II gaming with tribal governments. Tribal governments, as the primary regulators of Indian gaming, have an important role to play in the classification of games. Many felt that the procedure would exacerbate rather than reduce conflict because the process minimizes the role of tribal gaming commissions in making classification determinations in the first instance.

A second major criticism was that the rule was far too sweeping in that no game, even those games unquestionably falling within the Class II criteria, could be introduced for play without first receiving a classification decision from the Commission. Critics felt that given the large number of Class II games, the Commission would not be able to produce classification decisions in a reasonable or timely fashion. Many felt that the Commission's capacity to produce decisions under the rule would be overwhelmed by the sheer volume of the workload. The Commission itself has concerns in this regard. Grandfathering those games in common play at the time of issuance was considered, but this approach also has its faults and the Commission has yet to discern a way of effecting a workable solution to the myriad of issues involved in resolving this difficulty.

Commenters raised a number of other significant questions, many of which possess great merit. The Commission is particularly sensitive to the concern that its workload capacity could be detrimentally affected. Indeed, classification decisions often present difficult technical issues and the process may be highly time intensive. In some cases, the expense may be substantial. On the other hand, the Commission recognizes that its lack of a uniform process for making gaming classification decisions fosters a climate of uncertainty, exacerbating disputes and increasing the likelihood of long, drawn out litigation.

The Commission recognizes that Congress intended a partnership between it and tribal gaming regulators. IGRA clearly anticipates that tribal and federal regulators must work collaboratively to insure the integrity of Indian gaming. The Commission believes that a middle ground can be found with regard to a formal mechanism for game classification; however, the current proposal does not satisfy this objective.

It is the Commission's view that the proposed rule would have more likely satisfied the concerns of all if there had been greater opportunity for tribal input during its development. The Commission has utilized collaborative processes in rulemaking for a number of years with favorable result. Given the joint system of tribal and federal regulation and the on-going relationship between tribal and federal regulators, the expertise and experience of tribal regulators would have greatly aided the Commission's effort to develop a proposal in better alignment with the concerns and needs of tribal governments and to assist in resolving the problems that remain outstanding. If, at a future time, the Commission reconsiders promulgation of a rule establishing a formal procedure for the classification of games, a tribal advisory committee should be established to advise the Commission as to the nature and content of such rule.

History of the Rulemaking

A proposed rule establishing a process for classification of games was published in the **Federal Register** on November 10, 1999. 64 FR 61234.

Sixty-nine (69) comments were submitted in response to that publication. Comments were initially due on January 10, 2000. On December 27, 1999, the Commission issued a Notice of Extension of Time and Notice of Hearing. Written and oral testimony was submitted to the Commission at a public hearing on January 24, 2000, in Tulsa, Oklahoma. Following the extension, comments were due February 24, 2000.

Notice

The National Indian Gaming Commission (Commission) hereby gives notice that the proposed regulations establishing a formal process for the classification of games published in the **Federal Register** on November 10, 1999, 64 FR 61234, are withdrawn. If, at a future time, the Commission elects to proceed with the promulgation of a rule establishing a formal procedure for the classification of games, it will establish a tribal advisory committee to advise the Commission as to the nature and content of such rule.

Signed this 3rd day of July, 2002.

Elizabeth L. Homer,

Vice-Chair.

Teresa E. Poust,

Commissioner.

Chairman's Dissent

I respectfully dissent from the Commission's statement that attempts to bind a future Commission to establish a formal tribal advisory committee for the creation of a gaming classification rule. I believe strongly that tribal advisory committees are an effective way to obtain tribal input for rulemaking initiatives. Though I would prefer a mechanism that encourages even broader tribal participation in our rulemaking initiatives, I would encourage future Commissions to use tribal advisory committees in rulemaking initiatives. However, I believe that the current Commission simply lacks the power to bind future Commissions to a particular rulemaking process. Future Commissions are free to use the rulemaking approach that allows interested parties to participate in the process and that, ultimately, will produce the best rule under the circumstances.

