant documents, except:

(A) Those that the department/agency has decided to withhold from that party for any reason, including those covered by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the department/agency may decide to exclude from a copy of the report include documents previously furnished to or prepared by a party; classified information; information that would give a party a competitive advantage;

(B) Protestor's documents which the department/agency determines, pursuant to law or regulation, to withhold from any interested party.

(ii)(A) If, within two work days after receipt of the department/agency report, the protestor requests additional documents, the department/agency shall provide the requested documents to the GAO within five work days of receipt of the request.

(B) The additional documents shall also be provided to the protestor and other interested parties within the five-work day period unless the department/agency has decided to withhold them for any reason (see paragraph (a)(4)(i)(A) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the protective order. A request for protective order to cover additional documents shall be made in accordance with 233.104(a)(5) within this five-work day period.

(C) The department/agency shall notify the GAO of any documents withheld from the protestor and other interested parties and state the reasons for withholding them.

(5) The GAO may issue a protective order to limit the release of particular documents to counsel for the protestor and to counsel for the other interested parties entitled to receive the documents if the documents contain information that is privileged, or if their release would create a competitive advantage (4 CFR 21.3(d)(1)).

(i) *Requests for Protective Orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, but not more than 20 work days after the protest filing date, with copies furnished simultaneously to all parties.

(ii) *Exclusions and Rebuttals.* Within two work days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties. Within one work day after receipt of a copy of the request, any rebuttal shall be filed with the GAO, with copies furnished simultaneously to all parties.

(iii) *Additional Documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties. Any rebuttal to such a request must be filed within one work day after receipt of a copy of the request.

(iv) *Sanctions and Remedies.* The CAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against a department/agency which fails to provide documents designated in a protective order.

(6) The protestor and other interested parties are required to furnish a copy of any comments on the department/agency report directly to the GAO within ten work days after receipt of the report, with copies provided to the contracting officer and to other participating parties.

(7) Departments/agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO may contact, who are knowledgeable about the subject matter of the protest. Each department/agency shall be responsible for promptly advising the GAO of any change in the designated officials.

(b) *Protests before award.* (1) When the department/agency has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized, in accordance with department/agency procedures, by the head of the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and

(ii) Award is likely to occur within 30 calendar days of the written finding.

(2) A contract award shall not be authorized until the department/agency has notified the GAO of the finding in paragraph (b)(1) of this section.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding under paragraph (b)(1) of this section.

(c) *Protests after award.* (1) When the department/agency receives notice of a protest from the GAO after award of a contract, but within ten calendar days after award, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this section.

(2) In accordance with department/agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the department/agency has notified the GAO of the finding in paragraph (c)(2) of this section.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the department/agency receives notice of a protest filed with the GAO more than ten calendar days after award of the protested acquisition, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(d) *Findings and notice.* If the decision is to proceed with contract award, or continue contract performance under paragraph (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protestor and any other interested parties.

(e) *Hearings.* The GAO may hold a hearing at the request of the department/agency, a protestor, or other interested party who has responded to the notice in 233.104(a)(2). The GAO may designate representatives of the parties to attend the hearing. The attending parties and the hearing official may question representatives of the parties at the hearing. A recording or transcription of the hearing will normally be made, and copies are available from the GAO for a fee. All parties may file comments on the hearing and report within seven work days of the hearing.

(f) *GAO decision time.* GAO will issue its recommendation on a protest within 90 work days from the date of filing of the protest with the GAO, or within 45 calendar days under the express option (4 CFR 21.8), unless GAO establishes a longer period of time.

(g) *Notice to GAO.* The head of the department/agency or a designee (not below the level of the head of the contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 calendar days of receipt of the GAO's recommendation, if the department/agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation, including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be followed by the department/agency.

(h) *Award of protest costs.* Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. 3554(c), a recommended award of protest costs (as defined under paragraph (g) of this section) may be paid by the department/agency out of funds available to or for the use of the department/agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the department/agency if 31 U.S.C. 3554(c) is judicially determined not to be constitutional. Before paying a recommended award of protest costs (as defined under paragraph (g) of this section), department/agency personnel should consult the General Counsel's office of the department/agency. This paragraph (h) applies to all recommended awards of protest costs (as defined under paragraph (g) of this section) which have not yet been paid.

