# Sunshine Act Meetings

Federal Register
Vol. 54, No. 210
Wednesday, November 1, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## NATIONAL TRANSPORTATION SAFETY BOARD

**TIME AND DATE:** 9:30 a.m. Tuesday, November 7, 1989.

**PLACE:** Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 205940.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Highway Accident Report: Collapse of the S.R. 675 Bridg Spans over the Pocomoke River, Pocomoke, Maryland, August 17, 1988.

**NEWS MEDIA CONTACT** (202) 382-6600.

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 382-6525.

Dated: Octobr 27, 1989.

Bea Hardesty,

*Federal Register Liaison Officer.*

[FR Doc. 89-25797 Filed 10-30-89; 1:17 pm]

BILLING CODE 7533-01-M

## SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [54 FR 42885 October 18, 1989].

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Friday, October 13, 1989.

**CHANGES IN THE MEETING:** Deletion.

The following item was not considered at an open meeting on Wednesday, October 25, 1989, at 4:00 p.m.

Consideration of an application filed by T. Rowe Price Associates, Inc. on behalf of T. Rowe Price Spectrum Fund, Inc. for a conditional order of the Commisson under sections 6(c), 17(b), and 17(d) and Rule 17d-1 of the Investment Company Act of 1940 to permit the Spectrum Fund to acquire shares of funds within the T. Rowe Price group of funds in excess of the limitations imposed by Sections 12(d)(1) and to permit certain affiliated transactions otherwise prohibited by sections 17(a) and 17(d). For further information, please contact Bibb L. Strench at (202) 272-2856.

Commission Schapiro, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barbara Green at (202) 272-2000.

Dated: October 27, 1989.

Jonathan G. Katz.

*Secretary.*

[FR Doc. 89-25861 Filed 10-30-89; 1:18 pm]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 30, 1989.

A closed meeting will be held on Tuesday, October 31, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 31, 1989, at 2:30 p.m., will be:

Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Consideration of *amicus* participation.
Regulatory matter regarding financial institution.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel O. Hirsch at (202) 272-2100.

Dated: October 27, 1989.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89-25862 Filed 10-30-89; 1:18 pm]

BILLING CODE 8010-01-M

# Corrections

Federal Register
Vol. 54, No. 210
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Rural Electrification Administration

### 7 CFR Part 1762

**RIN 0572-AA20**

### Standard Forms of Telecommunications Contracts REA Form 525-Central Office Equipment Contract (Including Installation)

*Correction*

In proposed rule document 89-24965 beginning on page 43429 in the issue of Wednesday, October 25, 1989, make the following correction:

On page 43430, in the first column, in the table, 5 asterisks should appear above and below "525".

**BILLING CODE 1505-01-D**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 88-AGL-29]**

### Establishment of Transition Area; Spearfish, SD

*Correction*

In rule document 89-24008 beginning on page 41822 in the issue of Thursday, October 12, 1989, make the following correction:

On page 41823, in the first column, under **"Spearfish, SD [New]**, in the last line, "(lat. 44°49′00″)" should read "(lat. 44°29′00″)".'

**BILLING CODE 1505-01-D**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

**[T.D.8264]**

**RIN 1545-AK26**

### Temporary Regulations Under Section 383 of the Internal Revenue Code of 1986; Use of Pre-Change Attributes

*Correction*

In rule document 89-22108 beginning on page 38664 in the issue of Wednesday, September 20, 1989, make the following corrections:

1. On page 38665, in the third column, in the second complete paragraph, in the 14th line, "carryforward" should read "carryforwards".

2. On page 38666, in the third column, in amendatory instruction "Par.3"," Section 1.383-2T" should read "Section 1.382-2T".

**§ 1.383-1T [Corrected]**

3. On page 38670, in the first column, in Example (1), paragraph (ii), in the second line from the bottom, " 382(1)(2)" should read " 383(l)(2)".

4. On the same page, in the second column, in item 8, in the last line "150" should read "150, 000".

5. On the same page and column, in item 13, in the fourth line, "0.93" should read "0.39".

6. On the same page, in the third column, in item 8., in the fourth line and in paragraph (g), in the second line from the bottom, "382(1)(2)" should read "382(l)(2)".

**BILLING CODE 1505-01-D**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 1

**RIN 2900-AE09**

### Evaluation of Studies Relating to Health Effects of Dioxin and Radiation Exposure

*Correction*

In rule document 89-23175 beginning on page 40388 in the issue of Monday, October 2, 1989, make the following correction:

**§ 1.17 [Corrected]**

On page 40391, in the third column, in § 1.17(d)(3), in the last line, "subgroups" should read "subgroup".

**BILLING CODE 1505-01-D**

federal register

Wednesday
November 1, 1989

# Part II

# Department of Justice

## Office of Juvenile Justice and Delinquency Prevention

## Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities; Notice

## DEPARTMENT OF JUSTICE

### Office of Juvenile Justice and Delinquency Prevention

### Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities

**AGENCY:** Office of Juvenile Justice and Delinquency Prevention.

**PROGRAM ANNOUNCEMENT:** Study to evaluate conditions in juvenile detention and correctional facilities.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 248(a)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Public Law 100-690, November 18, 1988, announces a new research initiative to evaluate conditions in juvenile detention and correctional facilities, to determine the extent to which such facilities meet recognized national standards, and to make recommendations to improve the conditions in these facilities.

The purpose of this initiative is to review systematically the conditions of confinement in juvenile detention and correctional facilities in the United States and to determine the extent to which those conditions comply with existing recognized national standards. A major product of this project will be a summary of the results for OJJDP to use in preparing a report to the Congress of the United States on the conditions existing within juvenile detention and correctional facilities, including recommendations for the improvement of those conditions. This summary must be completed and submitted to OJJDP by September 15, 1991.

This is a research effort composed of three incremental stages:

*Stage 1—Research Design:* The research design should clearly articulate the problem, objectives, methodology, measures, sampling strategy and analysis plans for reviewing the conditions of confinement within juvenile detention and correctional facilities.

*Stage 2—Data Collection and Data Processing:* This stage involves the implementation of the design developed in Stage 1. The following tasks are to be completed: (1) Preparation of the data collection plan; (2) pilot tests of the data collection instrument(s); (3) data collection; (4) data processing; and (5) preparation of data tapes for analysis.