Montie R. Deer,

Chairman.

[FR Doc. 02–17152 Filed 7–11–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1104–P]

RIN 1120–AB03

Infectious Disease Management: Voluntary and Involuntary Testing

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons proposes to revise its regulations on the management of infectious diseases. The changes address the circumstances under which the Bureau conducts voluntary and involuntary testing for HIV, tuberculosis, and other infectious diseases. We intend this amendment to provide for the health and safety of staff and inmates.

DATES: Comments due by September 10, 2002.

ADDRESSES: Submit comments to: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau proposes to revise its regulations on the infectious disease management program (28 CFR, part 549, subpart A). These regulations were published in the **Federal Register** on October 5, 1995 (60 FR 52278) as interim final rules. We received no public comment on that interim rule. We had published an entry in the Unified Regulatory Agenda describing the finalization of that

interim final rule (BOP–1017–F, RIN 1120–AA23). To clarify that this rulemaking is a change to the same interim rules, we are merging that action into this proposed rule.

The Correction Officers Health and Safety Act of 1998 gave the Bureau new statutory authority for conducting HIV tests. Additionally, the Centers for Disease Control (CDC) has issued a variety of recommendations on prevention and control of HIV, Tuberculosis, and other infectious diseases. Consequently, the Bureau is proposing to revise its regulations in accordance with the new statutory authority and in consideration of CDC recommendations.

Currently, Bureau regulations on the management of infectious diseases provide for mandatory HIV testing of a yearly random sample, yearly new commitment sample, new commitment re-test sample, pre-release testing, and clinically indicated testing. Any inmate refusing an order for one of these mandatory HIV testing programs is subject to an incident report for refusing to obey an order. Current regulations do not allow for involuntary HIV testing of an inmate following any intentional or unintentional exposure, when there is a risk of transmission of HIV infection to Bureau employees or other persons in a Bureau institution.

The Correction Officers Health and Safety Act of 1998 provides that each individual convicted of a Federal offense who is sentenced to a period of six months or more is to be tested for HIV, if such individual is determined to be at risk for HIV infection in accordance with the guidelines issued by the Bureau. The act also provides for involuntary HIV testing following any intentional or unintentional exposure when there is a risk of transmission of HIV infection to Bureau employees or other persons in a Bureau institution. Because of this new statutory authority, the Bureau is proposing to amend its regulations to allow involuntary testing in those instances where an inmate refuses to be tested following any intentional or unintentional exposure. The inmate may also be subject to an incident report for refusing to obey an order.

The Bureau will continue to allow an inmate to request to be tested for HIV. Such testing is limited to no more than once per 12-month period, unless the Bureau determines that additional testing is warranted. The Bureau will also continue to provide pre- and post-test counseling, regardless of the test results.

The Bureau is also proposing to amend its regulations on infectious disease management to address testing requirements for tuberculosis (TB). The Bureau's general authority to protect and provide for the safekeeping and care of inmates in Bureau custody (18 U.S.C. 4042(a)) allows us to conduct medical tests as necessary to protect the health of the inmate population. Currently, testing of inmates for TB is conducted in accordance with the recommendations and guidelines published by the Centers for Disease Control (CDC) in 1992. In response to the increased transmission of TB in correctional facilities, the CDC updated and expanded previously published recommendations for preventing and controlling TB in correctional facilities.

Based on these updated recommendations, the Bureau will screen each inmate for TB within two calendar days of initial incarceration. We intend to appropriately treat, isolate and/or protect inmates as a result of exposure in the two-day interim before testing. The Bureau will also conduct follow-up testing for each inmate annually. In addition, the Bureau will screen an inmate for TB when health services staff determine that the inmate may be at risk for infection. An inmate who refuses TB screening may be subject to an incident report for refusing to obey an order. If an inmate refuses PPD skin testing, and there is no contraindication to PPD skin testing, institution medical staff will educate and counsel the inmate regarding the need for such testing in an institutional setting (for example, the need to identify HIV+ inmates who have not received a course of prophylaxis and are at high risk for the development of active tuberculous disease). If an inmate still refuses PPD skin testing despite education and counseling, institution medical staff will test the inmate involuntarily. The intent of this amendment is to control TB among staff and inmates in correctional facilities.