48. Section 233.211 is added to read as follows:

233.211 Contracting officer's decision.

(a)(4)(v) Insert the following "Note" in all final decisions immediately after the paragraph required by FAR 33.211(a)(4)(v) (i.e., after "claims of $50,000 or less"):

"(Note: The U.S. Court of Appeals for the Federal Circuit has issued a decision that you should consider in evaluating your choice of a potential forum for any appeal from this final decision. See *Overall Roofing & Construction, Inc.* v. *U.S.*, 929 F.2d 687 (Fed. Cir. 1991))."

PART 237—SERVICE CONTRACTING

49. Section 237.102 is added to read as follows:

237.102 Policy.

To the maximum extent practicable, acquire services on the basis of the task to be performed rather than on the basis of the number of hours to be provided.

50. Sections 237.170 through 237.170–3 are added to read as follows:

237.170 Uncompensated overtime.

237.170–1 Scope.

This section implements section 834 of Pub. L. 101–510 (10 U.S.C. 2331).

237.170–2 General policy.

(a) Use of uncompensated overtime is not encouraged.

(b) When services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for Fair Labor Standards Act—exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

237.170–3 Solicitation provision.

Use the provision at 252.237–7019, Identification of Uncompensated Overtime, in all solicitations estimated at $100,000 or more for services to be acquired on the basis of the number of hours to be provided.

PART 239—ACQUISITION OF INFORMATION RESOURCES

239.7401 [Amended]

51. Section 239.7402(a)(3) is amended by revising the words "Defense Communications Agency" to read "Defense Information Systems Agency."

PART 242—CONTRACT ADMINISTRATION

52. Sections 242.1005 through 242.1007 are revised to read as follows:

242.1005 Lead negotiating agency responsibilities.

(a) The DoD IR&D Technical Evaluation Group is responsible for providing contractors the appropriate guidance for submission of technical information to support IR&D proposals.

(b) The DoD IR&D Technical Evaluation Group will provide the contracting officer with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD.

(c) The determination shall address the 231.205–18(c)(1)(iii)(*2*) requirement that the proposed IR&D/B&P projects must be of potential interest to DoD.

242.1006 Conducting negotiations.

(a)(5) Ensure that the requirements of 231.205–18(c)(1)(iii)(*2*) are met.

(b) Contracting officers shall encourage contractors to engage in the IR&D/B&P activities cited in 231.205–18(c)(1)(iii)(*2*).

§ 242.1007 Content of advance agreements.

(e) The agreement shall specifically note that—

(i) A review was performed of the proposed IR&D/B&P projects for potential interest to DoD; and

(ii) A determination was made that the Government's allocable share of the negotiated ceiling met the requirement for potential interest to DoD at the time of negotiation.

(f)(2) Allowable IR&D/B&P costs are limited to those incurred for projects that are of potential interest to DoD.

53. Section 242.1404–1 is added to read as follows:

242.1404–1 Parcel post eligible shipments.

(b)(1) See DoD 4525.8–M, DoD Official Mail Manual.

PART 243—CONTRACT MODIFICATIONS

243.107–70 [Redesignated as 243.170]

54. Section 243.107–70 is redesignated as 243.170.

55. A new section 243.107–70 is added to read as follows:

243.107–70 Notification of substantial impact on employment.

The Secretary of Defense is required to notify the Secretary of Labor if a modification of a major defense contract or subcontract will have a substantial impact on employment. The clause prescribed at 249.7002(c) requires that the contractor notify the contracting officer when a contract modification will have a substantial impact on employment.

PART 245—GOVERNMENT PROPERTY

245.104 [Amended]

56. Section 245.104 is amended by revising the reference "DoD 4275.5–M" to read "DoD 4161.2–M".

245.603–70 [Amended]

57. Section 245.603–70 is amended by revising paragraph (a)(1) to read "Contract administration offices (CAOs) may, with head of the contracting activity approval and contractor concurrence, authorize selected contractors to perform certain plant clearance functions if the volume of plant clearance warrants performance by the contractor."

