

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-30, adopted February 21, 1995, and released March 3, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-5618 Filed 3-7-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 95-28; RM-8593]

Radio Broadcasting Services; Stamping Ground, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Scott County Broadcasting, Inc., proposing the substitution of Channel 241A for Channel 256A at Stamping Ground, Kentucky, to enable Station WKYI(FM) to increase its power to six kilowatts and eliminate interference within its protected contour. An engineering analysis has determined that Channel 241A can be allotted to Stamping Ground in compliance with the

Commission's minimum distance separation requirements at petitioner's requested site with a site restriction of 12.0 kilometers (7.5 miles) east to avoid short-spacings to the application and allotment site of Channel 242C3, Stanford, Kentucky, and Station WKID(FM), Channel 240A, Vevay, Indiana. The coordinates for Channel 241A at Stamping Ground are North Latitude 38-17-43 and West Longitude 84-33-10.

DATES: Comments must be filed on or before April 24, 1995 and reply comments on or before May 10, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James P. Gray, President, Scott County Broadcasting, Inc., 10 Trinity Place, Fort Thomas, Kentucky 41075 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-28, adopted February 21, 1995, and released March 3, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Treatment of Gains or Losses Subsequent to Mergers or Business Combinations by Government Contractors

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), proposes to amend the Cost Accounting Standards (CAS) relating to treatment of gains or losses attributable to tangible capital assets subsequent to mergers or business combinations by government contractors.

To resolve the problems that have been identified in this area, the Board proposes to amend CAS 9904.404, "Capitalization of Tangible Assets" and CAS 9904.409, "Depreciation of Tangible Capital Assets". The proposed amendments are based on an approach involving a "no step-up, no step-down" of asset bases and no recognition of gain or loss on a transfer of assets following a business combination by contractors subject to CAS.

Section 26(g)(1) of the Office of Federal Procurement Policy Act requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard, publish a Notice of Proposed Rulemaking (NPRM). This NPRM addresses the Board's proposal to amend CAS 9904.404 and CAS 9904.409 to deal with the issue of gains and losses subsequent to a merger or business combination.

DATES: Comments should be received by May 8, 1995.

ADDRESSES: Comments should be addressed to Dr. Rein Abel, Director of Research, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Attn: CASB Docket No. 91-06N.

FOR FURTHER INFORMATION CONTACT: Dr. Rein Abel, Director of Research, Cost Accounting Standards Board (telephone 202-395-3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules and regulations are codified at 48 CFR Chapter 99. Section

26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. § 422(g)(1), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. This process consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking.
3. Promulgate a Notice of Proposed Rulemaking.
4. Promulgate a Final Rule.

This proposal is step three in the four step process.

B. Background

Prior Promulgations

The issues addressed in this proposal were first identified by commenters in response to the Board's request for suggested agenda topics in November 1990. Subsequently two Staff Discussion Papers (SDPs) were issued.

The first, dated August 26, 1991 and titled "Recognition and Pricing of Changing Capital Asset Values Resulting from Mergers and Business Combination by Government Contractors." (56 FR 42079) raised broad issues such as the scope of the proposed project, the basis for any Government claim to gains or losses resulting from a business combination and the likely economic consequences of a policy that would prohibit revaluation of assets following a merger.

The responses to this SDP were used by the Board as the basis for discussing the basic issues involved in this case. As a result of this discussion, the Board decided to issue a second SDP dealing with a series of questions concerning the specific procedures needed to deal effectively with the recognition, allocation and recovery of the gain or loss subsequent to a merger or business combination. The second SDP, entitled "Treatment of Gains or Losses Subsequent to Mergers or Business Combinations by Government Contractors," was issued on November 4, 1993 (58 FR 58882). On the basis of comments received to the SDP, an Advance Notice of Proposed Rulemaking (ANPRM) was developed and published in the **Federal Register** on August 24, 1994 (59 FR 26774). The responses to the ANPRM were of significant assistance to the Board in developing this NPRM.

Public Comments

Fourteen sets of public comments were received from government contractors, professional and industrial associations, Federal agencies, and accounting and consulting firms.

