

with an applicable standard or contains an imminent safety hazard, and to direct manufacturers to notify owners, and to remedy violations of the federal construction and safety standards and, in some cases, to remedy the defect or imminent safety hazard.

The proposal is a mandate upon local jurisdiction to prohibit landowners from restricting the use of their land. The use of real property, or private or contractual restrictions upon it, is not within the scope of the Secretary's authority under the Act or within the applicability of the procedural and enforcement regulations.

2. Regardless of the authority given to the Consensus Committee under the Act to propose regulations, it proposal would seek the expand the authority of the Department beyond a reasonable interpretation of any provisions in the Act.

The Department may not expand its jurisdiction of the limitations of its statutory powers through statutory interpretation. The Department's statutory jurisdiction and authority must be delegated to it by Congress and be found within an authorizing provision of a statute. 5 U.S.C. 706(2).

The proposal is not based upon the federal construction and safety standards or the enforcement of those federal standards. It seeks to establish mandates on state and local jurisdictions, and to expand responsibilities and authority beyond what Congress had granted by requiring HUD to become involved in state and local land use issues and to take remedial action against local governments if they do not comply. There is no congressional authorization in the Act permitting or mandating the Department to be involved in such issues. As such, any actions by the Secretary to promulgate the proposal would be held unlawful under the APA.

HUD has long interpreted its authority under the Act to exclude involvement in local land use issues. 62 FR 3456, 3458 (1997). It had not previously interpreted the preemption provisions in the Act to preempt local laws unless the local laws involved building or construction standards. There is nothing in the Act or in the legislative history of the Act that would suggest a directive by Congress to change HUD's long-held legal position.

In addition, there is no applicable authority under any other statutory grant of power of the Secretary. The action requested by the Consensus Committee is not within any general authority of the Secretary, such as it granted in Section 7(d) of the

Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

For HUD to promulgate and enforce a regulation of such massive impact upon individual landowners and local jurisdictions nationwide and to assert federal involvement in areas traditionally reserved to the states, the Department would need a more specific statement from Congress of its intent.

3. The proposed regulation does not delineate a procedure by which state or local jurisdictions are to ascertain or to prohibit restrictions on land use nor a procedure by which the Department is to enforce against a state or local jurisdiction that does not comply. While the proposal purports to create a mandate, the regulation is only one sentence and does not contain any structure by which to enforce it or to ascertain violations. As such, the regulation is administratively incomplete.

Accordingly, for these reasons, the Secretary rejects the proposed regulation of the Consensus Committee.

Dated: July 11, 2003.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 31

[REG-144908-02]

RIN 1545-BB66

#### Federal Unemployment Tax Deposits— De Minimis Threshold

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the deposit of Federal Unemployment Tax Act (FUTA) taxes. The proposed regulations would provide an additional exception to the FUTA deposit requirements for taxpayers that qualify for the *de minimis* exception to the deposit requirements applicable to Federal Insurance Contribution Act (FICA) and withheld income taxes. The regulations affect small employers required to make deposits of FUTA taxes.

**DATES:** Written or electronically generated comments and requests for a public hearing must be received by October 15, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG-144908-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG-144908-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at <http://www.irs.gov/regs>.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Heather L. Dostaler, (202) 622-4940; concerning submissions of comments and requests for a public hearing, Treena Garrett of the Regulations Unit at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

The current rules relating to the deposit of FUTA taxes require employers to deposit taxes on a quarterly basis. The only generally applicable exception to this requirement is for employers whose accumulated FUTA taxes (*i.e.*, FUTA taxes for the current quarter plus undeposited FUTA taxes for prior quarters) do not exceed \$100. These employers are not subject to the deposit requirements until the quarter in which accumulated FUTA taxes exceed \$100. Similarly, if FUTA tax liability for a calendar year exceeds deposits for the year, the employer may remit the balance with the annual return only if it does not exceed \$100. In all other cases, the balance must be deposited with an authorized financial institution.

An employer is also generally required to deposit FICA taxes and withheld income taxes (employment taxes) on at least a monthly basis and file a quarterly or annual employment tax return. For any return period in which the employer's total liability for these taxes is less than \$2,500, the employer may satisfy its deposit obligation by remitting the tax with a timely filed employment tax return. An employer that qualifies for this exception with respect to employment taxes accumulated during a return period may, nevertheless, be required to deposit FUTA taxes for that period if the amount of accumulated FUTA taxes exceeds \$100.

##### Explanation of Provisions

The proposed regulations would provide an additional exception to the FUTA deposit requirements for