*Stage 3—Data Analysis and Preparation of Reports:* A series of reports on the existing conditions of confinement in juvenile detention and correctional facilities will be prepared. These reports will include a description and a summary of the results of the study as well as recommendations for improving conditions of confinement for juveniles.

OJJDP invites public and private agencies and organizations, or combinations thereof, to submit competitive applications to conduct the research outlined in this solicitation.

Up to $800,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, with an initial budget period of 18 months. This research program will consist of three stages (Design, Implementation, and Analysis). The initial award will provide support for stages I and II. One or more noncompeting continuation awards will be considered to complete a 30 month project period. Applicants should include in their proposal a plan to complete the analysis of the data collected for this project as well an estimate and justification of the amount required to complete the analysis.

The deadline for receipt of applications is January 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Thomas, Research and Program Development Division, (202) 724-5929. OJJDP, Room 784, 633 Indiana Avenue, NW., Washington, DC 20531.

**SUPPLEMENTARY INFORMATION:**

I. Introduction and Background
II. Program Goals and Objectives
III. Program Strategy
IV. Dollar Amount and Duration
V. Eligibility Requirements
VI. Application Requirements
VII. Procedures and Criteria for Selection
VIII. Deadline for Receipt of Applications
IX. Civil Rights Compliance

### I. Introduction and Background

In 1986, there were approximately 716,608 admissions of juveniles to public and private residential programs housing delinquent or status offenders. These residential programs provide for the care and custody of youths placed by courts with juvenile court jurisdiction for delinquent offenses, non-criminal misbehavior, or neglect and abuse. They include detention centers, shelter care facilities, training schools, camps and ranches, group homes and community-based correctional centers. On any given day one may find many thousands of youths housed within these residential settings. Indeed, a 1987 census of Children in Custody revealed that 91,646 juveniles were in custody on a single day in the approximately 3,300 public and private juvenile residential facilities serving juvenile courts throughout the United States. (Office of Juvenile Justice and Delinquency Prevention, *OJJDP Fact Sheet on Children in Custody: 1987 Census of Public and Private Juvenile Facilities.*)

Inadequate conditions of confinement within juvenile detention and correctional facilities present major obstacles to the provision of individualized justice and effective services to meet the needs of youth in custody. At best, inadequate conditions can be counter-productive to the growth and development of juveniles in custody. At worst, they can be destructive and dehumanizing.

The JJDP Act provides for the development of comprehensive strategies to deal with the problems of juvenile delinquency and other issues pertaining to the administration of juvenile justice in the United States. A major purpose of the JJDP Act is "to develop and encourage the implementation of national standards for the administration of juvenile justice, including recommendations for administrative, budgetary, and legislative action at the Federal, State, and local level to facilitate the adoption of such standards." (Sec. 102(a)(5)).

The 1988 amendment to the JJDP Act directly addresses the issue of conditions of confinement for juveniles by requiring that the Office of Juvenile Justice and Delinquency Prevention conduct a study to review the conditions in juvenile detention and correctional facilities and assess the extent to which those conditions meet recognized national professional standards. The review of conditions in juvenile detention and correctional facilities is to result in a series of reports on the conditions existing within juvenile custodial facilities (see Stage III). This material will be used by OJJDP in preparing a report to the Congress of the United States summarizing the results of the study, and in making recommendations for improving the conditions in those facilities.

The study outlined herein is a response to this recent amendment to the JJDP Act as well as a continuation of previous efforts by the Office of Juvenile Justice and Delinquency Prevention to encourage the adoption and utilization of national juvenile justice standards. For this study, existing nationally recognized standards addressing the conditions of confinement for juveniles in custody are to be used as a basis for defining the conditions and developing the evaluation criteria to be used in reviewing those conditions. The ultimate goal is to improve the operation of those facilities and the delivery of appropriate services to juveniles.

In addressing the extent to which conditions in juvenile detention and correctional facilities meet recognized national standards, the full range of available standards should be assessed. The legal literature, as it relates to the rights of institutionalized persons, should also be reviewed to determine the extent to which conditions of confinement have been addressed in the courts.

Standards provide a focal point for the assessment and improvement of the process of justice for juveniles by guiding policy and informing administrative actions. Standards related to the conditions of confinement in juvenile detention and correctional facilities can provide specific and measurable objectives, help define tasks to assist the accomplishment of goals, and provide guidance in developing policies and procedures to improve service delivery.

Previous efforts to establish national standards for the administration of juvenile justice have been carried out by various national professional organizations and prominent national advisory committees. Included among these efforts are the following:

(1) The Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards (IJA/ABA).

(2) The National Advisory Committee on Criminal Justice Standards and Goals Task Force on Juvenile Justice and Delinquency Prevention (Task Force).

(3) National Advisory Committee for Juvenile Justice and Delinquency Prevention: Standards on the Administration of Juvenile Justice (NAC).

(4) American Correctional Association/Commission on Accreditation (ACA/CAC).

The standards prepared by the IJA/ABA, the Task Force, and the NAC are comprehensive and cover a wide range of issues including intervention in the lives of children, delinquency prevention, court roles and procedure, the police, planning and evaluation, as well as other areas. The standards promulgated by the ACA focus upon corrections and include community residential services, probation and aftercare, detention facilities and services, and training schools.

One of the major activities of this program is to select and operationally define the "conditions" that will be used as the evaluation criteria for this study. Applicants are to address a wide range of conditions of confinement, including but not limited to:

- Intake and release criteria;
- Judicial case review;
- Mail, telephone use, and visitation;
- Access to religious services;
- Access to legal assistance;
- Dress and personal property;
- Educational, training and treatment programs;
- Exercise and recreation;
- Medical services;
- Mental health care;
- Isolation;
- Diet and Nutrition;
- Staff qualifications and numbers;
- Sanitation, safety, and hygiene;
- Physical environment and living conditions;
- Resident rights, sanctions, and grievance procedures;
- Monitoring and reporting behavior of residents.

Standards promulgated by Federal agencies, professional organizations and national advisory committees do not, necessarily, obligate states, local jurisdictions, or private agencies to comply with those standards. It is expected, however, that the policies, procedures, and practices established at the state and local level for juvenile detention and correctional facilities will reflect, to varying degrees, recognized national standards. This study, therefore, will involve the identification of local detention and State correctional policies, procedures, practices and programs and the determination of the extent to which they are consistent with nationally recognized standards.

