

Approved: December 23, 1996.

**Jesse Brown,**  
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is amended as follows:

#### **PART 17—MEDICAL**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. An undesignated center heading and a new § 17.149 are added to read as follows:

#### **Prosthetic, Sensory, and Rehabilitative Aids**

##### **§ 17.149 Sensori-neural Aids.**

(a) Notwithstanding any other provision of this part, VA will furnish needed sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids) only to veterans otherwise receiving VA care or services and only as provided in this section.

(b) VA will furnish needed sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids) to the following veterans:

- (1) Those with a compensable service-connected disability;
- (2) Those who are former prisoners of war;
- (3) Those in receipt of benefits under 38 U.S.C. 1151;
- (4) Those in receipt of increased pension based on the need for regular aid and attendance or by reason of being permanently housebound;
- (5) Those who have a visual or hearing impairment that resulted from the existence of another medical condition for which the veteran is receiving VA care, or which resulted from treatment of that medical condition;
- (6) Those with a significant functional or cognitive impairment evidenced by deficiencies in activities of daily living, but not including normally occurring visual or hearing impairments; and
- (7) Those visually or hearing impaired so severely that the provision of sensori-neural aids is necessary to permit active participation in their own medical treatment.

(c) VA will furnish needed hearing aids to those veterans who have service-connected hearing disabilities rated 0 percent if there is organic conductive, mixed, or sensory hearing impairment, and loss of pure tone hearing sensitivity in the low, mid, or high-frequency range or a combination of frequency ranges which contribute to a loss of communication ability; however,

hearing aids are to be provided only as needed for the service-connected hearing disability.

(Authority: 38 U.S.C. 1701(6)(A)(i))

3. The undesignated center heading preceding § 17.150 is removed.

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#### **POSTAL RATE COMMISSION**

##### **39 CFR Part 3001**

[Docket No. RM97-1; Order No. 1176]

#### **Rules of Practice and Procedure**

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission amends Rule 54 of its rules of practice. When the Postal Service files a request that proposes to change rates or fees and, at the same time, proposes to change established cost attribution principles, the amendment requires the Postal Service to estimate the impact of its proposed changes in rates or fees separately from the impact of its proposed changes in attribution principles. The purpose of the amendment is to give other participants and the Commission adequate and timely notice of the impact of the proposals that it contains, in order to facilitate evaluation of those proposals.

**DATES:** This rule will take effect on June 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stephen Sharfman, Legal Advisor, (202) 789-6820.

**SUPPLEMENTARY INFORMATION:** On December 17, 1996, the Commission issued its Notice of Proposed Rulemaking ("NPR") in this docket. Order No. 1146, 61 FR 67760-67763, December 24, 1996. The NPR proposed to amend Rule 54(a) of the Commission's Rules of Practice [39 CFR 3001.54(a)] to require Postal Service rate filings to include an alternate cost presentation that estimates what the impact of its proposed changes in rates would be on attributable costs and cost coverages if established cost attribution principles were applied. The amendment proposed in the NPR would not require an alternate cost presentation to show the impact of minor changes in the procedures by which attribution principles are implemented. In response to the comments received, the Commission has modified the amendment proposed in the NPR in one respect. Under final amended Rule 54(a), the Postal Service's

rate request would have to describe proposed changes in the detailed procedures by which attribution principles are implemented, even though such changes would not require an alternate cost presentation.

#### **I. Procedural History**

Current Rule 54(a) requires the Postal Service to include with its rate filings enough information to "fully inform" the Commission and the parties of the "significance and impact" of the proposed changes. The NPR observed that the basic purpose of Rule 54 is to require the Postal Service to accompany its requests for changes in rates with the threshold level of cost, volume, and revenue information necessary to support its direct case, so that its request can be evaluated within the tight deadline that the Act imposes.

The Commission concluded that to satisfy Rule 54(a), the Postal Service's request must separately identify the impact that its proposed changes in rates and its proposed changes in attribution principles would have on cost coverages. It noted that in Docket No. MC96-3, the Postal Service's Rule 54 cost presentation did not satisfy this objective. It estimated only the combined effect on subclass attributable costs and cost coverages of its proposed changes in rates and its proposed changes in attribution principles. It left the task of distinguishing between these effects to other parties and the Commission.

In its NPR, the Commission observed that it is not properly the parties' burden to disentangle the effects of the Postal Service's proposed changes in rates from the effects of its proposed changes in attribution principles so that they can separately evaluate these aspects of the Postal Service's proposals. As the proponent of change, the Postal Service has the burden of going forward, and the burden of persuasion. See 5 U.S.C. 556(d), 39 U.S.C. 3622, 39 CFR 3001.53 and 3001.54. If the Postal Service's request confounds the effects of its proposals to change rates and its proposals to change cost attribution principles, its request does not provide timely and effective notice of the significance of either.

The Commission noted that when a Postal Service request combines proposals to change rates with proposals to change established cost attribution principles, mailers and competitors are not able to determine from the Postal Service's request how its proposed changes in attribution principles would affect their interests until they calculate for themselves what cost coverages would be at the Postal Service's

proposed rates, under established attribution principles. The NPR noted that for many potential participants in Commission proceedings, performing this elaborate set of calculations is a formidable and time consuming task. It can defeat, or seriously delay, their ability to determine how the Postal Service's proposals would affect them, and whether they should intervene to support or oppose them.

Where a Postal Service rate request proposes to simultaneously change rates and attribution principles, amended Rule 54(a) requires that the request include an alternate attributable cost presentation that calculates attributable costs and cost coverages at the Postal Service's proposed rates according to established attribution principles. This ensures that the Commission and potential participants will receive timely and effective notice of the separate impact of the Postal Service's proposed changes in rates and its proposed changes in attribution principles.

## II. Comments on the Notice of Proposed Rulemaking

The Commission received eleven sets of comments on the amendment proposed in the NPR. The American Business Press (ABP), Dow Jones & Company, Inc. (Dow Jones), the National Association of Presort Mailers (NAPM), and the National Federation of Nonprofits (NFN), supported the amendment as proposed. The American Bankers Association (ABA), the Major Mailers Association (MMA), McGraw-Hill Companies, Inc. (McGraw-Hill), the Newspaper Association of America (NAA), United Parcel Service (UPS), and the Officer of the Consumer Advocate (OCA), proposed strengthening the proposed amendment. Only the Postal Service opposed it.

