

views on the liability of Indian tribes under the Federal Unemployment Tax Act (FUTA). Your letter was forwarded to this office for reply.

You state that the Colorado Employment Security Act has amended their definition of "Political Subdivision," for purposes of the Employment Security Act, to include an Indian tribe organized pursuant to the Indian Reorganization Act of 1934. This amendment confers on Indian tribes in Colorado the option of either paying contributions to the State unemployment fund or reimbursing the State account for the amount of benefits paid based upon service with the Tribe. You question whether this amendment to Colorado law and the fact that tribes have chosen the reimbursement option changes the status of the tribes for purposes of determining the amount of tax due under FUTA. As explained below, it is the position of the Internal Revenue Service that Indian tribes are treated in the same way as private employers. The amendment to Colorado law does not change our position.

In addition you ask whether Indian tribes being treated as political subdivisions of a State are exempt from FUTA. If tribes are being treated as private employers, you also ask whether the FUTA tax is reduced by any reimbursements made by the tribes. While we are unable to comment directly on the Indian tribes in Colorado, we can provide the following general information.

Section 3301 of the Internal Revenue Code imposes on every employer a tax (the FUTA tax) on the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)). Thus, unless the payments are excepted from the term "wages" or the services performed by the employee are excepted from the term "employment" such payments will be subject to FUTA.

Section 3306(c)(7) provides an exception from the definition of "employment," for purposes of FUTA, for service performed in the employ of a State or political subdivision.

Section 3309 allows States to provide for unemployment coverage for governmental organization under the "direct reimbursement method." Under the direct reimbursement method, a qualifying organization is allowed to obtain state unemployment coverage for its employees by agreeing to reimburse the State for unemployment benefits that are attributable to services performed for the organization. The reimbursement of benefits is in lieu of paying state unemployment tax based on the experience rate of the organization. This provision applies to service which is excluded from the term "employment" by reason of section 3306(c)(7), which is service performed in the employ of a State, or political subdivision thereof.

It is the long-standing position of the Service that American Indian tribes are not political subdivisions or agencies of a state for federal employment tax purposes. For purposes of FUTA, Indian tribes and their tribal activities are treated in the same way as private employers. Although section 7871 of the Code provides that an Indian tribal government is a State for certain enumerated

Internal Revenue Code purposes, these purposes do not include federal employment taxes. Thus, service for a tribal government does not qualify for the exception from the definition of "employment" under section 3306(c)(7). See Rev. Rul. 59-354, 1959-2 C.B. 24 and Rev. Rul. 68-493, 1968-2 C.B. 426 (copies attached).

Section 3302(a)(1) of the Code provides that the taxpayer may, to the extent provided in subsections (a) and (c), credit against the tax imposed by section 3301, the amount of contributions paid by the taxpayer into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year.

As stated above, for purposes of FUTA, Indian tribes and their tribal activities are treated in the same way as private employers. Thus, if a tribe is not contributing to a State unemployment fund, it would be required to pay FUTA at the full rate. Because the reimbursement option under section 3309 is not available to Indian tribes, we have never addressed the question of whether reimbursements made to a State unemployment fund by an Indian tribe would reduce the amount of FUTA tax owed by the tribe. Section 3302(a) allows a credit for contributions paid by a taxpayer. Section 3309 allows for reimbursements *in lieu of contributions*. Given this language, it appears that Indian tribes would not be allowed a credit for any reimbursements they made.

We hope this information is helpful. If we can be of further assistance, please contact Jean M. Casey of my staff at (202) 622-6040.

Sincerely yours,

Mary E. Oppenheimer,
Assistant Chief Counsel, Office of the
Associate Chief Counsel (Employee Benefits
and Exempt Organizations).

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BILLING CODE 4510-30-M

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection

requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed revision collection of FECA Medical Report Forms: CA-7, CA-8, CA-16b, CA-20, CA-20a, CA-1090, CA-1303, CA-1305, CA-1306, CA-1314, CA-1316, CA-1331, CA-1332, A-1336, OWCP-5a, OWCP-5b, and OWCP-5c.

A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 24, 1996. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Mr. Rich Elman, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 219-6375 (this is not a toll-free number), fax 202-219-6592.