To provide for the protection, safekeeping, and care of inmates in our custody (as required by 18 U.S.C. 4042(a)), we retain, revised for clarity, regulations on diagnostics (549.12(c)); Programming, Duty and Housing Restrictions (549.13); Confidentiality of Information (549.14); and Infectious Disease Training and Preventive Measures (549.15).

Finally, the Bureau is removing provisions in current § 549.13(c)(2) and (3) dealing with medical isolation and quarantining as these are governed by normal medical protocols and do not need to appear in the regulations. Removing these provisions from regulation and retaining them in Bureau policy allows us the flexibility to adhere to ever-changing medical standards and Federal medical guidelines.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule has been reviewed as a ''significant regulatory action'' under section 3(f) of Executive Order 12866 by the Office of Management and Budget (OMB).

Executive Order 13212

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions

of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi at the address listed above.

List of Subjects in 28 CFR Part 549

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 549 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

1. Revise the authority citation for 28 CFR part 549 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4014, 4042, 4045, 4081, 4082, (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise Subpart A to read as follows:

Subpart A—Infectious Disease Management

Sec.

Subpart A—Infectious Disease Management

§ 549.10 Purpose and scope.

The Bureau will manage infectious diseases in the confined environment of a correctional setting through a comprehensive approach which includes testing, appropriate treatment, prevention, education, and infection control measures.

§ 549.11 Program responsibility.

Each institution's Health Services Administrator (HSA) and Clinical Director (CD) are responsible for the operation of the institution's infectious disease program in accordance with applicable laws and regulations.

§ 549.12 Testing.

(a) *Human Immunodeficiency Virus (HIV).* (1) *Clinically indicated.* The Bureau tests inmates who have sentences of six months or more if health services staff determine, taking into consideration the risk as defined by the Centers for Disease Control guidelines, that the inmate is at risk for HIV infection. If the inmate refuses testing, staff may initiate an incident report for refusing to obey an order.

(2) *Exposure incidents.* The Bureau tests an inmate, regardless of the length of sentence or pretrial status, when there is a significant risk that the inmate transmitted the HIV infection, whether intentionally or unintentionally, to Bureau employees or other non-inmates who are lawfully present in a Bureau institution. Exposure incident testing does not require the inmate's consent.

(3) *Surveillance testing.* The Bureau conducts HIV testing for surveillance purposes as needed. If the inmate refuses testing, staff may initiate an incident report for refusing to obey an order.

(4) *Inmate request.* An inmate may request to be tested. The Bureau limits such testing to no more than one per 12-month period unless the Bureau determines that additional testing is warranted.

(5) *Counseling.* Inmates being tested for HIV are to receive pre- and post-test counseling, regardless of the test results.

(b) *Tuberculosis (TB).* (1) The Bureau screens each inmate for TB (e.g., PPD skin test, medical history, etc.) within two calendar days of initial incarceration.

(2) The Bureau conducts follow-up tests for each inmate annually.

(3) The Bureau will screen an inmate for TB when health services staff determine that the inmate may be at risk for infection.

(4) An inmate who refuses TB screening may be subject to an incident report for refusing to obey an order. If an inmate refuses PPD skin testing, and there is no contraindication to PPD skin testing, then, institution medical staff will test the inmate involuntarily.

(5) The Bureau conducts TB contact investigations following any incident in which inmates or staff may have been exposed to tuberculosis. Inmates will be tested according to paragraph (b)(4) of this section.