### 1. Adequacy of Notice

The bulk of the comments received argue proposed Rule 54(a) is inadequate to provide the notice they need of the impact of the Postal Service's proposals on attributable costs and cost coverages. They offer numerous proposals for increasing the scope and the detail of the information required in the alternate attributable cost presentation required by the proposed rule. Out of concern for the burden on the Postal Service, the alternate attributable cost presentation required by the proposed rule is unchanged in the final rule. The final rule, however, incorporates a proposal that Postal Service rate requests flag all changes that it proposes in established attribution procedures, including implementation details that do not meet

the definition of "attribution principles," and therefore do not trigger the alternate cost presentation requirement.

As in proposed Rule 54(a), the alternate cost presentation required by the final rule applies to proposed changes in "cost attribution principles," not to proposed changes in the detailed mechanics by which those principles are implemented. The final rule uses the phrase "cost attribution principles" to describe the baseline attribution procedures that must be held constant in the alternative cost presentation that the amendment would require. "Cost attribution principles" include theories of cost causation (e.g., volume variability, exclusivity), models of cost causation (e.g., econometric models of volume variability), the identity and role of cost drivers (e.g., shape, coverage), and the identity and role of distribution keys (e.g., pieces, pound/miles). "Cost attribution principles" are not intended to encompass minor adjustments to the mechanics of implementing these principles if the adjustments do not conflict with the principles themselves. Nor are attribution principles intended to encompass data updates, apparent errors in arithmetic, spreadsheet mechanics, or documentation that do not raise issues as to the theory or logic by which costs are attributed to subclasses.

UPS questions whether notice would be adequate if the Postal Service is excused from providing an alternate cost presentation where it changes only the mechanics by which established attribution principles are implemented. Notice of the effect of such changes is necessary, it argues, because they could substantially affect subclass attributable costs and cost coverages. UPS recognizes that the Commission's motive for narrowing the scope of the rule in this way is to reduce the burden of the alternate cost presentation requirement on the Postal Service. It argues that only corrections of apparent arithmetic, documentation, or presentation errors should be exempt from the rule. If proposed changes in the mechanics of implementation are exempt, it contends, the Postal Service would have too much discretion to characterize its proposed attribution changes as changes in the mechanics of implementation rather than in attribution principles. It therefore suggests that the Commission adopt a rule similar to the broader requirements of Federal Energy Regulatory Commission Rule § 154.301 [18 CFR] described in the NPR. Comments of UPS

in response to notice of proposed rulemaking, January 30, 1997, at 2-3.

The OCA supports the NPR's proposal not to subject minor changes in the mechanics by which attribution principles are implemented to the requirements of the rule. The OCA argues, however, that the rule should require Postal Service rate requests to identify proposed changes in implementation mechanics, in order to make it easier to assess whether the effects of such changes are inconsequential. Comments of the Office of the Consumer Advocate to the Postal Rate Commission, January 31, 1997, at 24.

In the past, the Postal Service has made continuous, evolutionary changes in the mechanics by which attribution principles are implemented that do not rise to the level of changes in "attribution principles" as defined above. It is the Commission's observation that over the past decade such changes have rarely had a substantial impact on the relative shares of subclass attributable costs. Accordingly, it appears that such changes do not need to be included within the scope of the rule to achieve its purposes. In excluding such changes, the Commission is assuming that they will continue to have only inconsequential effects on subclass attributable costs and cost coverages, as in the past. If past experience turns out not to be representative of the future, the Commission will make appropriate amendments to the rule. The Commission, however, agrees with the OCA that the rule should require Postal Service requests to identify all changes that it proposes to make in the mechanics of implementing attribution principles to help parties and the Commission assess whether their effects are inconsequential. Since the Postal Service typically makes only a few such changes from one rate case to the next, this rule should have a minor effect on the Postal Service's burden of preparing rate requests. Accordingly, the language of amended Rule 54(a) has been modified to include this requirement.

McGraw-Hill makes a number of proposals for strengthening the notice required by proposed Rule 54(a). The most significant of its proposals is that alternate attributable cost presentations show the impact of the Postal Service's proposed changes in attribution principles, individually and collectively. Comments of the McGraw-Hill Companies, Inc., January 31, 1997, at 3. Such a requirement can be found in the rules of practice of other public utility commissions. See, for example, § 200.2 of the Municipal Regulations for

the Public Service Commission of the District of Columbia [15 DCMR § 200.2 (1991)] described in the NPR.

Such a rule would make it much easier for the parties and the Commission to evaluate the significance of each proposed change if the impact of each were separately estimated. In the context of the Postal Service's rate filings, however, the Commission is concerned that such a requirement would impose too great a burden on the Postal Service. The Postal Service's attributable cost presentations are more complex and more detailed than those required of most public utilities. The Postal Service strenuously objects to the burden involved in preparing a single alternate cost presentation that shows the collective effect of its proposed changes in attribution principles. Postal Service Comments at 2-6. If the Postal Service had been required to prepare attributable cost presentations for each of its proposed changes in attribution principles in the most recently filed rate request (Docket No. MC97-2), such a rule would have required ten separate test year attributable cost presentations. It would have had to separately show the impact of its proposal to substitute volume-variable for single-subclass access costs, to substitute the Bradley analysis of purchased highway transportation cost variability for the established analysis, to omit the Alaskan Air adjustment, the Hawaiian Air adjustment, non-volume variable Special Delivery Messenger costs, non-volume variable window service costs for postal cards, the Vehicle Service Drivers variability adjustment, volume variable route time, special purpose route adjustments, as well as the collective impact of all of these proposals. Although such notice would be highly relevant and useful to those evaluating these proposals, it might add so significantly to the burden of documenting the Postal Service's rate requests as to be impractical. For this reason, McGraw-Hill's proposal is not adopted in the final rule.

