

*Unfunded Mandates Reform Act*

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801–804) is not applicable to the Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

**List of Subjects in 28 CFR Part 901**

Crime, Health, Privacy, Safety.

Accordingly, the Compact Council proposes to amend part 901 as follows:

**PART 901—FINGERPRINT SUBMISSION REQUIREMENTS**

1. The authority citation for part 901 continues to read as follows;

**Authority:** 42 U.S.C. 14616.

2. Amend § 901.3 as follows;

a. By redesignating paragraph (c) as paragraph (d);

b. By designating the text following paragraph (b) as new paragraph (c) and adding a sentence to the end of the paragraph;

c. By adding a new paragraph (e).

The added text reads as follows:

**§ 901.3 Approval of delayed fingerprint submission request.**

\* \* \* \* \*

(c) \* \* \* For the purposes of this rule, "time frame" means the number of days that elapse between the date on which the name search was conducted and the date on which the state repository either positively identifies the fingerprint subject or forwards the fingerprints to the FBI or the date a Federal agency forwards the fingerprints to the FBI.

\* \* \* \* \*

(e) Part 901 is also applicable to any federal agency authorized to access criminal history records pursuant to Federal statute or Executive Order for noncriminal justice purposes.

3. Amend part 901 by adding §§ 901.4 and 901.5 to read as follows:

**§ 901.4 Audits.**

(a) Audits of authorized State agencies that access the III System shall be conducted by the State's Compact Officer or, in absence of a Compact Officer, the chief administrator for the criminal history record repository. The responsible Federal service coordinator shall ensure that similar audits are conducted of authorized Federal agencies. Such audits shall be conducted to verify adherence to the provisions of part 901 and the FBI's Criminal Justice Information Services (CJIS) Security Policy.

(b) Authorized agencies shall cause to be collected an appropriate record of each instance of III System access through a manual or electronic log. The log shall be maintained for a minimum one-year period to facilitate the audits and compliance reviews. Such records shall be maintained in accordance with the CJIS Security Policy. (For information on this security policy, contact your State Control Terminal Officer or Federal Service Coordinator.)

(c) The audit and compliance reviews must include mechanisms to determine whether fingerprints were submitted within the time frame specified by the Compact Council.

(d) In addition to the audits as stated above, the FBI CJIS Audit staff shall also conduct routine systematic compliance reviews of State repositories, Federal agencies, and as necessary other authorized III System user agencies.

**§ 901.5 Sanction for noncompliance.**

The Compact Council, or the FBI in consultation with the Compact Council, may impose sanctions in accordance with rules, procedures, or standards as established by the Council. The approval for access to criminal history record information systems for noncriminal justice purposes is subject to cancellation or discontinuance for violation of the National Crime Prevention and Privacy Compact Act, failure to comply with the provisions of part 901, or failure to comply with the FBI Criminal Justice Information Services Security Policy (See § 901.4(b)). The State's Compact Officer, the chief administrator of the criminal history record repository or the Federal Service Coordinator may take similar actions, as applicable, against a State or Federal agency for failure to comply with applicable security policies.

Dated: November 5, 2003.

**Jeffrey D. Harmon,**  
*Compact Council Chairman.*

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**BILLING CODE 4410–02–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[DE072 1042b; FRL–7593–4]

**Approval and Promulgation of Air Quality Implementation Plans; Delaware; MOBILE6-based Motor Vehicle Emission Budgets for the Delaware Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a revision to the Delaware State Implementation Plan (SIP). Specifically, EPA is proposing approving amendments to the 2005 highway (on road) motor vehicle emission inventory for the Delaware portion of the Philadelphia-Wilmington-Trenton area's (the Philadelphia area) 1-hour ozone attainment plan as a revision to the Delaware SIP. This revision also serves to amend the 2005 motor vehicle emission budgets (MVEBs) used for determining transportation conformity under the Clean Air Act. The revised MVEBs were developed using MOBILE6, the most recent version of EPA's mobile source emission factor model. Revision of the MVEBs was a requirement of EPA's prior approval of Delaware's 1-hour ozone attainment demonstration plan for the Philadelphia severe ozone nonattainment area. In the final rules section of this **Federal Register**, EPA is approving Delaware's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by January 5, 2004.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Robert Kramer, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23,

U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to [kramer.robert@epa.gov](mailto:kramer.robert@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Delaware Department of Natural Resources and Environmental Control, 156 South State Street, Dover, Delaware 19901.

**FOR FURTHER INFORMATION CONTACT:** Larry Budney, (215) 814-2184, or by e-mail at [budney.larry@epa.gov](mailto:budney.larry@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number DE072-1042 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot

contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to [kramer.robert@epa.gov](mailto:kramer.robert@epa.gov), attention DE072-1042. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [Regulations.gov](http://www.regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of [Regulation.gov](http://www.regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA.