## II. Program Goals and Objectives

### *A. Goals*

1. To review recognized national professional standards for juvenile detention and correctional facilities for the purpose of defining conditions and developing evaluation criteria for the review of conditions in confinement.

2. To assess conditions in juvenile detention and correctional facilities and determine the extent to which those conditions meet recognized national standards.

3. To make recommendations for improving the conditions of confinement in juvenile detention and correctional facilities through the identification of model policies, procedures, practices and programs that are consistent with recognized national standards.

### *B. Objectives*

1. Develop a research strategy to conduct an assessment of conditions of confinement in juvenile detention and correctional facilities.

2. Collect data on the conditions within juvenile detention and correctional facilities.

3. Analyze the data on the conditions of confinement within juvenile detention and correctional facilities, report on the analysis and develop specific recommendations for improving the conditions of confinement.

## III. Program Strategy

OJJDP's planning and program development activities are guided by a framework that specifies four (4) sequential phases of program development: research, development, demonstration, and dissemination. This framework guides the decision-making process regarding the funding of future stages of the program.

This program is a research initiative. The purpose of the research initiative is to conduct and support research on issues that relate to the administration of juvenile justice and to the prevention of delinquency in the United States. The program will be conducted in three discrete incremental stages: (I) The research design stage, which involves the development of a research methodology for the assessment of conditions of confinement in juvenile detention and correctional facilities; (II) The data collection stage, in which data will be collected, processed and prepared for analysis using the methodology developed in the previous stage; and (III) The data analysis and reporting stage, which involves the analysis of the data and the preparation of reports that summarize the results of the study and provide recommendations for improving conditions of confinement in juvenile detention and correctional facilities.

All technical and subject matter portions of the program will be guided by recommendations of an independent project advisory committee established specifically for the program and approved by OJJDP. The project advisory committee will provide comments and recommendations regarding the strategies and activities for this program. It may be necessary to change or supplement project advisory committee members for different stages of the program. However, the objective will be to select technical and subject matter experts capable of addressing issues related to each of the program stages.

The project advisory committee members should have combined expertise in juvenile corrections, criminal/juvenile justice research and evaluation, and standards pertaining to the administration of juvenile justice, particularly as they relate to juvenile corrections.

Each stage of the program development process detailed below is designed to result in a complete and publishable product (*e.g.*: a research design that includes a review of existing recognized national standards, the research strategy, and reports to be prepared), and a dissemination strategy to inform the field of the development of the program and the results and products of each stage. A decision to continue or to terminate the program is made at the end of each stage based on the availability of funds and the quality and utility of program products.

*A. Stage I—Research Design*

The first stage of the program consists of developing the research design. The research should be designed to produce recommendations that can guide the development of programs to improve the conditions within detention and correctional facilities. This will involve the identification and review of recognized national standards for detention and correctional facilities and the development of clear, well justified definitions of "conditions" and "detention and correctional facilities."

The research design should provide for the selection of an appropriate sampling strategy for each type of facility, a plan for data collection, and a plan for the dissemination of information. It is expected that site visits will be a primary component of the data collection strategy.

1. Activities

Applicants must describe how the following major activities will be undertaken:

a. Establishment of a project advisory committee;

b. Development of a research design plan;

c. Review of the literature;

d. Development of the research design;

e. Project advisory committee review; and

f. Development of a dissemination strategy to inform the field of the status of the project.

2. Products

The products to be completed during this stage are:

a. A plan for developing the research design that includes:

(1) Research objectives;

(2) Description of activities, including an integrated time/task plan; and

(3) Staff assignments.

b. A research design that specifies:

(1) Objectives;

(2) Definition of key concepts—including, but not limited to: "conditions," "secure detention and correctional facilities," and "recognized national standards";

(3) Operationalization and measurement of key concepts;

(4) Well conceived and clearly articulated sampling strategy;

(5) Data collection plan;

(6) Data analysis plans;

(7) Anticipated reports;

(8) Time/task plan for implementation; and

(9) Dissemination strategy to inform the field of the status of the program.

*B. Stage II—Data Collection and Data Processing*

This stage involves the collection of data on the conditions of confinement using the methodology and instruments developed in the previous stage. The data collection instruments should be pilot tested and the project advisory committee should review the results of the pilot tests. It is expected that a preliminary report on the results of the pilot tests, including comments from the project advisory committee, will be prepared and appropriate revisions to the instrument will be made.

This stage also includes the preparation of the data for analysis. Data processing involves the preparation and application of appropriate data coding strategies and entry of the data into an automated data processing system. The applicant should address how each of the activities in Stage II will be accomplished.

1. Activities

Applicants must describe how the following major activities will be undertaken:

a. Preparation of a data collection plan;

b. Pilot test of the data collection instrument(s);

c. Project advisory committee review of the results of the pilot test and appropriate adjustments to methodology and/or instrument(s);

d. Data collection;

e. Data processing; and

f. Preparation of data file for analysis.

2. Products

The major products to be completed during this stage are:

a. Data collection plan to include a detailed data collection protocol;

b. Report on results from pilot test of data collection instruments and final instruments;

c. Data tape prepared for analysis, to include all necessary documentation; and

d. Dissemination strategy to inform the field of the status of the program.

*C. Stage III—Data Analysis and Reporting*

The final stage of this initiative will involve the analysis of the data collected and the preparation of reports. Applicants should include a proposed set of reports that will communicate the results to a variety of audiences including policy makers, practitioners, and researchers in the juvenile justice system. These reports are to describe the study, summarize the results, and provide recommendations as they relate to improving conditions of confinement existing in juvenile detention and correctional facilities.

1. Activities

Applicants must describe how the following major activities will be undertaken:

a. Preparation of a plan for report development and dissemination;

b. Analysis of data;

c. Preparation of draft reports on analyses related to the research objectives;

d. Project advisory committee review of analysis and draft reports; and

e. Preparation of reports on existing conditions in juvenile detention and correctional facilities and the extent to which they meet existing recognized national standards, which include recommendations for policy and program development.

2. Products

The products to be completed under this stage are:

a. Plan for data analysis and preparation of reports that identifies the report or series of reports to be prepared and the purpose and audience for each report;

b. Draft reports, including a summary of the results to be used by OJJDP in preparing a report to the Congress;

c. Final report; and

d. Dissemination strategy to inform the field of the results of the program.

**IV. Dollar Amount and Duration**

Up to $800,000 has been allocated for the initial award.