MMA was concerned that proposed Rule 54(a) did not specify the level of documentation of the alternate cost presentation that it would require. It urged that the Rule specify that supporting exhibits are required. Comments of Major Mailers Association on Notice of Proposed Rulemaking, January 31, 1997, at 5. Proposed Rule 54(a) contemplated that the Postal Service document its alternate cost presentation at the same level of detail that it documents its main attributable cost presentation. The Commission agrees with MMA that it would be helpful to make the required level of

documentation explicit in the amended Rule. Accordingly, amended Rule 54(a) explicitly requires that an alternate attributable cost presentation comply with Rule 54(h), which prescribes the level of detail that the Postal Service is required to provide in its main attributable cost presentation. The amended Rule would provide parties with detailed calculations of attributable costs under established attribution principles and under those proposed by the Postal Service, both at the Postal Service's proposed rates and volumes. This should help parties separately assess the impact of proposed changes to specific attribution principles.

McGraw-Hill proposes strengthening the notice required by proposed Rule 54(a) in several other respects. It proposes that the Rule makes it clear that the alternate attributable cost presentation include a base year as well as a test year presentation. McGraw-Hill Comments at 2. Because the amended rule requires that an alternate attributable cost presentation satisfy Rule 54(h), it requires it to include base year, interim year, and test year calculations.

Similarly, McGraw-Hill proposes that an alternate cost presentation be required "whenever a cost element that had previously been treated as either wholly attributable or wholly non-attributable is proposed to be treated as attributable in part. \* \* \*" Id. If a proposed change fits the definition of a change to an "attribution principle" provided above, it will require an alternate cost presentation, regardless of the degree to which it alters the percent attributable of a particular cost component. For the same reason, an alternate cost presentation would be required "whenever the Postal Service proposes to implement any change in cost attribution principles that had been suggested by the Commission on a prospective basis (but not fully litigated) in a prior Commission proceeding[.]" as McGraw-Hill recommends. Id. The weight of precedent does not attach to prospective recommendations by the Commission, since they have not been litigated. Because parties should have an opportunity to litigate the validity of such principles, they need notice of their significance and impact.

McGraw-Hill also recommends that an alternate cost presentation be required "when a requested change in rates or fees is based in part on a significant change in data systems, or methods of extrapolating from cost data (particularly IOCS data). \* \* \*" Id. The Commission does not believe that it is practical to require the Postal Service to maintain different, parallel data

collection systems in order to maintain consistency with prior attribution procedures unless it is necessary to preserve the ability to apply established attribution principles. Whether changes proposed by the Postal Service in "methods of extrapolating from cost data," such as IOCS data, should come within the scope of the rule depends upon whether those proposed changes imply changes to established theories or assumptions about how costs are caused. If such changes are essentially mechanical, without theoretical implications, obtaining information about the impact of such changes is best left to the normal discovery process.

McGraw-Hill also recommends that an alternate cost presentation be required "whenever the Postal Service proposes to alter substantially its mail processing cost treatment for time not spent handling mail. \* \* \*" Id. Here, too, if the proposed change in how mail processing time is allocated implies a change in an established theory or assumption about how costs are caused, its effects should be reflected in an alternate cost presentation. If the proposed change is essentially mechanical, without theoretical implications, obtaining information about its impact is best left to the normal discovery process.

The Postal Service notes that the purpose of proposed Rule 54(a) is to "provide parties and the Commission with enough information from the outset of a proceeding to evaluate the significance and impact of the Postal Service's proposals," Postal Service Comments at 12, citing page 3 of the NPR. It argues that the alternate cost presentation contemplated by proposed Rule 54(a) is not needed to accomplish this purpose. In its view, it is the Commission's or the intervenors' burden to determine how the Postal Service's attribution procedures differ from established attribution principles, and to assess the impact those differences have on subclass attributable costs and cost coverages at the Postal Service's proposed rates. Postal Service Comments at 10-12. It contends that adequate notice of the impact of its proposed departures from Commission-approved attribution procedures can be obtained by "simple ratios derived from a comparison of past base years under the Postal Service's and the Commission's methodology. \* \* \*" Id. at 10-11. Attachments A through C to the Postal Service's Comments on the NPR are spreadsheets that calculate such ratios for FY 1993, the base year in R94-1. Attachment D to the Postal Service's Comments attempts to approximate the Commission's subclass

attributable costs for the test year in Docket No. MC96-3 by multiplying the Postal Service's subclass attributable costs for the test year in Docket No. MC96-3 by the percentage difference between the Postal Service's FY 1993 subclass attributable costs and the Commission's FY 1993 subclass attributable costs.

Attachment D then compares this approximation with fully modeled subclass attributable costs using Commission-approved costing principles (a preliminary set of attributable costs provided by the Commission in Library Reference PRC-LR-2 in MC96-3). The Postal Service characterizes the error produced in this instance by its ratioing technique as ranging from -3.03 percent for parcel post to +2.36 percent for Express Mail. The Postal Service contends, without further analysis, that this "firmly establishe[s]" the "adequacy" of its ratioing technique to provide the required notice in future dockets. Postal Service Comments at 12.

After filing its Comments on the NPR, the Postal Service filed a request for changes in rates in Docket No. MC97-2. As in MC96-3, its request proposed changes in rates and changes in cost attribution principles, and estimated only their combined effect on attributable costs and cost coverages. As in MC96-3, the Commission ordered the Postal Service to separately show the effects of its proposed changes in rates and its proposed changes in attribution principles on cost coverages, so that the Commission and the parties could evaluate them separately. See Order No. 1165, March 12, 1997. In MC96-3, the Postal Service declined to calculate fully modeled costs using established attribution principles. In MC97-2, as a substitute for fully modeled costs, it offered approximations based on ratios of Postal Service and Commission attributable costs in the MC96-3 base year. It relied on Attachment D to its Comments on the NPR as having demonstrated that ratioing will accurately approximate what fully modeled test year attributable costs would be in any docket if they were calculated by established attribution principles. See Response of USPS to Order No. 1165, March 24, 1997, at 1, citing LR-PCR-52.

In MC97-2, the Commission rejected the Postal Service's offer to provide ratio-based approximations in lieu of fully modeled attributable costs using established attribution principles. It observed that the Postal Service had provided no statistical or analytical basis for concluding what set of approximation errors would result from

a future application of its ratioing technique involving other base and test periods. The Commission noted that the approximation errors produced by the use of ratios in Attachment D actually range from -25.58 percent to +2.36 percent for the various subclasses, and that the Postal Service, with one exception, offered no explanation for the magnitude of these errors. Order No. 1169, April 14, 1997, at 3-4.