You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: November 20, 2003.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

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BILLING CODE 6560-50-P

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

### **48 CFR Parts 1809, 1837, and 1852**

**RIN 2700-AC60**

#### **Contractor Access to Confidential Information**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) to provide guidance on how NASA will acquire services to support management activities and administrative functions, when performing those services requires the contractor to have access to confidential information submitted by other contractors. NASA's increased use of contractors to support management activities and administrative functions, coupled with implementing Agency-wide electronic information systems, requires establishing consistent procedures for protecting confidential information from unauthorized use or disclosure.

**DATES:** Comments should be submitted on or before February 3, 2004 to be considered in the formulation of a final rule.

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

**FOR FURTHER INFORMATION CONTACT:** David Forbes, (202) 358-2051, e-mail: [David.P.Forbes@nasa.gov](mailto:David.P.Forbes@nasa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

In accomplishing its mission, NASA expends about eighty-five percent of its appropriations through contracts. As part of the process of awarding and performing contracts, offerors and contractors must provide information, some of which they claim to have developed at private expense and that may embody trade secrets or constitute commercial or financial and confidential information ("confidential

information"). Confidential information includes technical, financial, proprietary, commercial, privileged, or otherwise sensitive business information. As a result, NASA receives and retains a substantial amount of confidential information, contained in paper files and electronic administrative systems.

Generally, the information in question is not in the public domain and may be subject to the Trade Secrets Act, the Procurement Integrity Act (FAR 3.104), and other laws and regulations relating to ethics, organizational conflicts of interest, and corruption in the Federal procurement process. To the extent that an exception to the Freedom of Information Act applies, government agencies may also generate confidential information, including pre-negotiation analyses and positions and pre-decisional advice on a variety of subjects. NASA has long recognized a responsibility to protect this type of information from unauthorized use and disclosure. To this end, NASA has traditionally allowed only civil servants to have access to confidential information in the Government's possession. Practical realities, coupled with new policy initiatives compel NASA to reconsider its approach to managing contractor-related information.

The practical pressure to reconsider NASA's approach has emerged from years of "downsizing" the civil service workforce. Simply put, NASA no longer has enough employees to manage and safeguard all of the information in question. Of necessity, NASA is increasing its use of service contractors to assist in performing many administrative, financial, and technical functions that had been performed previously by government employees only. The types of services NASA will be procuring run the gamut from routine clerical support such as data entry and invoice processing, to more complex in-plant reviews, contract closeout processing, system administration, and safety and quality assurance activities. Service contractors may soon be supporting most of these activities and functions throughout the Agency. NASA must, therefore, find new, more streamlined ways to receive from offerors and contractors confidential information that may be entitled to protection and to disclose it to third party service providers, without compromising the information received.

As NASA releases more confidential information provided by offerors or contractors to other contractors, the risk increases that unauthorized uses and disclosures will occur. One aspect of

this increased risk is the potential that organizational conflicts of interest may arise when the Agency discloses one contractor's confidential information to another contractor. FAR Subpart 9.5 prescribes general rules for managing organizational conflicts of interest and gives four specific examples of situations that may give rise to problems. One of those examples deals directly with NASA's current dilemma, that is, providing one contractor access to other contractors' confidential information. Specifically, when one contractor gains access to other companies' "proprietary" information, FAR 9.505-4 directs the service provider to enter into agreement(s) with the other companies to protect their information from unauthorized use or disclosure and to refrain from using the information for any purpose other than that for which it was furnished. Additionally, FAR 9.505-4 requires the contracting officer to obtain copies of these third party agreements and ensure that they are properly executed.

In the past, NASA contracts rarely required access to another contractor's proprietary or other forms of confidential information, making this FAR procedure quite manageable. The current environment, however, raises the question whether use of FAR 9.505-4 continues to be workable for NASA. For example, in providing contract closeout services, the contractor and its employees may have access to hundreds of contract files, each of which should document all pre and post award activities for a particular contract. Typically, the contracts to be closed out will include multiple subcontractors. Many subcontractors will also have lower-tier subcontracts. To ensure that all of these companies have properly executed "non-disclosure agreements" among themselves could result in a huge number of interrelated agreements. Moreover, the contract closeout function is but one example of the types of services that may require one NASA contractor to have access to another contractor's confidential information before performance can proceed. Without obtaining even more support services, NASA cannot be responsible for managing this potentially enormous universe of interrelated non-disclosure agreements.

In today's environment, NASA must rely heavily on private sector service contractors for support in performing essential management activities and administrative functions. For contracts requiring this type of support, the Assistant Administrator for Procurement has determined that it is not in the NASA's interest to follow the