One cooperative agreement will be awarded competitively, with an initial budget period of eighteen (18) months. This research program will consist of three stages (Design; Data Collection; and Analysis and Reporting). The initial award will provide support for stages I and II. One or more noncompeting continuation awards will be considered to complete the thirty month project period.

Noncompetitive continuation awards for the additional budget periods may be withheld for justifiable reasons. They include: (1) The results of stage I and II do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason that would indicate continued funding would not be in the best interest of the Government.

### V. Eligibility Requirements

Applications are invited from public and private agencies and organizations. In order to expand the pool of eligible candidates, applications will be accepted from for-profit agencies as long as they agree to waive their profit fee and accept only allowable costs.

Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such.

Applicants and co-applicants must demonstrate that they have prior experience in the design and implementation of large scale, multiple site research on the juvenile justice system; and demonstrated knowledge of issues associated with juvenile corrections and conditions of confinement within juvenile detention and correctional facilities.

The applicants must also demonstrate that they have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

### VI. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (Section VI) in Part IV, Program Narrative of the application (SF-424). The program narrative of the application should not exceed 70 double-spaced pages in length.

In accordance with Executive Order 12549, 28 CFR 67.510, applicants must also provide a certification that they have not been debarred (voluntarily or involuntarily) from the receipt of Federal funds. Form 4662/2, which will be supplied with the application information package, must be submitted with the application.

In addition, applicants must provide a Certification Regarding Drug-Free Workplace Requirements which meets the requirements of the Drug Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D). Form 4061/3, which will be supplied with the application information package, must be submitted with the application.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

The following information must be included in the application:

(A) *A Statement of the Problem to be Addressed*—Applicants must include the review of the literature and a discussion of the potential contribution of this research to the field.

(B) *Program Goals and Objectives*—A succinct statement of the applicants' understanding of the goals and objectives of the program must be included, and specification of key research questions to be addressed.

(C) *Research Design and Strategy*—Applicants must describe the proposed approach for achieving the goals and objectives of the research program. Applicants must include a detailed discussion of how each of the activities in the three stages of the program will be accomplished, including a detailed discussion of the process for product preparation.

(D) *Products*—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

(E) *Program Implementation Plan*—Applicants must prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the program, and how the program will be managed. Given the important methodological and substantive issues inherent in this study, applicants must identify key project personnel with documented skills in research design, implementation, and analysis; juvenile corrections; and juvenile justice standards.

### VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria.

In general, all applications received will be reviewed in terms of their responsiveness to the program application requirements, organizational capability, goals, objectives and program strategy described in the RFP, and thoroughness and innovation in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B, published August 2, 1985, at 50 FR 31366-31367. The selection criteria and their point values (weights) are as follows:

(A) The problem to be addressed by the project is clearly stated. This criterion includes—clear, concise, well justified statement of the problem. (5 Points)

(B) The objectives of the proposed project are clearly defined. This criterion includes—succinct statement of the goals and objectives of the project; operational definitions of "nationally recognized standards," "juvenile detention and correctional facilities," and "conditions of confinement"; a clearly articulated statement described how this research will improve the operation of juvenile correctional and detention facilities and assist in the provision of effective services to meet the needs of youth in custody. (10 Points)

(C) The project design is sound and contains a program elements directly linked to the achievement of project objectives. This criterion includes—

appropriateness and technical adequacy of the approach to the activities and products of each stage of the program for meeting the goals and objectives; and potential utility of proposed products. (25 Points)

(D) The project management structure is adequate to the successful conduct of the project. (30 Points): This criterion includes—(1) Adequacy and appropriateness of the activities and the project management structure, and the feasibility of the time-task plan (15 Points); (2) the qualifications of staff identified to manage and implement the program including staff to be hired through contracts, the clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (15 Points)

(E) Organizational capability is demonstrated at a level sufficient to successfully support the project. This criterion includes—the extent and quality of organizational experience in the development, delivery and coordination of research programs that have been national in scope. (15 Points)

(F) Budgeted costs are reasonable, allowable, and cost effective for the activities proposed to be undertaken. This criterion includes—completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished. (15 Points)

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will be based on numerical values assigned by individual peer reviewers. Peer review ratings, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

## VIII. Deadline for Receipt of Applications

Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications will be provided upon request.

Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. e.s.t. on January 8, 1990. No applications, sections, or subsections of applications will be accepted after 5:00 p.m. e.s.t. on that date. Those applications sent by mail should be addressed to: NIJJDP/OJJDP, United States Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531. Hand delivered applications must be taken to the NIJJDP, Room 784, 633 Indiana Avenue, NW, Washington, DC, between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

## IX. Civil Rights Compliance

(A) All recipients of OJJDP assistance, including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

(B) In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination, after a due process hearing, on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

(C) Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person shall be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary financial assistance to any other recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

Dated: October 3, 1989.

**Terrence S. Donahue,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

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# Part III

# Department of Transportation

## Federal Aviation Administration

14 CFR Part 14

**Implementation of Equal Access to Justice Act; Interim Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 14**

**[Docket No. 25958]**

**RIN 2120-AD17**

## Implementation of Equal Access to Justice Act

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Interim final rule.

**SUMMARY:** The Federal Aviation Administration (FAA) is publishing this interim final rule to implement the Equal Access to Justice Act (Pub. L. 96-481, 94 Stat. 2825, 5 U.S.C. 504 *et seq.*), as amended (Pub. L. 99-80, 99 Stat. 183) (EAJA or Act). This interim final rule will remain in effect until such time as the Department of Transportation (DOT) promulgates updated, department-wide EAJA regulations which will incorporate, for the first time, the adversary adjudications conducted by the FAA pursuant to the Civil Penalty Assessment Demonstration Program and the Rules of Practice thereunder. The updated department-wide regulations will also reflect the above-cited amendment to the Act. These interim regulations set uniform procedures under the Act for any adversary adjudication conducted pursuant to section 554 by the FAA.

**EFFECTIVE DATE:** This interim final rule is effective on November 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** James S. Dillman, Assistant Chief Counsel, Litigation Division (AGC-400), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, (202) 267-3661.