In responding to the Postal Service's offer of provided ratio-based approximations, the Commission focused on how ratioing measures the impact of proposed changes in attribution principles on percentage points of cost coverage—the traditional measure of impact in Commission proceedings. It examined the seven subclasses most affected by the Postal Service's proposed changes in attribution principles. Under realistic assumptions, it concluded, ratio-based approximations for a majority of those subclasses have a predictive uncertainty that is at least 50 percent as large as the impact of the Postal Service's proposed changes in attribution principles. *Id.* at 4-7. The Commission concluded that where uncertainty surrounding an approximated cost coverage is more than half as large as the effect of proposed changes in attribution principles itself, ratioing substantially obscures the effect of which notice is required. *Id.* at 7.

In Order No. 1169, the Commission discussed possible reasons that ratioing appears to yield inaccurate results for so many subclasses. It noted that because attribution analysis focuses on cost behavior at the segment and component level, analysis of the effect of applying different attribution principles tends to be more reliable, and is more verifiable, if it is built up by segments and components, rather than arrived at by gross ratioing. *Id.*

The Postal Service characterizes its ratioing technique as "simple" and "straightforward," yet the Postal Service recognizes that various ad hoc adjustments are needed if key assumptions underlying ratioing are to hold. For ratioing to be useful, the differences between the attribution principles used by the Postal Service and the Commission in the base period must remain unchanged in the test period. The Postal Service recognized that ratios of Postal Service to Commission attributable costs in the R94-1 base year would not yield a useful approximation of Commission-approved MC96-3 test year attributable costs, because the Postal Service applied different attribution principles in MC96-3 than in R94-1. For that reason,

Attachment D bases ratios on the Postal Service's FY 1993 CRA, rather than its R94-1 base year attributable costs.

The Postal Service also appears to recognize that the base period that it used in Attachment D (its FY 1993 CRA) should have been further adjusted to reflect subsequent corrections in the editing of second-class IOCS tallies, in order to make its base period attribution procedures consistent with the Commission's FY 1993 base year procedures in all respects other than in attribution principles. See Attachment D to Postal Service Comments, note 4. The Postal Service also recognizes that a detailed adjustment to the Commission's R94-1 base year attributable costs is required to adjust costs associated with Alaskan Air Bypass mail if base period ratios are to approximate the Commission's test year attributable costs for some subclasses. See Docket No. MC96-3, LR-SSR-122, at 9-10.

In Order No. 1169, the Commission discusses other assumptions underlying ratioing, some of which appear not to hold in the base and test periods used in Attachment D, and which appear to contribute to the substantial approximation errors that it yields for some subclasses. See Order No. 1169 at 7-8 and Attachment 2. The Commission observed that whether key assumptions underlying ratioing have been met is difficult to verify because the Postal Service did not provide the detailed analysis reflected in the cost model. *Id.* at 8.

The Postal Service has not provided a statistical or analytical basis for concluding that ratioing will accurately, reliably, and verifiably predict how subclass attributable costs and cost coverages in a test year would look if established attribution principles were applied. Therefore, ratio-derived approximations of subclass attributable costs will not be considered adequate notice of the impact of its proposed changes in attribution principles under final Rule 54(a).

## 2. Definition of Baseline

Proposed Rule 54(a) makes the set of attribution principles that the Commission applied in its most recent general rate proceeding in which its recommended rates were adopted the baseline from which changes in attribution principles would be determined. The Commission believes that this set of attribution principles constitutes an appropriate baseline because it has been fully litigated, provides the cost basis for current rates, defines the status quo, and has the weight of precedent. Order No. 1146 at

10-11 [61 FR at 67762]. The OCA proposes that amended Rule 54(a) identify a particular set of appendices or workpapers of a specific Commission opinion as containing the established set of attribution principles, in order to reduce disputes as to what attribution principles are "established." It recognizes that this aspect of the Rule would have to be amended periodically as the Commission adopts changes in attribution principles. OCA Comments at 27-28.

NAA notes that if proposed Rule 54(a) were applied today, its language would refer to Docket No. R94-1, the most recent general rate case. It points out that in that docket there was an initial Recommended Decision followed by a Further Recommended Decision on reconsideration that corrected some inconsequential technical errors in the Commission's attributable cost calculations. It notes that there is no ambiguity as to which of those recommended decisions incorporates established attribution principles, since the Governors adopted the rates in the Further Recommended Decision on reconsideration. It anticipates a future situation in which a recommended decision on reconsideration is not accepted by the Governors. In that instance, it advises, the Commission should indicate which of its recommended decisions incorporates established attribution principles. NAA Comments at 3-4.

The language of amended Rule 54(a) clearly indicates that the baseline set of attribution principles is the set used in the Commission recommended decision that forms the basis for the rates adopted by the Governors. Even where there is more than one recommended decision in a docket, it will be clear which decision provides the basis for the rates adopted by the Governors. It is worth noting that as the Commission defines "attribution principles" in this docket, there is no difference between the Commission's initial recommended decision and its recommended decision on reconsideration in R94-1. The Opinion and Further Recommended Decision in R94-1 made trivial corrections to the mechanics by which attribution principles were implemented, but it did not change the attribution principles applied in the initial Recommended Decision.

The Commission believes that it would be cumbersome to try to specify in the rule a particular portion of the documentation of a particular recommended decision as containing the established set of attribution principles, because of the lag that would be involved in amending that portion of

the rule when the need arises. Ambiguity is not likely to be a serious problem with respect to a Commission recommended decision in an omnibus rate proceeding. Findings and conclusions in such proceedings are usually intended to be definitive and have general applicability. Ambiguity is more likely to arise if a proposal to change an attribution principle were accepted in a more limited proceeding between general rate cases. The set of attribution principles used in the most recent general rate proceeding would remain the baseline for purposes of Rule 54(a), but the Commission would be receptive to a request for a waiver of Rule 54(a) with respect to changes in attribution principles adopted in interim cases.