(c) *Diagnostics.* The Bureau tests an inmate for an infectious or communicable disease when the test is necessary to verify transmission following exposure to bloodborne pathogens or to infectious body fluid. An inmate who refuses diagnostic testing is subject to an incident report for refusing to obey an order.

§ 549.13 Programming, duty, and housing restrictions.

(a) The CD will assess any inmate with an infectious disease for appropriateness for programming, duty, and housing. Inmates with infectious diseases, that are transmitted through casual contact, will be prohibited from employment in any area, until fully evaluated by a health care provider.

(b) Inmates may be limited in programming, duty, and housing assignments when their infectious disease is transmitted through casual contact. The Warden, in consultation with the CD, may exclude inmates, on a case-by-case basis, from work assignments based upon the security and good order of the institution.

(c) If an inmate tests positive for an infectious disease, that test alone does not constitute sole grounds for disciplinary action. Disciplinary action may be considered when coupled with a secondary action that could lead to transmission of an infectious agent. Inmates testing positive for infectious disease are subject to the same disciplinary policy that applies to all inmates (see 28 CFR part 541, subpart B). Except as provided for in our disciplinary policy, no special or separate housing units may be established for HIV-positive inmates.

§ 549.14 Confidentiality of information.

Any disclosure of test results or medical information is made in accordance with the Privacy Act of 1974 and the HHS Standards for Privacy of Individually Identifiable Health Information promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996. Routine uses of such information maintained by the Bureau in its Privacy Act systems of records include the following:

(a) The HSA will ensure that each institution's respective state health department is informed of all cases of infectious diseases which are required by the state to be reported to the state health department.

(b) For all inmates being released from Bureau custody on parole, supervised

release, placement in a community-based program, furlough, or full-term release, the Warden will send a letter to the Chief, United States Probation Office (USPO) in the district where the inmate is being released if the inmate is known to be HIV seropositive or under treatment for active TB.

(c) If the inmate is being released to a halfway house, a copy of the USPO letter will be forwarded to the appropriate Community Corrections Manager (CCM). The CCM will notify the Director of the halfway house (if applicable).

(d) The HSA will notify the Immigration and Naturalization Service (INS) of any inmate testing HIV positive or who is under treatment for *active* TB who is to be released to an INS detainer.

§ 549.15 Infectious disease training and preventive measures.

(a) The HSA will ensure that a qualified health care professional provides training, incorporating a question-and-answer session, about infectious diseases to all newly committed inmates, during Admission and Orientation.

(b) Inmates in work assignments which staff determine to present the potential for occupational exposure to blood or infectious body fluids will receive annual training on prevention of work-related exposures and will be offered vaccination for Hepatitis B.

[FR Doc. 02–17564 Filed 7–11–02; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7245–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of a delisting petition. Based on waste-specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment.

The EPA is also proposing to grant a petition submitted by Tokusen USA, Inc. (Tokusen) to exclude (or delist) a certain solid waste generated by its Conway, Arkansas, facility from the lists of hazardous wastes.

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

If finalized, we would conclude that Tokusen's petitioned waste is nonhazardous with respect to the original listing criteria and that the dewatered sludge generated from the on-site Wastewater Treatment Plant (WWTP) and not from a manufacturing process will substantially reduce the likelihood of migration of constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until August 26, 2002. We will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by July 29, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Ali Dorobati, Hazardous Waste Division, Active Sites Branch, Arkansas Department of Environmental Quality (ADEQ), P.O. Box 8913, Little Rock, Arkansas, 72219–8913. Identify your comments at the top with this regulatory docket number: ''F–02–ARDEL–TOKUSEN.''

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Larry K. Landry (214) 665–8134.

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

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing:

(1) to grant Tokusen's petition to have its dewatered WWTP sludge excluded, or delisted, from the definition of a hazardous waste; and

(2) to use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Tokusen's petition requests a delisting for an F006 listed hazardous waste. Tokusen does not believe that the petitioned waste meets the criteria for which EPA listed it. Tokusen also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this