PART 249—TERMINATION OF CONTRACTS

249.102 [Amended]

58. Section 249.102 is amended by adding paragraph (a)(5) to read "Include a statement that, if a termination for convenience will have a substantial impact on employment, as defined in the clause at 252.249–7001, Notification of Substantial Impact on Employment, the contractor must provide the required notice to the contracting officer within 30 calendar days."

249.7001 [Amended]

59. Section 249.7001 is amended by revising paragraph (b)(5) to read "Defense Information Systems Agency—Contract Management Division (Code 260)" in lieu of Defense Communications Agency—Contract Management Division (Code 260)".

60. Section 249.7002 is added to read as follows:

249.7002 Notification and reporting of substantial impact on employment.

(a) Section 4201(a)(1)(B) of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510, Division D, title XLII; Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1991), requires the Secretary of Defense to notify the Secretary of Labor if a modification or termination for convenience of a major defense contract or subcontract will have a substantial impact on employment. "Substantial impact on employment" is defined in the clause at 252.249–7001, Notification of Substantial Impact on Employment.

(b) Within ten work days after the contractor provides the notification required under the clause at 252.249–7001, the head of the contracting activity shall notify the Office of Economic Adjustment (OEA), Assistant Secretary of Defense (Force Management and Personnel), in accordance with department/agency procedures.

(1) The notice to OEA shall include the data elements set forth in 252.249–7001(c).

(2) Notices may be mailed or telefaxed to OEA at: Office of Economic

Adjustment, 400 Army-Navy Drive, suite 200, Arlington, VA 22202-2884. Attention: Division D Notification. Telefax: (703) 697-3021.

(c) Use the clause at 252.249-7001, Notification of Substantial Impact on Employment, in all contracts of $5 million or more and all contracts with subcontracts of $500,000 or more.

PART 250—EXTRAORDINARY CONTACTUAL ACTIONS

250.201-70 [Amended]

61. Section 250.201-70 is amended by revising paragraph (b)(2) to read "Requests for indemnification against unusually hazardous or nuclear risks must be submitted to the USD(A) for approval before using the indemnification clause at FAR 52.250-1, Indemnification Under Public Law 85-804."

250.303 [Amended]

62. Section 250.303 is amended by revising in paragraph (6) the entry "Defense Communications Agency" to read "Defense Information Systems Agency".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211-7005 [Removed and Reserved]

63. Section 252.211-7005 is removed and the section marked "Reserved."

252.211-7019 [Amended]

64. Section 252.211-7019 is amended by adding the date "(MAY 1991)" to the clause heading.

252.223-7000 [Removed and Reserved]

65. Section 252.223-7000 is removed and the section marked "Reserved."

252.223-7004 [Removed]

66. Section 252.223-7004 is removed.

67. Section 252.223-7005 is redesignated as 252.223-7004 and the redesignated section 252.223-7004 is revised to read as follows:

252.223-7004 Drug-Free Work Force.

As prescribed in 223.510-3, use the following clause:

Drug-Free Work Force (Dec 1991)

(a) *Definitions.* As used in this clause—

(1) *Controlled substance, employee,* and *criminal drug statute* have the meanings given in the Drug-Free Workplace clause of this contract.

(2) *Employee in a sensitive position* means an employee whose duties could reasonably be expected to affect health, safety, or national security, including, but not limited to, duties involving—

(i) Access to classified information;

(ii) Possession or use of firearms;

(iii) Design, manufacture, test and evaluation, or maintenance of aircraft, vessels, vehicles, heavy equipment, munitions, toxic materials, weapons, weapons systems, potentially dangerous equipment/materials/or applications (such as lasers, explosives, unstable chemicals, or medical equipment with potentially life threatening consequences), or major components of the foregoing which are directly contracted for by the Department of Defense;

(iv) Control, operation or use of aircraft, vessels, vehicles, heavy equipment, toxic or nuclear materials, munitions, weapons, weapon systems, or potentially dangerous equipment/materials/or applications (such as lasers, explosives, unstable chemicals, or medical equipment with potentially life threatening consequences);

(v) Transportation, storage, or protection of toxic or nuclear materials, or munitions, or potentially dangerous materials (such as explosives or unstable chemicals);

(vi) Direct treatment or rehabilitation of employees for unlawful use or abuse of controlled substances; or

(vii) Air traffic control.