The Postal Service comments that it would be difficult to apply proposed Rule 54(a) if the Commission were to treat as established precedent attribution methods that "have never been lawfully established on the record." It asserts that the Commission's single subclass stop method for attributing city delivery carrier access time has not been lawfully established on the record. It contends that "the Commission's many single-subclass costing variants" have not been defended by a witness on the record, as required by the MOAA decision. Postal Service Comments at 16. It argues that the single subclass stop method does not fall within the proposed rule because it is not among the methods that were "arrived at following litigation during that or prior Commission proceedings and have survived any appellate review that might have been conducted under 39 U.S.C. § 3628." Postal Service Comments at 17, quoting Order No. 1146 at 11.

It is difficult to understand the Postal Service's continuing preoccupation with an approach to attributing carrier access time that the Commission has abandoned ever since the remanded phase of Docket No. R90-1. That approach is irrelevant to amended Rule 54(a) because the Commission did not apply it in the most recent general rate proceeding. As the Postal Service is well aware, and as the Commission has previously summarized in its Opinion and Further Recommended Decision in R94-1, the Commission applied a two-step approach to analyzing access cost causation in R87-1 and in the initial phase of R90-1. Step 1 attributed access costs to a subclass that were incurred to access a delivery point to deliver mail only of that subclass, on the theory that a subclass is responsible for costs that are incurred exclusively for its benefit. Step 2 attempted to identify and

attribute the volume variable portion of remaining access costs. As the Postal Service's own witnesses have freely conceded, Step 1 unambiguously and validly traces causation of access costs to the responsible subclass, independent of any attempt to attribute remaining access costs in Step 2. See, e.g., Docket No. R90-1 (Remand), Tr. 2/805-06 (Postal Service witness Panzar). The Commission's attribution of single subclass access costs consists only of Step 1. Step 1 was proposed, explained, and defended on the record by witness Chown in R87-1, by witness Sowell in the remanded phase of R90-1, and by witness Kolbe in R94-1. See discussion in the Commission's Opinion and Further Recommended Decision in Docket No. R94-1, paras. 221-245; NAA Comments at 2. The attribution principle applied in Step 1 has not varied since it was first applied in R87-1.

In R87-1 and the initial phase of R90-1, the Commission first applied Step 1, but then tried different ways of performing Step 2. It is the record basis for combining Step 1 with Step 2 that was challenged in the MOAA case and addressed by the MOAA Court. In remanding Docket No. R90-1 to the Commission, the MOAA Court referred to the "Commission's new double-barreled approach" and its "overlap theory" as having been developed off the record. *Mail Order Association of America v. USPS*, 2 F.3d 408 (D.C. Cir. 1993) at 427, 429. The Commission abandoned its "double barreled approach" and its "overlap theory" in the remanded phase of R90-1 and has never again applied it. It applied only Step 1 in the remanded phase of R90-1, and in R94-1, after it was proposed, explained, and defended by witnesses on the record in each. No appeal was taken from either of these Commission recommended decisions. Step 1, therefore, has been fully litigated on the record. For these reasons, amended Rule 54(a) clearly encompasses the single subclass criterion that the Commission has consistently used to attribute access costs since R87-1.

### 3. Burden

In its Comments on the NPR, the Postal Service asserts that preparing the alternative cost presentation required by Rule 54(a) would take between 10 and 15 person-days. It observes that it takes at least six months to prepare the documentation required for an omnibus rate filing. It states that although this "may not seem overwhelming, adding this to the already lengthy and time-consuming period of pre-filing case preparation would be onerous." Postal

Service Comments at 8. It suggests that adding further to this lead time might "encroach on the prerogatives of postal management to control the timing of rate requests. . . ." Id. at 5. The Postal Service suggests that a way to mitigate the burden of proposed Rule 54(a) would be to allow it to delay the alternate cost presentation required until 25 days after the filing of its request, which would shift the workload to a time "characterized by relatively low discovery requests. . . ." Id. at 13.

MMA, McGraw-Hill, NAPM, and NFN argue that requiring each intervenor to estimate the impact on attributable costs and cost coverages of the Postal Service's proposed changes to established attribution principles is unreasonable, considering the vast inequality of resources and expertise between the Postal Service and most intervenors in the area of postal cost analysis. MMA Comments at 2, McGraw-Hill Comments at 2, NAPM Comments at 1, NFN Comments at 1. Where the Postal Service estimates that preparing the alternate cost presentation required by Rule 54(a) would require 10 to 15 man-days, MMA cites the testimony of its witness Bentley in MC96-3 that he would need six months and \$150,000 to prepare such a presentation, despite his background in postal cost analysis. MMA Comments at 2. Such an expensive undertaking would be beyond the means of many of the participants in Commission proceedings, such as those represented by the National Federation of Nonprofits. NFN Comments at 1. Such a time consuming undertaking would be of little value even for intervenors who could afford it, since, in a typical rate proceeding, it would not be completed until after intervenors' cases were due.

On balance, burden considerations tend to support, rather than oppose adoption of proposed Rule 54(a). Estimating the impact of its proposed rates on costs according to the attribution principles that the Commission applies imposes only a modest burden on the Postal Service. It has unlimited access to the relevant data, a large technical staff with the specialized background required to develop a comprehensive estimate of Postal Service attributable costs, and has previously demonstrated its ability to accurately attribute costs according to established principles. The 10 to 15 person days to which the Postal Service refers appears to be an estimate of the effort that preparing an alternate cost presentation would initially require. Once its data processing programs were set up to regularly produce alternate cost presentations, it is likely that the 10

to 15 person days of effort would be greatly reduced. For these reasons, complying with amended Rule 54(a) should add only marginally to the lead time required to prepare rate filings. It should be noted, however, that the need to accompany a rate filing with a large amount of detailed information, as Rule 54 requires, is largely a function of the short time allowed the Commission and the parties to process that information. The ten-month deadline under which the Commission and the parties labor is unprecedented in regulatory practice for filings of the inherent size and complexity of omnibus postal rate filings. See, e.g., remarks in Docket No. MC95-1 at Tr. 1/59-60. The burden on the Commission of processing omnibus postal rate cases within a ten-month period is comparable to the burden on the Postal Service of preparing omnibus rate filings, considering the disparity of resources available. The deciding factor, therefore, should be the burden on the parties.