**SUPPLEMENTARY INFORMATION:**

*Availability of Interim Final Rule:* Any person may obtain a copy of this interim final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20951, or by calling (202) 267-3484. Requests must include the part number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

*Background:* The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to administrative proceedings before government agencies and who prevail over the government. These proceedings are conducted under section 554 of the Administrative Procedure Act (APA). 5 U.S.C. 554. Eligible prevailing parties are entitled to awards of attorney fees and other expenses, unless the adjudicative officer or judge of the proceeding finds that the position of the United States is substantially justified or that special circumstances make an award unjust.

The FAA is adopting EAJA regulations at this time because it is now, for the first time, conducting proceedings to which the EAJA applies. On August 31, 1988, the FAA implemented the provisions of section 204(g) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223) by issuing the Rules of Practice for FAA Civil Penalty Actions (53 FR 34646; September 7, 1988). Such regulations provide the procedural framework for the FAA to assess civil penalties (not to exceed $50,000) for violations arising under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471 *et seq.*), or a rule, regulation, or order issued thereunder, after written notice and a finding of violation by an FAA Decisionmaker. Under these regulations, which were enacted to provide for effective enforcement of the FAA's safety regulations, the FAA conducts proceedings required to be conducted in accordance with section 554 of the APA. The FAA's EAJA regulations apply to those proceedings required to be brought pursuant to the FAA's "Civil Penalty Assessment Demonstration Program," as codified in 14 CFR 13.201(a)(1), and to those proceedings brought for violations of title V, or a rule, regulation, or order issued thereunder, pursuant to 49 U.S.C. App. 1471(a)(3).

On July 10, 1989, the Federal Aviation Administration (FAA) issued a Notice of Proposed Rulemaking (NPRM) requesting comments, within 30 days, on the agency's proposed EAJA regulations (54 FR 29978; July 17, 1989). Four comments were received, one of which was filed late. The agency considered, and will respond herein, to all four comments.

*Separation of Functions:* All four commenters express concern that the separation of functions set up in the Rules of Practice, which applies to the adjudication of EAJA applications, does not adequately safeguard the separation of prosecutorial and decisionmaking functions within the agency. The commenters fear that the separation of functions required in the Rules of Practice will impede, rather than facilitate, objective EAJA awards. The FAA recognizes that commenters have used this opportunity to once again express their general displeasure over the Rules of Practice adopted last year by the FAA. Very few of the adverse comments to this NPRM are addressed to provisions of the proposed rule; those that are ignore the similarity of the proposed rule with every other EAJA regulation in place for Federal government agencies. In fact, their displeasure seems more accurately directed at the law which authorized the Demonstration Program.

In its March 17, 1989 disposition of comments to the Rules of Practice (54 FR 11914; March 22, 1989), the FAA went to great lengths to address the concerns of eight commenters who felt that the separation of functions provisions provided in the Rules of Practice are inadequate. Based on the comments received on the proposed EAJA regulations, there remains some fundamental misunderstanding of the agency's procedural regulations, and an equal amount of misunderstanding of the Equal Access to Justice Act. In light of this continuing concern and misunderstanding, the FAA will use this opportunity once again to attempt to alleviate the fears of those individuals who believe that the Rules of Practice, in one or more respects, violate the Constitution or the APA.

All four commenters refer to the Assistant Chief Counsel for Litigation as the "FAA decisionmaker" and express doubt that he could make an objective decision on an EAJA application or the underlying civil penalty proceeding in light of his traditional role as an advocate for the agency. This position is factitious. At the outset, the FAA points out what should be obvious: the Rules of Practice designate the FAA Administrator, not the Assistant Chief Counsel for Litigation, as the FAA decisionmaker. The Administrator is to be advised on legal matters arising from his role as the FAA decisionmaker by the Chief Counsel. To the extent that the Chief Counsel requires assistance in advising the decisionmaker, he may receive such assistance from the Assistant Chief Counsel for Litigation and his staff. (See the FAA Announcement of Separation of Functions, 54 FR 1335; January 13, 1989). Consequently, the Assistant Chief Counsel for Litigation does not rule upon either an EAJA application or an enforcement action, but rather only advises the Administrator in his ruling when asked to do so by the Chief Counsel. The Assistant Chief Counsel for Litigation has no authority to decide either an EAJA award or the underlying adjudication on the merits.

All four commenters express concern that the Assistant Chief Counsel for Litigation is physically located not far from agency enforcement attorneys who will be defending the agency's enforcement action in an application for an award of attorney fees under EAJA. (Contrary to one commenter's allegation, however, the Assistant Chief Counsel for Litigation and the Manager of the Enforcement Policy Branch do not share a single office, or even have adjacent offices.) It is asserted that their proximity to one another, in and of itself, constitutes a failure to provide adequate separation of functions between those attorneys in the prosecutorial and adjudicative functions of EAJA and enforcement actions.

As noted in the disposition of comments of the Rules of Practice, "the practice of housing within one agency the functions of prosecutor, adjudicator, and decisionmaker is well-established, widespread throughout the Executive Branch of the Federal Government, and was expressly contemplated by the drafters of the APA in 1946. In fact, this practice is the rule rather than the exception." (54 FR 11914, 11915.) In addition, the FAA points out that the EAJA also contemplates that decisions on EAJA applications be made within the same agency that brought the underlying action that is the basis for the application. Other federal agencies that have EAJA regulations, including the Department of Transportation and the Department of Justice, provide for the defense and adjudication of EAJA claims to be made within the agency. The fact that individuals acting in prosecutorial and adjudicative roles are both employed by the same agency and may also have offices in the same building or on the same floor, in no way creates a conflict of interest or invalidates the separation of functions required by law. The commenters refer to no judicial decision, and we have discovered none, that has found objectionable the mere physical proximity of prosecutor and decisionmaker. So long as the required separation of functions is established within the agency by written standards, it may be assumed that federal officials adhere to those standards, at least in the absence of any specific allegation that they have been breached. Propinquity in and of itself is simply inconsequential.

One commenter suggests that the role of the Assistant Chief Counsel for Litigation to defend tort claims brought under the Federal Tort Claims Act (FTCA) prejudices any legal advice he may give to the Administrator with regard to an EAJA application or any underlying enforcement action. This commenter suggests that where a particular factual incident gives rise both to a civil penalty action by the government and a tort claim against the government, the Assistant Chief Counsel for Litigation and his staff have a vested interest in the outcome of the enforcement action or EAJA application which interferes with the objectivity necessary to consider the matter fairly. This comment is without merit, for the reasons stated below.