All three Government commenters supported the basic approach and format incorporated in the ANPRM. All the other commenters, with one exception, were clearly opposed to the basic approach adopted in the ANPRM., i.e., the no step-up, no step-down approach. One industry commenter, although critical of the ANPRM, did not reject its basic approach out of hand and reserved his most critical comments to the current FAR provision that, in effect, sanctions the use of "historical cost or fair value, whichever is lower" principle in cases of mergers or business combinations.

Irrespective of their support or opposition to the basic approach incorporated in the ANPRM, a number of commenters offered additional, detailed comments on the various specific provisions of the document. Some of these comments were clearly editorial while others were more substantive in nature.

These comments are discussed below in greater detail, under Section E., Public Comments. The Board and the CASB staff express their appreciation for the generally constructive and thoughtful responses provided by the commenters.

Benefits

After consideration of all the comments received in response to the ANPRM, the Board continues to believe that amendments to CAS 9904.404, "Capitalization of Tangible Assets," and CAS 9904.409, "Depreciation of Tangible Capital Assets," as set forth in the ANPRM and essentially restated in this NPRM, will significantly improve and clarify the implementation of CAS and related procurement regulations in accounting for tangible capital assets after completion of a merger or business combination. In particular, the Board continues to believe that the proposal embodied in this NPRM will clarify the current ambiguities in this area and thus should lead to reductions in negotiations and litigation. This point is of particular significance in the current economic and budgetary environment where further reductions in the defense budget can be expected to lead to additional mergers and business combinations among defense contractors. The Board believes that the potential benefit to the audit, negotiation, and general contract

administration processes accruing from the added clarity and uniformity in the measurement of the cost of depreciation and cost of money subsequent to a business combination will be substantial and will greatly outweigh any added costs.

Summary of Proposed Amendments

A brief description of the proposed amendments follows:

a. The current subsection 9904.404-50(d) is deleted and is replaced by an amended section that prescribes:

(1) That for Federal contract costing purposes tangible capital assets following a business combination shall retain their net book value recognized prior to the business combination provided that the assets had previously generated costs that were charged either as direct or indirect costs to Federal government contracts subject to CAS.

(2) That the cost of tangible capital assets shall be restated after the business combination at a figure not to exceed the fair value at the date of the acquisition pursuant to a business combination where the assets prior to the business combination did not generate costs that were charged either as direct or indirect costs to Federal contracts subject to CAS.

b. A new subparagraph 9904.409-50(j)(5), is added to current subsection 9904.409-50(j). The purpose of this new subparagraph is to make it clear that the CAS 9904.409 provisions dealing with the recapture of gains and losses on disposition of tangible capital assets should not apply when assets are transferred subsequent to a business combination.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96-511, does not apply to this proposal, and any associated rulemaking, because this proposal would impose no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this proposal on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this ANPRM will not result in the promulgation of a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposal will not have a significant effect on a substantial number of small entities because small businesses are exempt

from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This NPRM was developed after consideration of the public comments received in response to the Board's ANPRM published on May 24, 1994 (59 FR 26774). The comments have provided valuable input to the Board's rulemaking process. The comments received and the action taken by the Board are summarized in the paragraphs that follow:

Comment: Most non-Government commenters disagreed with the Board's proposed "no step-up, no step-down" approach. They opposed the exception from generally accepted accounting principles (GAAP) and expressed the opinion that the proposed approach does not represent sound accounting. They also pointed out that the proposed approach would lead to inconsistencies in the accounting practices applied in cases of CAS-covered contracts as contrasted with non-CAS-covered contracts. In general, the alternative approaches suggested involved either continuation of the "status quo", combined with proposals to rescind FAR 31.205-52, or suggestions to explore ways to insure that the government participates, when appropriate, in gains and losses recognized from assets involved in mergers or business combinations.

Response: The Board adopted the "no step-up no step-down" approach after extensive consideration of the possible alternative approaches. In particular, the issues associated with the recognition, allocation and recovery of the gain or loss subsequent to a merger or business combination were extensively explored in a Staff Discussion Paper (SDP) entitled "Treatment of Gains or Losses Subsequent to Mergers or Business Combinations by Government Contractors". It was only after careful consideration of the responses to this SDP that the Board decided to proceed with the "no step-up, no step-down" approach.