The comments received confirm the Commission's observation in Order No. 1146 at 3 [61 FR 67760], that

[w]hen a Postal Service request combines proposals to change rates with proposals to change established cost attribution principles, mailers and competitors are not able to determine from the Postal Service's request how its proposed changes in attribution principles would affect their interests until they calculate for themselves what cost coverages would be at the Postal Service's proposed rates, under established attribution principles. For many potential participants in our hearings, performing this elaborate set of calculations is a formidable and time consuming task. It can defeat, or seriously delay, their ability to determine how the Postal Service's proposals would affect them, and whether they should intervene to support or oppose them.

The need for this information at the outset of the proceeding is clear, and the burden of preparing an alternate cost presentation of the kind required by proposed Rule 54(a) is vastly greater on many of the intervenors than on the Postal Service. While delaying the alternate cost presentation required by the proposed rule by 25 days would marginally ease the Postal Service's burden of preparing rate filings, it would substantially reduce the value of the notice it would provide, since a large proportion of the time available to the parties for discovery and preparation of their cases would have expired.

#### 4. Due Process

Many of the comments responding to the NPR assert that the rights of intervenors in postal rate proceedings to due process are violated if the Postal

Service fails to inform them of the impact of its proposed changes in cost attribution principles on attributable costs and cost coverages. Dow Jones Comments at 1, ABP Comments at 5, MMA Comments at 1, McGraw-Hill Comments at 1-2, NAPM Comments at 1, OCA Comments at 4. The Postal Service argues that requiring it to provide this information violates its rights to due process, if it requires estimating what the impact of its proposed rates would be using attribution principles it does not espouse. Postal Service Comments at 14-20. The Postal Service contends that comments that the Commission made in Docket No. RM83-2 confirm that its due process rights could be violated by such a requirement. Id. at 15. Because of key differences in the context of the proposals made in RM83-2 and proposed Rule 54(a), and key differences in the substance of those proposals, the due process concerns that the Commission expressed in connection with the RM83-2 proposals are avoided by amended Rule 54(a).

In RM83-2, the United Parcel Service (UPS) proposed to require Postal Service rate requests to provide an alternate attributable cost presentation that replicated the attribution procedures most recently applied by the Commission. UPS argued that the alternate cost presentation should be as detailed and as comprehensive as the Postal Service's main attributable cost presentation, integrating proposed and alternate base year cost segment attributions, working through all ripple effects, and rolling them forward to the test year.

The Commission did not adopt the UPS proposal. RM83-2 was instituted fourteen years ago when basic approaches to postal cost data collection and analysis were still unresolved. Extensive changes were being made to the In Office Cost System which provides the basic data for attributing mail processing costs, and the basic data collection systems underlying current transportation and delivery cost attributions were not yet in place. Basic issues in attribution theory were still unresolved. Whether a third tier of costs ("assignable costs") should continue to be analyzed for causation, and whether it should include "service related costs" was still unresolved, how to treat specific fixed costs and peak load costs were still being vigorously litigated; and the Postal Service's analysis of transportation and delivery costs had been rapidly evolving from one rate case to the next.

Because of the widespread changes being made to postal cost data collection

and analysis, the Commission was concerned that unforeseen problems could arise if the Postal Service were required to apply all of the detailed base year and test year attribution procedures used by the Commission in R80-1 to new data and circumstances in subsequent cases. If the Postal Service were required to speculate as to what solutions the Commission might have applied to unforeseen attribution issues, and were required to affirm such speculations under oath, it appeared to the Commission that there was a significant risk that the Postal Service might have to adopt a litigating position with which it did not agree, in violation of its right to due process. Order No. 478, January 21, 1983, at 6-7. The Commission did not adopt the UPS proposal, primarily to avoid this potential infringement on the Postal Service's right to determine its own litigating positions.

In RM83-2, the Commission proposed that the Postal Service's rate requests include alternative cost presentations for individual cost segments that were consistent with Commission-recommended procedures. The Commission believed that limiting the alternate cost presentation to individual cost segments would make this task sufficiently simple and straightforward to avoid due process problems that might be presented by the broader UPS proposal. In preparing supplemental cost segment presentations, the Commission assumed that the Postal Service would be able to apply the same method, and employ the same judgments that the Commission had outlined in its most recent recommended decision. Therefore, it was the Commission's view that under its more limited proposal, the Postal Service would not be required to exercise a significant degree of discretionary judgment. Id.

The Commission ultimately decided not to adopt the alternate cost presentation requirement that it initially proposed in RM83-2. It found some merit in the Postal Service's contention that reconstructing detailed attributable cost presentations consistent with those used in prior rate cases, even ones limited to individual cost segments, would be difficult, given the extensive changes taking place in the collection, editing, and analysis of postal cost data. In Docket No. RM83-6, which was instituted to examine this issue, the Postal Service provided plausible examples of how changes in the way cost data had been collected since the completion of R80-1 made it impractical to attempt a detailed reconstruction either of Commission-

approved attribution procedures or its own proposed attribution procedures in that case. The Postal Service asserted that costs could not be attributed according to either its or the Commission's R80-1 procedures unless obsolete data collection forms and systems were reconstructed, at a cost that it estimated to be from \$60 to \$120 million. See Prepared Testimony of Postal Service witnesses Alenier and Alepa, filed February 22, 1983, in Docket No. RM86-3.

Circumstances have changed since RM83-2. The Postal Service has not materially changed its systems for collecting basic mail processing, transportation, and delivery cost data since R90-1. Although refinements have been made since then, they have not affected the ability of the Postal Service or the Commission to apply established attribution principles, as they have been defined in this docket. Similarly, the basic approaches taken by the Postal Service and the Commission to analyzing cost responsibility for mail processing, transportation, and delivery costs have remained unchanged since R90-1, with rare exceptions.

Because the collection and analysis of cost data has matured and stabilized since R83-2, it is less likely that the Postal Service will encounter unforeseen problems implementing established attribution principles, and less likely that it will need to speculate as to what procedures the Commission would have used to solve them. Accordingly, there is little risk that requiring the Postal Service to provide an alternate cost presentation consistent with established attribution principles would infringe on its right to due process.