(b) The Contractor shall institute and maintain a program for achieving a drug-free work force. As a minimum, the program shall provide for the random drug testing of Contractor employees working in sensitive positions. The Contractor's drug testing program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970), April 11, 1988.

(c) The Contractor shall not permit an employee to work in a sensitive position in the performance of a Department of Defense contract if—

(1) The employee tests positive for the use of a controlled substance during a test pursuant to this clause or a test based on reasonable suspicion of drug use; and

(2) The use is determined to be unlawful; or

(3) The employee is convicted of violating a criminal drug statute.

(d) The Contractor may permit an employee covered by paragraph (c) of this clause to work in a sensitive position on a Department of Defense contract only—

(1) With the approval of the Contracting Officer; and

(2) After the employee has successfully completed a supervised rehabilitation program.

(e) The requirements of this clause take precedence over any State and local laws to the contrary.

(End of clause)

252.225-7006 [Amended]

68. Section 252.225-7006 is amended by revising paragraph (c)(1)(i) to read "Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Buy American Act and Balance of Payments Program clause of this solicitation); and".

252.225-7009 [Amended]

69. Section 252.225-7009 is amended in paragraph (f)(2)(iv) by removing the quotation marks at the end of the second sentence.

70. Section 252.225-7029 is added to read as follows:

252.225-7029 Restriction on acquisition of air circuit breakers.

As prescribed in 225.7016-5, use the following clause:

Restriction on Acquisition of Air Circuit Breakers (Dec 1991)

(a) All air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States and the cost of their U.S. components must exceed 50 percent of the cost of all their components.

(b) If compliance with this restriction will have an adverse effect on a U.S. company, the Offeror/Contractor may request a waiver.

(End of clause)

252.228-7001 [Amended]

71. Section 252.228-7001 is amended by revising in paragraph (i)(2)(ii) the word "damage" to read "damaged".

72. Sections 252.232-7004 and 252.232-7005 are added to read as follows:

252.232-7004 DoD Progress payment rates.

As prescribed in 232.502-4-70 (b) and (c), use the following clause:

DOD Progress Payment Rates (Dec 1991)

(a) If the contractor is a large business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 85 percent.

(b) If the contractor is a small business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 90 percent.

(c) If the contractor is a small disadvantaged business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 95 percent.

(d) The above rates are the customary uniform progress payment rates for DoD contracts.

(End of clause)

252.232-7005 Reimbursement of subcontractor advance payments—DoD pilot mentor-protege program.

As prescribed in 232.412-70(c), use the following clause:

Reimbursement of Subcontractor Advance Payments—DOD Pilot Mentor-Protege Program (Dec 1991)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a small disadvantaged business, as a protege firm, pursuant to an approved mentor-protege agreement, provided—

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232–12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1195, Request for Progress Payments, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1195 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable, contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)

252.234–7000 [Amended]

73. Section 252.234–7000 is amended by revising the clause title to read "Notice of Cost/Schedule Control Systems (Dec 1991)" in lieu of Cost/Schedule Control Systems (Dec 1991)".

252.237–7019 [Added]

74. Section 252.237–7019 is added to read as follows:

252.237–7019 Identification of uncompensated overtime.

As prescribed in 237.170–3, use the following provision:

Identification of Uncompensated Overtime (Dec 1991)

(a) *Definitions.* As used in this provision—

(1) *Uncompensated overtime* means the hours worked in excess of an average of 40 hours per week by employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave, shall be included in the normal work week for purposes of computing uncompensated overtime hours.

