annual charges as such. Under the Omnibus Budget Reconciliation Act of 1986 (OBRA), the Commission is expressly authorized to collect annual charges to recover all of its costs, including costs not related to a particular jurisdictional company's regulatory filings. The Commission allocates the costs of a particular program to individual companies on the basis of the volumes of gas they sell or transport, their jurisdictional electricity transactions, oil pipeline revenues, or hydropower capacity and generation. This approach accords with the expectations of Congress reflected in the Conference Report accompanying the OBRA legislation[3] and has been affirmed by the courts.[4] Requesters' insistence that the Commission is limited by law to recovering from a jurisdictional company only the costs engendered by that company's own regulatory filings ignores both OBRA and the judicial decisions sustaining it. The Commission's policy reasons for removing most filing fees have already been discussed above and in the earlier Commission order and require no further comment.

C. The Annual Charges Mechanism

ANR and CIG further argue that the Commission did not consider their suggestions for alternative methods to implement Order No. 548, as provided in their comments.[5] These alternative methods involve changes in the annual charges regulation (18 CFR part 382), which are beyond the scope of this rulemaking. The Commission will address questions concerning annual charges in a future rulemaking. That rulemaking will take into account the comments that were filed by all commenters in this case and will seek additional comments from entities that are affected by the Commission's annual charges assessments.

For all these reasons, the request for rehearing of the Final Rule adopted in Order No. 548 is denied.

[3] Joint Explanatory Statement of the Committee of Conference to Accompany H.R. 5300. H.R. Rep. No. 1012, 99th Cong., 2d Sess. 238, reprinted in 1988 U.S.C.C.A.N. 3607, 3883, 3884.

[4] Skinner v. Mid-America Pipeline Co., 490 U.S. 212 (1989) (upheld user fees, similar to the Federal Energy Regulatory Commission's annual charges, that are assessed based upon the usage, in reasonable relationship to volume-miles, miles, revenues, or an appropriate combination thereof for industry self-regulation as a fair allocation of the cost for regulation); INGAA v FERC, No. 87-1570 (D.C. Cir. filed Oct. 9, 1987) (voluntarily dismissed June 5, 1989, based on the decision in Skinner v. Mid-America Pipeline Co., 490 U.S. 212 (1989)).

[5] III FERC Stats. & Regs. at pp. 30,751-30,752.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25486 Filed 10-15-93; 8:45 am]

BILLING CODE 6717-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Freedom of Information Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act (FOIA) regulations to more accurately reflect its direct reasonable operating costs in searching for and reviewing records requested under the Freedom of Information Act.

DATES: The regulations are effective October 18, 1993. The new rates apply to all requests received after October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (BR 6B), Chattanooga, TN 37402-2801, telephone number: (615) 751-2523.

SUPPLEMENTARY INFORMATION: On April 5, 1993 (58 FR 17553), TVA gave notice of its intention to amend its FOIA regulations. One comment was received from the public in response to this notice. The commenter expressed concern that imposition of the new rate structure would restrict citizens' access to public information.

TVA recognizes that the new rate structure may affect certain individuals who request information under the Freedom of Information Act. However, the rates are consistent with the fee schedule guidelines that define the "direct costs" permitted to be recovered under the FOIA.

TVA is therefore amending 18 CFR 1301.2(c)(1) to more accurately reflect its direct reasonable operating costs in searching for and reviewing records requested under the Freedom of Information Act. The rates reflect an average rate for the range of TVA pay grades typically involved in responding to Freedom of Information Act requests. For time spent by clerical employees, the charge is currently $8.35 per hour. For time spent by supervisory and professional employees, the charge is currently $19.75 per hour. TVA is amending the charges to $10.10 per hour and $32.20 per hour, respectively. In conformance with section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, TVA is also amending 18 CFR 1301.2(d)(2) by reducing the amount of search time that will be provided without charge from 4 hours to 2 hours.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII, part 1301 of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

Subpart A—[Amended]

1. The authority citation for subpart A of part 1301 continues to read as follows:

Authority: 16 U.S.C. 831-831dd; 5 U.S.C. 552.