Differences in substance between amended Rule 54(a) and the proposals considered in RM83-2 provide an even more important reason why amended Rule 54(a) will not require the Postal Service to adopt a litigation position with which it does not agree. The Postal Service understood the proposals in RM83-2 to require it to apply procedures that were identical in every detail with the procedures used by the Commission to attribute costs in the previous rate case, either overall, or for individual segments. The Postal Service assumed that an approved attribution method applied in a prior rate case could not be considered to have been applied in a subsequent rate case unless the process began with identical data collection forms, used identically labeled cost accounts and subaccounts, and used identical mathematical formulae at every step of every calculation. See, e.g., Docket No. RM83-

2, Initial Comments of USPS on the Notice of Inquiry, December 16, 1982, at 5, 10.

Proposed Rule 54(a) does not require alternate attributable cost presentations to be identical in every detail with the attribution procedures used by the Commission in the most recent general rate case. It requires that an alternate cost presentation show the impact of applying established attribution principles. Attribution principles refer to a theories of cost causation (e.g., volume variability, exclusivity), models of cost causation (e.g., econometric models of volume variability), the identity and role of cost drivers (e.g., shape, coverage), and the identity and role of distribution keys (e.g., pieces, pound/miles). Attribution principles are not intended to encompass the detailed mechanics by which they are implemented, as long as they are not inconsistent with the principle itself. See Order No. 1146 at 4 [61 FR at 67761].

In RM83-2 the Postal Service assumed that the attribution procedures with which the Commission was concerned were inseparable from the details of data collection. See Docket No. RM83-2, Initial Comments of USPS at 10. This assumption cannot be validly applied to alternate cost presentations under amended Rule 54(a). Under the amended rule, the Postal Service will not have to follow the detailed mechanics by which the Commission implemented attribution principles in the previous general rate case because refinements in such things as data collection systems, cost account organization, and roll forward techniques will generally not conflict with the basic logic of cost causation by which a given cost component is associated with subclasses of mail.

The Postal Service might perceive a need to alter the detailed procedures by which the Commission implemented a particular attribution principle in the most recent general rate case to accommodate new data or changed circumstances. If it does, the Postal Service might be asked by a Presiding Officers Information Request to explain why it believes there is such a need, and why it chose one solution over another. But its good faith judgments as to any needed innovations in detailed implementation procedures would not be considered in violation of amended Rule 54(a). However, if the Postal Service perceived a need to alter an established attribution principle (i.e., established causation theory, model, cost driver, or distribution key), to accommodate new data or changed circumstances, it should explain the

need for such a change in a request for a waiver of Rule 54(a) with respect to that principle.

There is a final distinction between the proposals made in RM83-2 and amended Rule 54(a) in this docket that essentially eliminates the risk that the Postal Service would have to adopt a litigation position with which it does not agree. The Postal Service assumed that the primary purpose of the proposals in RM83-2 was to require an alternate cost presentation that would provide an independent evidentiary basis for the Commission recommended decisions. It assumed this because, throughout RM83-2, the Commission emphasized its need to preserve access to record cost data that it considered necessary to apply Commission-approved attribution methods.

The primary purpose of proposed Rule 54(a) is not to preserve access to record cost data. This concern has eased since RM83-2 as the Postal Service's basic cost data collection systems have matured and stabilized. The purpose of Rule 54(a) is to ensure that parties and the Commission have timely notice of the effect that the Postal Service's proposed changes in rates and in attribution principles would have on cost coverages. Since the Commission is free to apply attribution principles litigated and approved in prior dockets to new data submitted in subsequent dockets, the alternate cost presentation required by amended Rule 54(a) is not needed to provide an evidentiary basis for applying those principles. Because the alternate cost presentation required by Rule 54(a) is not needed to supply an evidentiary basis for applying established attribution principles, the alternate cost presentation may be provided in the form of either a library reference or sworn testimony.

The NPR emphasized that the Postal Service would not be required to affirm either the theoretical or the practical merits of established attribution principles. It is merely required to affirm that it has made a good faith effort to give notice of what the impact would be of its proposed departures from established attribution principles. Order No. 1146 at 10 [61 FR at 67762]. Such an affirmation would not require the Postal Service to adopt a litigation position against it will, except to the extent that any proponent must carry the burden of going forward, and the burden of persuasion, if its proposals are to prevail.

The Postal Service criticizes the Commission's "present attempt to impose on the Postal Service significant judgmental decisionmaking with respect to" attribution methods that the

Commission has applied. Postal Service Comments at 19. Amended Rule 54(a) is not an attempt to impose on the Postal Service significant judgmental decisionmaking with respect to replicating previously applied attribution principles. Although Rule 54(a) would allow the Postal Service's judgment to be applied with respect to implementation details if changed circumstances require it, the Commission expects that this would rarely be necessary. Further, applying those attribution principles to a current rate case would require the Postal Service to exercise judgment in only trivial respects that have inconsequential effects on subclass attributable costs and cost coverages. Cf. Docket No. MC95-1, Answer of Richard Patelunas to Request During Oral Cross Examination, Tr. 28/13221-23.

In the NPR, the Commission indicated that exercising judgment that does not conflict with established attribution principles will not be considered a violation of the Rule. It did so because recent experience indicates that the need for exercising judgment would be rare and the consequences of exercising it would be exceedingly minor under most circumstances. There are unusual circumstances in which it is reasonably foreseeable that an alternate cost presentation might require a significant exercise of judgment. An example would be if the Postal Service were to file a rate case that involved a major restructuring of mail classes. In that context, a waiver of proposed Rule 54(a) might be appropriate if the cost characteristics of the proposed new services are expected to differ substantially from existing services.

The Postal Service asks what use participants and the Commission could make of an alternate attributable cost presentation that is not submitted in the form of sworn testimony. Postal Service Comments at 19. One use is to provide participants with a timely basis for deciding whether to intervene and litigate a particular issue. Additionally, participants may treat the impacts shown in the alternate cost presentation as hypothetically correct, and submit testimony that discusses what the ramifications would be for the Postal Service's proposals if that hypothesis were correct. The weight that the Commission ultimately would give such testimony would depend on how consistent the alternate cost presentation turns out to be with established attribution principles, as determined by the Commission after it has analyzed the record.