First, an agency final decision on an EAJA application cannot benefit the government's defense of a tort claim because the EAJA decision cannot affect the underlying enforcement action. To the extent that an application for an EAJA award is reviewed by the Assistant Chief Counsel for Litigation, a determination has already been made that there was no violation of the Federal Aviation Regulations (FAR) and that the only remaining legal issue to be decided is whether the agency was "substantially justified" in bringing the enforcement action in the first instance. Even if it is assumed that the Assistant Chief Counsel for Litigation had some interest in the initiation and resolution of an enforcement action, such action would necessarily have been decided before the filing of an EAJA application.

Second, the commenter exaggerates the role of the Assistant Chief Counsel for Litigation in the defense of tort claims against the government. Just as the Assistant Chief Counsel for Litigation is not the decisionmaker in the underlying enforcement action, so also he is not the decisionmaker in the defense of tort claims litigation. That role is exercised by the Department of Justice.

Third, with regard to enforcement actions prosecuted under the Rules of Practice, the FAA is confident that its obligations do not conflict so as to invalidate the procedural rules. Under 28 U.S.C. 515–519, Congress has obligated the Department of Justice through the Attorney General to attend to the interests of the United States in litigation, which includes the defense of claims under the FTCA. In furtherance of this obligation, the FAA assists the Justice Department in the defense of aviation accident litigation. Congress has also obligated the FAA to investigate, prosecute and, under Public Law 100–223, render decisions on violations of the FAR. These two obligations are independent of one another, even in those situations where the same factual incident results in both a tort claim against the government and an enforcement action prosecuted by the government. There is no inherent or impermissible conflict of interest in the FAA's performance of these separate functions.

Conflict of interest standards exist in part to ensure the individual loyalty of an attorney to one's client. Where the vigor of an attorney's representation is questionable as a result of the attorney's representation of another client with varying or conflicting interests, or where an attorney is in a position to use privileged information concerning the other side obtained as a result of another representation, the attorney is faced with a conflict of interest which would disqualify him from continuing to represent his client. No conflict exists, however, where an agency represents the Federal government's interests on two separate matters, even if those matters arise from the same factual incident, and even if the government has varying or conflicting interests. While disqualification guidelines for conflict of interest are strictly construed in the private bar, where a client can always find other representation, courts have held that the policy considerations behind those guidelines do not apply to government attorneys since they represent only one client, the Federal government. *In the Matter of the Grand Jury Subpoena of Jean Ford* v. *United States*, 756 F.2d 249, 254 (1985). The Supreme Court has held "[T]he Government cannot follow the fastidious standards of a private fiduciary, who would breach his duties to his single beneficiary solely by representing potentially conflicting interests without the beneficiary's consent. The Government does not 'compromise' its obligation to one interest that Congress obliges it to represent by the mere fact that it simultaneously performs another interest that Congress has obligated it by statute to do." *Nevada* v. *United States et al.*, 463 U.S. 110, 128 (1983). The law and ethical standards leave it to the Federal government to resolve any conflict of interest internally. The FAA is satisfied that it can execute its responsibilities without compromising their integrity. The above-cited court decisions support the FAA position in this regard.

Fourth, to the extent that a party who has received a final agency decision from the FAA decisionmaker believes that such decision was unduly affected by prejudiced advice, that party may raise that challenge in a petition for review of the decision in the court of appeals. In this regard, it is well-established that courts more closely examine administrative decisions in cases where the agency head reverses the initial decision of an ALJ. Consequently, even assuming that the FAA decisionmaker arbitrarily and without basis reverses an ALJ decision, a party can be well assured of an objective and thorough review of such decision by the court of appeals.

Fifth, the fact that the agency decision under EAJA or the underlying civil penalty proceeding may be challenged in the courts also serves as an incentive for the FAA decisionmaker, and those who advise the decisionmaker, to faithfully execute their role, since the decision will be reviewed on the merits.

Sixth, if, for some reason, the Chief Counsel or Assistant Chief Counsel for Litigation or a staff attorney assisting them is called upon to advise the FAA decisionmaker on a matter about which he believes he could not be objective, he can and would recuse himself from that case.

Finally, the attorneys working for the FAA are subject to the standards of conduct promulgated by the Executive Branch and Department of Transportation. Should an agency attorney violate the ethical or professional standards he/she is sworn to uphold, official sanction could result.

*EAJA Actions Subject to This Part:* Two commenters express concern that individuals who prevail in FAA enforcement actions would not be as likely to receive EAJA awards from the FAA decisionmaker as they would from the National Transportation Safety Board (NTSB) or the Federal courts. The FAA notes that this rule applies only to civil penalty proceedings authorized by Congress to be adjudicated administratively; it does not apply to certificate actions. The NTSB has no authority to determine an application for a fee award under EAJA arising out of civil penalty proceedings. NTSB procedural regulations, as well as its EAJA provisions, continue to apply only to FAA certificate actions.

Similarly, one commenter requests that the FAA not promulgate EAJA regulations because, "absent an implementation of EAJA by the Agency, a pilot has the right to file a lawsuit in Federal District Court to seek an award of attorney's fees under EAJA as implemented in 28 U.S.C. 2412." With regard to whether the FAA should implement EAJA regulations at all in light of 28 U.S.C. 2412, the FAA does not have any discretion in this area. The EAJA mandates that agencies that conduct hearings pursuant to § 554 of the Administrative Procedure Act (APA) establish procedures for the submission and consideration of EAJA applications (5 U.S.C. 554(c)(1)). This is not at all surprising, for Congress, in enacting the Administrative Procedure Act of 1946, previously recognized and sanctioned administrative adjudication of disputes. Any concern that the FAA decisionmaker will dispose of EAJA applications impartially or unreasonably, in contrast (per the commenter) to the NTSB or Federal court, is eliminated by the prospect of judicial review of EAJA decisions. In any event, 28 U.S.C. 2412 by its terms applies only to EAJA awards for the legal fees associated with court review of an agency decision of the adversary adjudication. Consequently, that section cannot be used to obtain reimbursement for legal fees incurred while the matter was still before the agency decisionmaker.

*Standard of Judicial Review:* One commenter asserts that the FAA on its own may not provide the standard of judicial review of EAJA decisions made by the agency (§ 14.29). The standard of review to which the commenter refers was not prescribed by this regulation, but was prescribed by Congress in the EAJA (5 U.S.C. 554(c)(2)). This standard applies to all EAJA claims brought throughout the Federal government.