2. Section 1301.2 is amended by revising paragraph (c)(1) and the first sentence of paragraph (d)(2) to read as follows:

§ 1301.2 Schedule of fees.

* * * * *

(c) * * *

(1) *Search time charges for other than computer searches.* For time spent by clerical employees in searching files, the charge is $10.10 per hour. For time spent by supervisory and professional employees, the charge is $32.20 per hour.

* * * * *

(d) * * *

(2) Except for documents provided in response to a commercial use request, the first 100 pages and the first 2 hours of search time will be provided without charge. * * *

* * * * *

William S. Moore,

Manager, Information Support Services.

[FR Doc. 93-25383 Filed 10-15-93; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8492]

RIN 1545-AQ95

Bank Bad Debts, Conclusive Presumption

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations that clarify the scope of the express determination that is required under § 1.166–2(d)(3) in order for a bank to elect to use a method of accounting that conforms tax accounting for bad debts to regulatory accounting (conformity election). Section 1.166–2(d)(3) provides a conclusive presumption that debts charged off for regulatory purposes are worthless for tax purposes. The final regulations affect banks that have made or intend to make an election under § 1.166–2(d)(3).

DATES: These regulations are effective October 18, 1993.

These regulations apply to taxable years ending on or after December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Craig Wojay, 202–622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1992, the Internal Revenue Service published in the **Federal Register** (57 FR 45568) a notice of proposed rulemaking that, by cross reference to temporary regulations, proposed to amend § 1.166–2(d)(3) of the income tax regulations to clarify the scope of the express determination requirement in § 1.166–2(d)(3)(iii)(D). The language of the uniform express determination letter set forth in Rev. Proc. 92–18, 1992–1 C.B. 684, required similar clarification. Accordingly, Rev. Proc. 92–18 was modified and superseded by Rev. Proc. 92–84, 1992–2 C.B. 489. The revisions did not alter the intended scope of the express determination requirement.

In addition, an amendment to the transition rules in § 1.166–2(d)(3)(iii)(E) of the regulations was proposed because a bank may have been unable to obtain an express determination letter in connection with a Federal supervisory examination of its loan review process that occurred after December 31, 1991, and before October 2, 1992. Extension of the transitional period for which a bank may make the conformity election without an express determination would prevent the automatic revocation under § 1.166–2(d)(3)(iv) of an election made by a bank for its 1991 taxable year in reliance on the regulations.

No public hearing on these regulations was requested or held, but written comments were received. After consideration of the written comments, the temporary regulations are adopted as modified by this Treasury decision.

Explanation of Provisions

Section 1.166–2(d)(3) of the regulations permits supervised banks to elect a method of accounting under which their debts generally are conclusively presumed to be worthless for Federal income tax purposes when the debts are charged off for regulatory purposes. One of the requirements for this "conformity presumption" is that the bank obtain an express determination letter from its supervisory authority in connection with the most recent examination involving the bank's loan review process.

Prior to the temporary regulations, § 1.166–2(d)(3)(iii)(D) required an express determination by a bank's supervisory authority that the bank maintains and applies loan review and loss classification standards that are consistent with those of its supervisory authority. Transitional rules in §§ 1.166–2(d)(3)(iii)(E) and 1.166–2(d)(3)(iv)(C)(*2*) permitted a bank to make an election to use the conformity presumption without an express determination letter for taxable years ending on or after December 31, 1991, and before completion of the first examination involving the bank's loan review process that is after December 31, 1991, provided certain requirements are satisfied.

After the regulations were finalized, a notice of proposed rulemaking by cross reference to temporary regulations was published to alleviate concerns pertaining to the scope of the express determination requirement in § 1.166–2(d)(3). The final regulations contained in this document amend § 1.166–2(d)(3) to require that a bank's supervisory authority expressly determine that the bank maintains and applies "loan loss classification standards," rather than "loan review and loss classification standards" that are consistent with regulatory standards. See § 1.166–2(d)(3)(iii)(D). In addition, the transition rules in § 1.166–2(d)(3) are being amended to allow a bank to make the conformity election without an express determination letter until its first examination (involving the loan review process) that is after October 1, 1992, rather than December 31, 1991. See § 1.166–2(d)(3)(iii)(E) and (d)(3)(iv)(C)(*2*). Therefore, a bank that made the conformity election for its first taxable year ending on or after December 31, 1991, is not required to obtain an express determination letter until the completion of its first Federal examination that is after October 1, 1992, regardless of possible intervening examinations between December 31, 1991, and October 2, 1992.