As with participants, the Commission may use the alternate cost presentation

required by amended Rule 54(a) to identify particular issues in time to examine them during the discovery phase. If the Commission were to observe flaws, inconsistencies, or unexplained judgmental choices in the Postal Service's alternate cost presentation, it could take steps to have them examined on the record, for example, as topics of Presiding Officer Information Requests. What the impact of the Postal Service's proposals actually would be is something that the Commission would ultimately determine, based on record evidence.

The Postal Service argues that if the Commission considers adequate notice to be important to the due process rights of participants, that it issue an "initial decision prior to the close of hearings \* \* \*" if it recommends methodological changes after the close of the evidentiary record. Id. at 20. The Commission intends only to recommend changes in attribution principles that are grounded in the record. As long as they are, the parties have been afforded adequate notice. Providing advance notice of the conclusions that the Commission tentatively draws from the record prior to the time that it closes might be helpful in hearings without deadlines. The record must close at some point, however, so that the Commission can analyze and make findings on the whole record. As the Postal Service is aware, there is no realistic opportunity to further compress the 10-month statutory deadline for processing general rate cases, given their size and complexity. Therefore, there is no realistic opportunity for the Commission to issue tentative decisions.

#### 5. Enforcement

MMA argues that the major weakness of proposed Rule 54(a) is that it does not provide any sanction for noncompliance. MMA notes that in R94-1 and MC96-3, the Commission ordered the Postal Service to provide an alternate cost presentation that is consistent with established attribution principles and the Postal Service refused to comply. MMA warns that the Postal Service will likely continue to resist complying with such a requirement, and that there is a likelihood that requests for waivers and other motion practice will drag out the controversy past the time that the information could serve its intended purpose. MMA Comments at 3-4.

39 U.S.C. § 3624(c)(2) enables the Commission to extend the 10-month deadline for issuing its final decision on a rate request if the Postal Service fails to provide the information requested in a lawful Commission order. MMA



proposes that Rule 54(a) be amended to automatically invoke § 3624(c)(2) if the required alternate cost presentation does not accompany a Postal Service rate request. Id. at 3-4. As an alternate means of enforcement, MMA proposes that the Commission adopt a rule modeled upon the Federal Energy Regulatory Commission's rule 385.2001 [18 CFR], which authorizes that agency to reject filings that do not comply with its rules. Id. at 4-5.

Like MMA, NAA comments that proposed Rule 54(a) will have to be resolutely enforced, either through invocation § 3624(c)(2) or dismissal of the Postal Service's filing, if it is to be effective. NAA Comments at 3-4. ABA also urges that failures to comply with Rule 54(a) automatically invoke § 3624(c)(2), although it recommends that waivers be available in exceptional circumstances. ABA Comments at 1-2. The OCA asks that the sanctions for noncompliance with proposed Rule 54(a) be clarified and strengthened. It urges that noncompliance with proposed Rule 54(a) be treated as the equivalent of failure to respond to discovery and that the sanctions available in 39 CFR § 3001.28 be applied. OCA Comments at 25-27.

It is understandable that the comments on proposed Rule 54(a) have emphasized the need for sanctions, since the Postal Service has not complied with orders to provide alternate cost presentations in recent dockets. In doing so, the Postal Service has relied heavily on the fact that current Rule 54 does not explicitly require it to give parties and the Commission the notice that proposed Rule 54(a) would require. With amended Rule 54(a) in place, the Commission is optimistic that the Postal Service will comply with its requirements. Appropriate sanctions for noncompliance with amended Rule 54(a) will be determined as the need arises.

#### Regulatory Evaluation

It has been determined pursuant to 5 U.S.C. 605(b) that this amended rule will apply exclusively to the Postal Service in proceedings conducted by the Postal Rate Commission. Therefore, it is certified that this amendment will not have a significant economic impact on a substantial number of small entities under the terms of the Regulatory Flexibility Act, 5 U.S.C. 501 *et seq.* Because this rule will only apply to the Postal Service in Commission proceedings, it has also been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism

Assessment pursuant to Executive Order 12612. Inasmuch as the rule imposes information reporting requirements exclusively upon the United States Postal Service for the purpose of conducting postal rate proceedings, it does not contain any information collection requirements as defined in the Paperwork Reduction Act [44 U.S.C. 3502(4)], and consequently the review provisions of 44 U.S.C. 3507 and the implementing regulations in 5 CFR part 1320 do not apply.

#### List of Subjects in 39 CFR Part 3001

Administrative practices and procedure.

For the reasons set out in the preamble, 39 CFR part 3001 is amended as follows:

#### PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

T4Authority: 39 U.S.C. 404(b), 3603, 3622-24, 3661, 3662.

2. In § 3001.54, paragraph (a)(1) is revised to read as follows:

#### § 3001.54 Contents of formal requests.

(a) General requirements. (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (r) of this section. The request shall describe any changes that it proposes in the attribution procedures applied by the Commission in the most recent general rate proceeding in which its recommended rates or fees were adopted. If a request proposes to change the cost attribution principles applied by the Commission in the most recent general rate proceeding in which its recommended rates were adopted, the Postal Service's request shall include an alternate cost presentation satisfying paragraph (h) of this section that shows what the effect on its request would be if it did not propose changes in attribution principles. If the required information is set forth in the Postal Service's prepared direct evidence, it

shall be deemed to be part of the formal request without restatement.

\* \* \* \* \*

Issued by the Commission on May 27, 1997.

**Margaret P. Crenshaw,**

Secretary.

[FR Doc. 97-14257 Filed 6-2-97; 8:45 am]

BILLING CODE 7710-FW-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[SIPTRAX No. PA-4058a; FRL-5832-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO<sub>x</sub> RACT Determinations for Individual Sources

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) reasonably available control technology (RACT) on five major sources located in Pennsylvania. The intended effect of this action is to approve source-specific operating permits that establish the above-mentioned RACT requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This action will become effective August 4, 1997 unless notice is received on or before July 3, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to David Campbell, Air, Radiation, and Toxics Division, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of