(2) *Uncompensated overtime rate* is the rate which results from multiplying the hourly rate for a 40 hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40 hour work week basis at $20.00 would be converted to an uncompensated overtime rate of $17.78 per hour. ($20 × 40) divided by 45 = $17.78.

(b) For any hours proposed against which an uncompensated overtime rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in direct cost pools for personnel whose regular hours are normally charged direct.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals which include unrealistically low labor rates, or which do not otherwise demonstrate cost realism, will be considered in a risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

252.239–7000 [Amended]

75. Section 252.239–7000 is amended by revising in paragraph (a)(1) the acronym "NACSIM" to read "NACSEM".

76. Section 252.249–7001 is added to read as follows:

252.249–7001 Notification of substantial impact on employment.

As prescribed in 249.7002(c), use the following clause:

Notification of Substantial Impact on Employment (Dec 1991)

(a) *Definitions.* (1) "Major defense contract or subcontract" means—

(i) All prime contracts of $5 million or more; and

(ii) All subcontracts of $500,000 or more.

(2) "Substantial impact on employment" means—

(i) A reduction of—

(A) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area (MSA) or similar area. MSAs are identified in FIPS Publication 8–5, Metropolitan Statistical Areas, which is available from the U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161, Tel. (703) 487–4650. Telephone inquiries concerning MSAs may also be directed to the Bureau of the Census, Population Division, Population Distribution Branch, Washington, DC, Tel (301) 763–5158;

(B) 1,000 or more employee positions, in the case of a labor market area outside an MSA; or

(C) One percent of the total number of civilian jobs in that area; or

(ii) A reduction, or the threat of a reduction, of—

(A) 25 percent or more in sales or production of the contractor or subcontractor; or

(B) 80 percent or more of the workforce of the contractor or subcontractor in any division of such contractor or such subcontractor or at any plant or other facility of such contractor or subcontractor; or

(iii) Any group of 100 or more workers at a defense facility who are, or who are threatened to become, eligible to participate in the Defense Conversion Adjustment Program under section 325 of the Job Training Partnership Act (29 U.S.C. 1662–1662c, as amended).

(b) This clause applies only if a modification or termination for convenience of a major defense contract or subcontract will have a substantial impact on employment.

(c) The Contractor shall notify the Contracting Officer within 30 calendar days if the proposed modification or termination for convenience of this contract or a major defense subcontract under this contract will have a substantial impact on employment. The Contractor may use DD Form 2604, Notification of Substantial Impact. If the form is not used, the notice shall include:

(1) Contract number;

(2) Contractor name and division name;

(3) Type of business (e.g. small disadvantaged business, small business, large business, etc.)

(4) Address of affected work location, including county;

(5) Contract price of items canceled or terminated;

(6) Number of employees affected;

(7) Percentage reduction in sales or production;

(8) Percentage of contractor workforce at affected work location;

(9) Title and signature of the reporting official; and

(10) The information required by (1) through (9) for each subcontract.

(d) The Contractor shall include the substance of this clause in all subcontracts of $500,000 or more under this contract.

(End of clause)

PART 253—FORMS

253.204–70 [Amended]

77. Section 253.204–70 is amended by revising in paragraph (d)(5)(i)(H) "Enter Code H" to read "Enter Code N"; and by revising in paragraph (d)(5)(xi)(b)(*1*) the reference "52.219–7019" to read "52.219–19".

253.204–70 [Amended]

78. Section 253.204–70(c)(3) is amended by revising the heading in the table "Then code Part C block:" to read "Then code the blocks in Part C with reference to the:".

79. Section 253.204–70(c)(4)(vi) is revised to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(c) * * *
(4) * * *
(vi) BLOCK C6, NUMBER OF OFFERORS SOLICITED. Leave Block C6 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). As an exception to the chart in paragraph (c)(3) of this subsection—

If Block B13 is coded	Then
6	Enter code 2 in Block C6.
7	Leave Block C6 blank.

If not an exception, enter,
(A) *Code 1—One.* Enter code 1 if only one offeror was solicited.
(B) *Code 2—More than one.* Enter code 2 if more than one offeror was solicited.
* * * * *
80. Section 253.204–70(c)(4)(vii) is revised to read as follows:

253.204–70 DD Form 250, Individual Contracting Action Report.