SUPPLEMENTARY INFORMATION:

I. Background

Statute 5 USC 8101 et seq. of the Federal Employees' Compensation Act provides for the payment of benefits for wage-loss and/or for permanent payment to a scheduled member, arising out of a work-related injury or disease. The CA-7 and CA-8 request information, allowing the Office of Workers' Compensation Programs to fulfill its statutory requirements for the period of compensation claimed (e.g., the pay rate, dependents, earnings, dual benefits and third party information). The other forms in this proposed revision collection collect medical

information necessary to determine entitlement to benefits under FECA.

II. Current Actions

The Department of Labor seeks the revision approval to collect this information in order to carry out its responsibility to determine eligibility for and the compensation of benefits. The OWCP-5a, OWCP-5b and OWCP-

5c are being revised. The CA-1302, formerly included in 1215-0103, is being eliminated.

Type of Review: Revision.
Agency: Employment Standards Administration.
Title: FECA Medical Report Forms.
OMB Number: 1215-0103.
Agency Numbers: CA-7, CA-8, CA-16b, CA-20, CA-20a, CA-1090, CA-1303, CA-1305, CA-1306, CA-1314,

CA-1316, CA-1331, CA-1332, A-1336, OWCP-5a, OWCP-5b, and OWCP-5c.

Affected Public: Individuals or households; Businesses or other for-profit; Federal Government.

Total Respondents: 441,855.

Frequency: As needed.

Total Responses: 441,855.

Estimated Total Burden Hours: 43,412.

Total	Form respondents	Responses	Total response time	Burden hours
CA-7	200	200	20 min	67
CA-8	200	200	5 min	17
CA-16B	157,000	157,000	5 min	13,083
CA-17B	134,000	134,000	5 min	11,167
CA-20	92,000	92,000	5 min	7,667
CA-20a	20,000	20,000	5 min	1,667
CA-1090	800	800	5 min	67
CA-1303	4,000	4,000	20 min	1,333
CA-1305	80	80	20 min	27
CA-1306	25	25	10 min	4
CA-1314	1,200	1,200	20 min	400
CA-1316	1,100	1,100	10 min	183
CA-1331	750	750	5 min	63
CA-1332	1,500	1,500	30 min	750
CA-1336	2,000	2,000	5 min	167
OWCP-5a	7,000	7,000	15 min	1,750
OWCP-5b	5,000	5,000	15 min	1,250
OWCP-5c	15,000	15,000	15 min	3,750
Totals	441,855	441,855	43,412

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$141,394.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 17, 1996.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 030-30266, License No. 30-23697-01E, EA 96-170]

Innovative Weaponry, Inc., Albuquerque, New Mexico; Confirmatory Order Modifying License (Effective Immediately)

I

Innovative Weaponry, Inc. of Nevada, (IWI or Licensee) is the holder of NRC

License No. 30-23697-01E issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes the Licensee to distribute byproduct material (i.e., tritium) in gunsights as specified in the license. The license was transferred from IWI of New Mexico to IWI of Nevada on April 3, 1995. Although due to expire on June 30, 1993, the license has remained active based on a timely renewal application.

II

Based on its review of the results of an NRC investigation conducted from May 9, 1995, through March 22, 1996, the NRC identified the following apparent violations of IWI's license conditions: (1) IWI distributed tritium in gunsights not approved by the NRC and not specifically authorized on the license; and (2) IWI distributed tritium sources obtained from a manufacturer not authorized on the license. In addition, as indicated in a letter issued to IWI on April 17, 1996, it appeared that the violations were committed by the President and Executive Vice President of the company.

These apparent violations and the concern that they were committed by the President and Executive Vice President were discussed with IWI

representatives at a predecisional enforcement conference in Rockville, Maryland on April 23, 1996. The Licensee admitted that violations had occurred but denied that there was any intent to commit the violations. Notwithstanding the Licensee's position on intent, the NRC is concerned that the violations resulted from a lack of effective action to assure compliance with license requirements, despite IWI officials being aware that the NRC license contained limitations on what could and could not be distributed.

III

As a result of the NRC investigation, the NRC staff questioned whether it should have the requisite reasonable assurance that IWI will comply with agency requirements. At the predecisional enforcement conference and a meeting on the same date to discuss license amendment issues, the Licensee voluntarily committed to actions to address the NRC's concerns about its ability to conduct its activities in compliance with the license and applicable NRC requirements. The Licensee offered to develop the following plans and to submit them to the NRC for approval: (1) a training plan to assure that all IWI employees, including management, understand the