The Board cannot agree with the suggestions that the status quo should be, in essence, maintained. The issues addressed in this proposal were first identified as significant issues by commenters in responses to the Board's request for suggested agenda topics in November 1990. Furthermore, the FAR 31.205-52 provisions, which are part of the current regulatory environment in this area, have been generally recognized as leading to inequitable

consequences from the perspective of contractors. One commenter stated: " * * * the FAR provision not only suffers from implementation and transition problems, but as written is patently unfair by using historical costs when the purchase method indicates increased asset values and using the purchase cost when it is lower than the historical values. This allows the government to choose the method of accounting which is most cost beneficial to it." Given these circumstances, the Board cannot agree that "no action" is the proper course to follow in this instance.

Comment: Several commenters discussed the need to solve the apparent conflict between the CAS allocability provisions and the Federal Acquisition Regulation (FAR) allowability provisions in this area. In particular, it was suggested the OFPP Administrator address any continuing conflict between the Cost Accounting Standards and FAR 31.205-52 pursuant to the authority conferred on the Administrator by 41 U.S.C. 422(j)(3).

Response: The Board is aware of the apparent conflict between the provisions of CAS 9904.404 and FAR 31.205-52. Once the proposed amendment to CAS has been promulgated, the OFPP Administrator will determine whether any changes may be necessary in the FAR cost principles to make them fully compatible with the amended CAS 9904.404 and 9904.409.

Comment: Several commenters stated that the proposed amendment is unfair to contractors as it would prevent them from recouping their investments through future contract prices. In particular, the contrast was drawn between the acquisition of individual assets through purchase and the acquisition of assets as part of a business combination. In one case, the GAAP rules regarding acquisition cost would be followed, whereas in the other, the new CAS rule would mandate adherence to historical cost.

Response: It is the intent of the Board to apply the proposed amendments to CAS 9904.404 and 9904.409 on a prospective basis only. Therefore, any assets acquired in business combinations that have been concluded prior to the promulgation of these amendments will not be affected by the proposed changes in CAS. As to business combination taking place after the promulgation of the amendments, it is assumed that the parties involved will take into account, while negotiating the merger agreement, that any future depreciation chargeable to Government contracts and corresponding cash flow

projections, will be based on the historical costs of the tangible capital assets being transferred in the course of the merger.

As to the treatment of purchased assets in contrast to assets acquired through a business combination, it should be pointed out that in cases of individual tangible capital assets acquired from a CAS-covered contractor, any gain or loss from such a sale would be subject to recapture by the Government in accordance with the provisions of CAS 9904.409-50(j). It is precisely because the Board concluded that such a recapture would be impractical in cases of business combinations that it decided to proceed with the "no step-up, no step-down" approach in the proposed amendments.

Comment: One commenter argued that any Government claim to a share in a gain resulting from changes in asset values due to price level changes cannot be justified on the basis of payment of cost of money as a government contract cost. The commenter argued that cost of money was introduced as an offset to profit and therefore should not have an impact on cost measurement.

Response: At the time the CASB separately recognized cost of money in CAS 9904.414 as an imputed contract cost, it clearly acknowledged that prior to the promulgation of that Standard, this cost element had been a "consideration in determining contract profit compensation." However, this acknowledgement did not imply that the Board regarded cost of money as being part of, or having the characteristics of profit. It clearly recognized pre-CAS 9904.414 cost of money as an element of cost that implicitly was recognized as part of profit. CAS 9904.414 merely turned an implicitly recognized cost into an explicitly recognized cost.

Comment: Several commenters suggested that some type of materiality or significance criterion should be introduced to deal with those instances where the acquired entity has allocated only immaterial amounts of assets costs to CAS-covered contracts prior to the business combination or where such allocations were not made during the cost accounting period immediately preceding the business combination although they may have been made in the course of earlier periods.

Response: CAS 9904.404 and 9904.409 apply only in the case of full CAS coverage. Therefore, after the recent changes in the applicability criteria, the threshold for full CAS coverage has been increased to \$25 million in contract awards during a cost accounting period. It is hard to conceive

of circumstances where such an amount in contract awards would result, on a consistent basis, in insignificant depreciation and/or cost of money charges.

Comment: Some commenters believed that the term "generated costs chargeable" was too ambiguous.

Response: The word "chargeable" has been replaced by "charged either as direct cost or as indirect cost".

Comment: Several commenters were concerned about the perceived potential recordkeeping burden including massive studies and protracted audits.