*Standards for Awards:* One commenter expresses concern that the proposed standards for awards provision, § 14.4, includes language which is not contained in other agencies' EAJA regulations. The commenter does not object to the language, but points out that it was not contained in other EAJA regulations. As stated in the NPRM, the FAA EAJA regulations incorporate the 1985 amendment to the EAJA, as it must. The language in question was taken directly from that amendment and clarifies the meaning of the term "substantially justified." The FAA has decided to adopt § 14.4 as is to comport with the law and in the absence of any specific objection to the language.

*Review by FAA Decisionmaker:* One commenter expresses concern that proposed § 14.28 permits the FAA decisionmaker to review an underlying EAJA decision on this own initiative. This provision is a standard EAJA provision which is included in the EAJA regulations of the Department of Transportation, the National Transportation Safety Board and the Justice Department. We do not anticipate that the FAA decisionmaker will regularly choose to review an EAJA initial decision of an administrative law judge *sua sponte*, simply because there is little chance that the Administrator will give his attention to such a matter unless one party appeals the decision. Because this provision has been adopted by many agencies, including the Department of Transportation, the National Transportation Safety Board, and the Justice Department, and because this provision apparently has not posed any problems in those agencies, the FAA will retain this provision.

*What EAJA Awards Cover:* One commenter suggests that proposed § 14.5(e), which states that legal fees may be awarded for work performed after the designation of a proceeding, needs to be clarified. (This provision was taken directly from the Department of Transportation and the Department of Justice EAJA regulations.) The commenter questions whether the FAA will consider a proceeding designated, for purposes of this regulation, after an Order of Civil Penalty is issued. The commenter urges the FAA to recognize that a party will be likely to have incurred legal expenses in an adversary proceeding subject to the Rules of Practice prior to the issuance of an Order. While the FAA recognizes that legal advice and associated expenses may begin to accrue as early as when a party receives a letter of investigation, the EAJA authorizes reimbursement for legal expenses incurred only in connection with an "adversary adjudication," which is defined in the EAJA as "an adjudication under section 554 of this title[.]" 5 U.S.C. 504(b)(1)(C). A section 554 adjudication is one "required by statute to be determined on the record after opportunity for an agency hearing." 5 U.S.C. 554(a). The eligibility for an EAJA award, therefore, is triggered when the party in question is offered the opportunity for an agency hearing. In terms of the FAA Rules of Practice, the opportunity for a hearing arises only when the FAA issues an Order of Civil Penalty, which serves as the complaint and which begins the adversary adjudication. Consequently, legal expenses that are incurred before that time are not incurred in connection with an adversary adjudication and thus not covered by the EAJA and this regulation. The FAA acknowledges the commenter's point that § 14.5(e) is ambiguous in its use of the term "designation of a proceeding." In order to clarify that EAJA awards are available only for legal expenses incurred after the issuance of an Order of Civil Penalty, § 14.5(e) has been changed to read as follows: "Fees may be awarded only for work performed after the issuance of an Order of Civil Penalty."

After consultation with the Department of Justice, the FAA is changing the applicability section of the

EAJA rules as it was proposed by deleting paragraphs (b) and (c) of § 14.02. The FAA received no comments on these paragraphs from the public. Although an agency does not have the descretion to designate APA-type proceedings as covered by EAJA, thereby unilaterally extending the applicability of EAJA beyond that authorized by Congress, those paragraphs are included in model EAJA rules to recognize that an agency is in the best position to determine, consistent with its statutory authority, which proceedings are adversary adjudications covered by EAJA. The FAA conducts such adversary adjudications only in cases where a civil penalty may be assessed pursuant to express statutory authority. While those model EAJA paragraphs may be needed for other agencies, they are unnecessary and inappropriate for the FAA. Thus, proposed § 14.02 is changed by deleting paragraphs (b) and (c) by redesignating the remaining paragraphs, and by adding to paragraph (a) the applicable statutory citations.

*Omitted Language:* One commenter notes that certain language was inadvertently omitted in § 14.11(b). The FAA has remedied that omission. Section 14.11(b) now reads, "The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one-year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth *ceiling. If there were no such* transactions, the applicant shall so state." (The italicized portion of the sentence was omitted in the NPRM.) The commenter also states that proposed § 14.4 does not contain the standard EAJA regulation language that an EAJA award could be received for a "significant and discrete substantive portion" of a covered proceeding. This language was included verbatim in the NPRM and is also in the final rule.

In sum, many of the comments to which this preamble has responded reflect the fundamental disagreement of the commenters with the Civil Penalty Assessment Demonstration Program authorized by Congress. The FAA proposed an EAJA regulation that in all material respects is similar to all other EAJA regulations within the federal government and is consistent with with Equal Access to Justice Act, as amended.

*Reason for Immediate Adoption:* The FAA's Rules of Practice, issued on August 31, 1988, enable the FAA to conduct proceedings to which the EAJA applies. Because of the need to immediately facilitate the application and award of attorney and other legal fees available pursuant to EAJA, good cause exists to make these procedural rules effective in less than 30 days.

The FAA has determined to issue this rule as an interim final rule. This rule will be superseded by the department-wide DOT EAJA regulation when the latter is updated to conform to the EAJA amendment and to include the FAA Demonstration Civil Penalty Assessment Demonstration Program, as noted in the summary.

### Paperwork Reduction Act

Information collection requirements in part 14, subpart B, have been submitted to the Office of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). When these requirements are approved, a notice and the assigned OMB control number will be published in the **Federal Register.**

### Economic Impact

The rule sets out procedures which eligible prevailing parties must follow to apply for EAJA awards. The rule facilitates filing applications for EAJA awards and, consequently, reduces costs to the applicant. Since this rule does not impose any costs on applicants, the impact of the rule is minimal and no full Regulatory Evaluation is necessary.

### Trade Impact Assessment

The rule has no impact on international trade. The subject of the rule is unrelated to the manufacture or distribution of aviation-related products and services either by United States-based manufacturers and air carriers or foreign-based manufacturers and air carriers.

### Regulatory Flexibility Determination

Additionally, the rule does not have a significant economic impact on the operating costs of those small entities filing applications for EAJA awards with the FAA. There may be some small benefit to small entities by facilitating filing for awards, but this will not be substantial. Therefore, the rule does not have a significant economic impact, positive or negative. Accordingly, a regulatory flexibility analysis is not required.