Three comments were received on the regulations. The first comment requested relief for any bank that, because of the delay in resolving issues related to the express determination letters, did not make a conformity election for a taxable year ending on or after December 31, 1991.

In response to this comment, the Service is releasing concurrently with these regulations Notice 93–50, to be published in Internal Revenue Bulletin No. 1993–34, November 1, 1993, which allows certain banks, on an amended return for a taxable year ending on or after December 31, 1991, to elect to use the conformity method of accounting. The Notice prescribes a period of time in which the election may be made.

The second comment raised the concern that small State-chartered banks may not be able to rely on the conformity presumption for tax years in which they are examined by State banking agencies. Although a small State-chartered bank may not be examined by a Federal banking agency on an annual basis, this does not prejudice the bank's eligibility to use the conformity presumption. Section 1.166–2(d)(3)(iii)(D) requires an express determination letter only upon an examination of a bank's loan review process by a Federal banking agency. When the letter is issued, it covers all tax years until the next such Federal examination. Although a bank may be examined by its State banking authority in an intervening year, the bank is not required to obtain a new determination letter from that authority.

The final comment requested that the conformity presumption be extended to debts that are classified as substandard or doubtful, rather than limited to debts that are classified as loss. This issue was carefully considered during the drafting of the final regulations under § 1.166–2(d)(3), which were published in the **Federal Register** on February 24, 1992 (57 FR 6291), and was not adopted for the reasons expressed at that time. Moreover, this issue is beyond the scope of this regulation project.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Craig Wojay, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.166–2 is amended by revising paragraphs (d)(3)(iii)(D), (d)(3)(iii)(E), and (d)(3)(iv)(C)(*2*) to read as follows:

§ 1.166–2 Evidence of worthlessness.

* * * * *

(d) * * *

(3) * * *

(iii) * * *

(D) *Express determination requirement.* In connection with its most recent examination involving the bank's loan review process, the bank's supervisory authority must have made an express determination (in accordance with any applicable administrative procedure prescribed hereunder) that the bank maintains and applies loan loss classification standards that are consistent with the regulatory standards of that supervisory authority. For purposes of this paragraph (d)(3)(iii)(D), the supervisory authority of a bank is the *appropriate Federal banking agency* for the bank, as that term is defined in 12 U.S.C. 1813(q), or, in the case of an institution in the Farm Credit System, the Farm Credit Administration.

(E) *Transition period election.* For taxable years ending before completion of the first examination of the bank by its supervisory authority (as defined in paragraph (d)(3)(iii)(D) of this section) that is after October 1, 1992, and that involves the bank's loan review process, the statement or Form 3115 filed by the bank must include a declaration that the bank maintains and applies loan loss classification standards that are consistent with the regulatory standards of that supervisory authority. A bank that makes this declaration is deemed to satisfy the express determination requirement of paragraph (d)(3)(iii)(D) of this section for those years, even though an express determination has not yet been made.

(iv) * * *

(C) * * *

(*2*) *Year of revocation.* If a bank makes the conformity election under the transition rules of paragraph (d)(3)(iii)(E) of this section and does not obtain the express determination in connection with the first examination involving the bank's loan review process that is after October 1, 1992, the election is revoked as of the beginning of the taxable year of the election or, if later, the earliest taxable year for which tax may be assessed. In other cases in which a bank does not obtain an express determination in connection with an examination of its loan review process, the election is revoked as of the beginning of the taxable year that includes the date as of which the supervisory authority conducts the examination even if the examination is completed in the following taxable year.

* * * * *

Par. 3. Section 1.166–2T is removed.