(c) * * *
(4) * * *
(vii) BLOCK C7, NUMBER OF OFFERS RECEIVED. Leave Block C7 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). As an exception to the chart in paragraph (c)(3) of this subsection—

If Block B13 is coded	Then
6	Enter code 2 in Block C7.

If not an exception, enter,
(A) *Code 1—One.* Enter code 1 if only one offer was received.
(B) *Code 2—More than one.* Enter code 2 if more than one offer was received.
* * * * *
81. Section 253.204–70 is amended by revising paragraph (e)(3)(ii) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

(e) * * *
(3) * * *
(ii) Enter the offered price from the small business firm that would have been the low offeror if organizations for the blind or other severely handicapped had not participated in the acquisition. Enter the amount in whole dollars.
* * * * *

Appendix G to Chapter 2 [Amended]

82. Appendix G, Table of Contents, part 7, is amended by revising the part 7 entry to read "Defense Information Systems Agency Activity Address Numbers" in lieu of "Defense Communications Agency Activity Address Numbers."
83. Appendix G, part 1, General, section G–101 is amended by revising in paragraph (c) the **DEFENSE COMMUNICATIONS AGENCY entry to read as follows:
**DEFENSE INFORMATION SYSTEMS AGENCY, Chief, Logistics Management Office, Code 202, Defense Information Systems Agency, Washington, DC 20305–2000.
84. Appendix G is amended by adding a DLA activity address number to the end of part 6 to read as follows:
DLA920—Defense Electronics Supply Center
W4—DESC–PKCC, 1507 Wilmington Pike, Dayton, OH 45444–5198.

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BILLING CODE 3810–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 702, 706, 715, 719, 728, 731, 732, 737, 750, 752, 753, and Appendix H

[AIDAR Notice 92–1]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development Acquisition Regulation (AIDAR) is being amended to change office designations to reflect a recent reorganization, to remove the list of countries for which Defense Base Act (DBA) insurance waivers are in effect, and to revise letter of credit coverage to reflect the discontinuation of the Treasury Financial Communication System letters of credit by the U.S. Treasury.

EFFECTIVE DATE: January 29, 1992.

FOR FURTHER INFORMATION CONTACT: FA/PPE, Mr. James M. Kelly, room 1600I, SA–14, Agency for International Development, Washington, DC 20523–1435. Telephone: (703) 875–1534.

SUPPLEMENTARY INFORMATION: AID has recently undergone a reorganization; the AIDAR is being amended to reflect new office designations and titles. The AIDAR is also being amended to remove the list of countries for which DBA insurance waivers are in effect. Because of the list's size and the irregular timing of changes, AID has decided to maintain and update it through an internal directive to agency contracting officers. The AIDAR as revised will tell interested persons what the DBA list is and how to find out if a country is on the list. Finally, the AIDAR is being amended to revise our rules regarding establishment of letters of credit. This is in response to the Treasury Department's decision to discontinue letters of credit under the Treasury Financial Communication System, and its suggestion that each agency establish its own letter of credit system. The revised system is substantially similar to the superseded system, and we do not believe it will have significant impact on AID contractors.

The changes being made by this notice are editorial and administrative and are not considered significant rules under FAR section 1.301 or subpart 1.5, nor major rules as defined in Executive Order 12291. This notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act. Because of the nature and subject matter of this notice, use of the proposed rule/public comment approach was not considered necessary. AID has decided to issue this notice as a final rule; however, we welcome public comment on the material covered by this notice or any other part of the AIDAR at any time. Comments or questions may be addressed as specified in the "**FOR FURTHER INFORMATION CONTACT**" section of the preamble.

List of Subjects in 48 CFR Parts 701, 702, 706, 715, 719, 728, 731, 732, 737, 750, 752, 753 and Appendix H to Chapter 7

Government procurement.

Accordingly for the reasons set out in the preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citations in parts 701, 702, 706, 715, 719, 728, 731, 737, 750, 752, 753 and appendix H to Chapter 7 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.