Response: When CAS has been applied continuously, the proposed amendments do not create any need for new or additional data regarding tangible capital assets. The only requirement is that records regarding the net book values that were maintained prior to the business combination should be retained and kept up to date after the business combination.

It is only when the contractor believes that the historical costs used for CAS purposes do not represent the fair value to be used for financial reporting purposes that the creation of additional records (or at least additional entries on existing records) becomes necessary.

Comment: One commenter stated that an adequate definition of "business combination" is required.

Response: "Business combination" and "purchase method" are financial accounting terms that are already used in the current version of CAS 9904.404. CAS uses these terms in a derivative sense, i.e., it prescribes certain courses of action when events so described have been recognized for financial reporting purposes. The CASB is not an originator of these terms.

Comment: One commenter suggested that issues dealt with in the proposed amendment also apply to intangible assets and that these should also be addressed in this proposal.

Response: The proposed amendments are necessarily a part of CAS 9904.404 and 9904.409. Since the application of these two Standards is limited to tangible capital assets, the proposed amendment is not a suitable vehicle for extending the coverage to intangible assets. A separate project on intangible assets would be necessary for such a purpose.

Comment: One commenter in particular offered extensive editorial comments on the proposed amendments.

Response: Most of these editorial comments were accepted.

List of Subjects in 48 CFR Part 9904

Cost accounting standards,
Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for part 9904 continues to read as follows:

Authority: Public Law 100-679, 102 Stat. 4056, 41 U.S.C. 422.

PART 9904—COST ACCOUNTING STANDARDS

9904.404 Capitalization of tangible assets.

2. Section 9904.404-50 is proposed to be amended by revising paragraph (d) to read as follows:

9904.404-50 Techniques for application.

* * * * *

(d) For Federal Government contract costing purposes, acquisition costs of tangible capital assets acquired in a business combination and accounted for under the "purchase method" of accounting shall be assigned to these assets as follows:

(1) Tangible capital assets that generated costs charged either as direct costs or as indirect costs to Federal Government contracts prior to a business combination shall retain the same net book value(s) subsequent to a business combination as if the business combination had not taken place.

(2) Where acquired tangible capital asset(s) did not generate costs that were charged to Federal contracts subject to CAS at the time of the business combination, the asset(s) shall be assigned a portion of the cost of the acquired company not to exceed their fair value(s) at the date of acquisition. When the fair value of identifiable acquired assets less liabilities assumed exceeds the purchase price of the acquired company in an acquisition under the "purchase method," the value otherwise assignable to tangible capital assets shall be reduced by a proportionate part of the excess.

* * * * *

3. Section 9904.404-63 is proposed to be amended by designating the existing paragraph as (a) and by adding a new paragraph (b) to read as follows:

9904.404-63 Effective date.

(a) * * *

(b) The effective date of 9904.404-50(d) is [30 days after date of publication of the final rule in the **Federal Register**].

4. Section 9904.409-50 is proposed to be amended by adding a new paragraph (j)(5) to read as follows:

9904.409-50 Techniques for application.

* * * * *

(j) * * *

(5) The provisions of this subsection 9904.409-50(j) do not apply to business combinations. The carrying values of tangible capital assets subsequent to a business combination shall be established in accordance with the provisions of 9904.404-50(d).

* * * * *

6. Section 9904.409-63 is proposed to be amended by designating the existing paragraph as (a) and by adding a new paragraph (b) to read as follows:

9904.409-63 Effective date.

(a) * * *

(b) The effective date of 9904.409-50(j)(5), is [30 days after date of publication of the final rule in the **Federal Register**].

[FR Doc. 95-5566 Filed 3-7-95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AD02

Endangered and Threatened Wildlife and Plants; Proposed Revisions for Proposed Designation of Critical Habitat for the Mexican Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule, proposed revisions to proposed designation of critical habitat.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces proposed exclusions from its previously published proposal to designate critical habitat for the Mexican spotted owl. The draft economic analysis upon which the exclusions are partly based has also been made available.

DATES: The original comment period on the proposed rule to designate critical habitat extended from December 7, 1994, to March 7, 1995. The comment period on the proposal and the proposed exclusions extends through May 8, 1995.

ADDRESSES: Requests for copies of the Service's Economic Analysis and comments concerning that document and the proposal to designate critical habitat for the Mexican spotted owl or