Approved: August 19, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Samuel Y. Sessions,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93–25393 Filed 10–15–93; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF JUSTICE

Office of the Pardon Attorney

28 CFR Part 1

[AG Order No. 1798–93]

Rules Governing Petitions for Executive Clemency

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The regulations governing petitions for executive clemency describe the procedures involved in petitioning the President for executive clemency and the responsibility of the Attorney General in investigating each application for clemency and advising the President as to its disposition.This order republishes the present clemency regulations in their entirety, as initially published in the Federal Register on May 18, 1983, 48 FR 22290–22291, with amendments relating to the eligibility requirements for filing pardon and commutation petitions, and certain other amendments. Section 1.2 has been revised to require a single five-year minimum waiting period for all offenses, and also has been amended to exclude language making reference to the waiver of the waiting period in the cases of aliens seeking to avoid deportation. Further, individuals on supervised release have been added to the excluded class identified in the last sentence in the section. Similarly, individuals on probation and supervised release have been added to the last sentence in § 1.7. Editorial revisions have been made in § 1.3 to update and clarify the "exhaustion of other available remedies" requirement for the consideration of a clemency petition, and the phrase "unusual circumstances" (and specific examples thereof) has been eliminated as unnecessary. Certain language in §§ 1.1, 1.6, 1.7, and 1.9 has been edited to correct and clarify gender references. Existing § 1.8(b) has been amended to exclude capital cases from its coverage. Nonsubstantive editorial changes have been made in §§ 1.1. and 1.2.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a federalism assessment in accordance with section 6 of E.O. 12612.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret Colgate Love, United States Pardon Attorney, 500 First Street NW., 7th Floor, Washington, DC 20530. Telephone (202) 616–6070.

List of Subjects in 28 CFR Part 1

Clemency.

With the approval of the President, acting in conformity with his authority as Chief Executive and Article II, Section 2, United States Constitution, and by virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, part 1 of chapter I of title 28 of the Code of Federal Regulations is revised to read as follows:

PART 1—EXECUTIVE CLEMENCY

Sec.

Authority: U.S. Const., Art. II, sec. 2; authority of the President as Chief Executive; and 28 U.S.C. 509, 510.

§ 1.1 Submission of petition; form to be used; contents of petition.

A person seeking executive clemency by pardon, reprieve, commutation of sentence, or remission of fine shall execute a formal petition. The petition shall be addressed to the President of the United States and shall be submitted to the Pardon Attorney, Department of Justice, Washington, DC 20530, except for petitions relating to military offenses. Petitions and other required forms may be obtained from the Pardon Attorney. Petition forms for commutation of sentence also may be obtained from the wardens of federal penal institutions. A petitioner applying for executive clemency with respect to military offenses should submit his or her petition directly to the Secretary of the military department that had original jurisdiction over the court-martial trial and conviction of the petitioner. In such a case, a form furnished by the Pardon Attorney may be used but should be modified to meet the needs of the particular case. Each petition for executive clemency should include the information required in the form prescribed by the Attorney General.

§ 1.2 Eligibility for filing petition for pardon.

No petition for pardon should be filed until the expiration of a waiting period of at least five years after the date of the release of the petitioner from confinement or, in case no prison sentence was imposed, until the expiration of a period of at least five years after the date of the conviction of the petitioner. Generally, no petition should be submitted by a person who is on probation, parole, or supervised release.

§ 1.3 Eligiblity for filing petition for commutation of sentence.

No petition for commutation of sentence, including remission of fine, should be filed if other forms of judicial or administrative relief are available, except upon a showing of exceptional circumstances.

§ 1.4 Offenses against the laws of possessions or territories of the United States.

Petitions for executive clemency shall relate only to violations of laws of the United States. Petitions relating to violations of laws of the possessions of the United States or territories subject to the jurisdiction of the United States should be submitted to the appropriate official or agency of the possession or territory concerned.

§ 1.5 Disclosure of files.

Petitions, reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for executive clemency generally shall be available only to the officials concerned with the consideration of the petition. However, they may be made available for inspection, in whole or in part, when in the judgment of the Attorney General their disclosure is required by law or the ends of justice.

§ 1.6 Consideration of petitions; recommendations to the President.

(a) Upon receipt of a petition for executive clemency, the Attorney General shall cause such investigation to be made of the matter as he/she may deem necessary and appropriate, using the services of, or obtaining reports from, appropriate officials and agencies of the Government, including the Federal Bureau of Investigation.