### Federalism Impact

The regulations herein do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Conclusion

To the extent that this rule has an economic effect on regulated persons, it will only be a minimally beneficial one since it will facilitate the filing for EAJA awards. Therefore, the FAA has determined that this proposal involves a regulation which is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this same reason, it is certified that under the criteria of the Regulatory Flexibility Act the rule does not have a significant economic impact, positive or negative, on a substantial number of small entities. Because of the absence of any costs attendant with the rule, the FAA has determined that the expected impact of the regulations is so minimal that they do not warrant a full regulatory evaluation.

### List of Subjects in 14 CFR Part 14

Equal access to justice, Lawyers.

### The Amendment

Accordingly, the Federal Aviation Administration hereby adds part 14 of the Federal Aviation Regulations (14 CFR part 14) to read as follows:

## PART 14—RULES IMPLEMENTING THE EQUAL ACCESS TO JUSTICE ACT OF 1980

#### Subpart A—General Provisions

Sec.
14.01 Purpose of these rules.
14.02 Proceedings covered.
14.03 Eligibility of applicants.
14.04 Standards for awards.
14.05 Allowable fees and expenses.

#### Subpart B—Information Required From Applicants

14.01 Contents of application.
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#### Subpart C—Procedures for Considering Applications

14.20 When an application may be filed.
14.21 Filing and service of documents.
14.22 Answer to application.
14.23 Reply.
14.24 Comments by other parties.
14.25 Settlement.
14.26 Further proceedings.
14.27 Decision.
14.28 Review by FAA Decisionmaker.

14.29 Judicial review.
14.30 Payment of award.

Authority: Equal Access to Justice Act (Pub. L. 96-481, 94 Stat. 2325) as amended (Pub. L. 99-80, 99 Stat. 183), (5 U.S.C. 504(c)(1); 49 U.S.C. 1354 (a) and (c) (Revised, 49 U.S.C. 106(g)).

## Subpart A—General Provisions

### § 14.01 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (the Act), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (adversary adjudications) before the Federal Aviation Administration (FAA). An eligible party may receive an award when it prevails over the FAA, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the FAA Decisionmaker will use to make them. As used hereinafter, the term "agency" applies to the FAA.

### § 14.02 Proceedings covered.

(a) The Act applies to certain adversary adjudications conducted by the FAA. These are adjudications under 5 U.S.C. 554 in which the position of the FAA is represented by an attorney or other representative who enters an appearance and participates in the proceeding. This subpart applies to proceedings under 49 U.S.C. App. 1475 and 49 U.S.C. App. 1471(a).

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

(c) Fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which such party has unreasonably protracted the proceedings.

### § 14.03 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions or eligibility set out in this subpart and in subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million at the time the adversary adjudication was initiated;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees at the time the adversary adjudication was initiated;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees at the time the adversary adjudication was initiated; and

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees at the time the adversary adjudication was initiated; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $7 million and not more than 500 employees at the time the adversary adjudication was initiated.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interest.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the administrative law judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge may determine that financial relationships of the applicant, other than those described in this paragraph, constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible if not itself eligible for an award.

### § 14.04 Standards for awards.

(a) A prevailing applicant may receive an award for attorney fees and other expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. Whether or not the position of the FAA was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which was made in the civil action for which fees and other expenses are sought. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency counsel, who may avoid an award by showing that the agency's position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

### § 14.05 Allowance fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the agency pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

(e) Fees may be awarded only for work performed after the issuance of an Order of Civil Penalty.

## Subpart B—Information Required From Applicants

### § 14.10 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the agency in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates) at the time the adversary adjudication was initiated. However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney for the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(f) If the applicant is a partnership, corporation, association, organization, or sole owner of an unincorporated business, the application shall state that the applicant did not have more than 500 employees at the time the adversary adjudication was initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

### § 14.11 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates when the proceeding was initiated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of the voting shares or other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates or of the applicant including the affiliates. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge may require an applicant to file additional information to determine the eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one-year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the administrative law judge in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the FAA's established procedures under the Freedom of Information Act as implemented by 49 CFR part 7, appendix C of the FAA's rules.

### § 14.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceedings by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

## Subpart C—Procedures for Considering Applications

### § 14.20 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, but in no case later than 30 days after the FAA Decisionmaker's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of:

(1) The date on which an unappealed initial decision becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the FAA Decisionmaker's Final order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed; or

(4) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

**§ 14.21 Filing and service of documents.**

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 14.11(b) for confidential financial information.

**§ 14.22 Answer to application.**

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of the section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the administrative law judge upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 14.26.

**§ 14.23 Reply.**

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 14.26.

**§ 14.24 Comments by other parties.**

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

**§ 14.25 Settlement.**

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

**§ 14.26 Further proceedings.**

(a) Ordinarily the determination of an award will be made on the basis of the written record; however, on request of either the applicant or agency counsel, or on his or her own initiative, the administrative law judge assigned to the matter may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible.

(b) A request that the administrative law judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

**§ 14.27 Decision.**

The administrative law judge shall issue an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

**§ 14.28 Review by FAA decisionmaker.**

Either the applicant or the FAA counsel may seek review of the initial decision on the fee application in accordance with subpart G of part 13 of the Federal Aviation Regulations, specifically 14 CFR 13.233. Additionally, the FAA Decisionmaker may decide to review the decision on its own initiative. If neither the applicant nor the agency counsel seeks review within 30 days after the decision is issued, it shall become final. Whether to review a decision is a matter within the discretion of the FAA Decisionmaker. If review is taken, the FAA Decisionmaker will issue a final decision on the application or remand the application to the administrative law judge who issued the initial fee award determination for further proceedings.

**§ 14.29 Judicial review.**

If an applicant is dissatisfied with the determination of fees and other expenses made under this subsection, pursuant 5 U.S.C. 504(c)(2), that applicant may, within thirty (30) days after the determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the FAA adversary adjudication. The court's determination on any appeal heard under this paragraph shall be based solely on the factual record made before the FAA. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.

**§ 14.30 Payment of award.**

An applicant seeking payment of an award shall submit to the disbursing official of the FAA a copy of the FAA Decisionmaker's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Applications for award grants in cases involving the FAA shall be sent to: The Office of Accounting and Audit, AAA–1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Issued in Washington, DC, on October 27, 1989.

James B. Busey,
*Administrator.*

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