(b) The Attorney General shall review each petition and all pertinent information developed by the investigation and shall determine whether the request for clemency is of sufficient merit to warrant favorable action by the President. The Attorney General shall report in writing his or her recommendation to the President, stating whether in his or her judgment the President should grant or deny the petition.

§ 1.7 Notification of grant of clemency.

When a petition for pardon is granted, the petitioner or his or her attorney shall be notified of such action and the warrant of pardon shall be mailed to the petitioner. When commutation of sentence is granted, the petitioner shall be notified of such action and the warrant of a commutation shall be sent to the petitioner through the officer in charge of his or her place of confinement, or directly to the petitioner if he/she is on parole, probation, or supervised release.

§ 1.8 Notification of denial of clemency.

(a) Whenever the President notifies the Attorney General that he has denied a request for clemency, the Attorney General shall so advise the petitioner and close the case.

(b) Except in cases in which a sentence of death has been imposed, whenever the Attorney General recommends that the President deny a request for clemency and the President does not disapprove or take other action with respect to that adverse recommendation within 30 days after the date of its submission to him, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General shall so advise the petitioner and close the case.

§ 1.9 Delegation of authority.

The Attorney General may delegate to any officer of the Department of Justice any of his or her duties or responsibilities under §§ 1.1 through 1.8.

§ 1.10 Advisory nature of regulations.

The regulations contained in this part are advisory only and for the internal guidance of Department of Justice personnel. They create no enforceable rights in persons applying for executive clemency, nor do they restrict the authority granted to the President under Article II, section 2 of the Constitution.

Dated: August 23, 1993.

Janet Reno,
Attorney General.

Dated: October 12, 1993.

Approved:

William J. Clinton,
President.

[FR Doc. 93-25462 Filed 10-15-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

Stabilization of Disability Evaluations

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the regulation of the Department of Veterans Affairs (VA) governing the stabilization of disability evaluations. The amendment will correct grammatical errors in the regulation and ensure that the regulation is clear and not subject to misinterpretation.

EFFECTIVE DATE: The effective date is February 24, 1961, the effective date of the original regulation.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 3.344(a) of title 38 CFR provides procedures and guidelines for reviewing examination reports in order to produce the greatest possible degree of stability in disability evaluations, consistent with the pertinent laws and VA regulations. A recent review of the regulation uncovered two technical errors which could cause confusion and result in misapplication of the regulatory provisions. In one sentence an incorrectly placed comma has separated the words "bronchial asthma." In another sentence, the passive voice of the verb has been used where the active voice is required. This amendment corrects these deficiencies and restores the language of the regulation as it was originally published.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

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

§ 3.344 [Corrected]

2. In § 3.344(a), the fifth sentence, remove the "," between the words "bronchial" and "asthma"; in the seventh sentence, remove the words "be considered" and insert in their place the word "consider".

Approved: September 30, 1993.

B. Michael Berger,

Director, Records Management Service.

[FR Doc. 93-25519 Filed 10-15-93; 8:45 am]

BILLING CODE 8320-01-U

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-37

[FPMR Amendment G-101]

Government Aviation Administration and Coordination

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation contains changes concerning the documentation, approval, and use of Government aircraft. This action is necessary for compliance with the provisions of OMB Circular A-126, dated May 22, 1992, and OMB Bulletin Number 93-11, dated April 19, 1993. Implementation of this regulation will minimize the cost and improve the management and use of Government aviation resources.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Larry Godwin, Aircraft Management Division (FBA), Federal Supply Service, General Services Administration, Washington, DC 20406 (703-305-6399).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101-37

Aircraft, Air transportation, Aviation, Government property management.

For the reasons set forth in the preamble, 41 CFR part 101-37 is amended as follows:

PART 101-37—GOVERNMENT AVIATION ADMINISTRATION AND COORDINATION

1. The authority citation for part 101-37 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101-37.4—Use of Government-Owned and Operated Aircraft

2. The subpart heading is revised as set forth above.

3. Section 101-37.400 is revised to read as follows:

§ 101-37.400 General.

The provisions of this subpart prescribe policies and procedures for the use of Government aircraft. This subpart incorporates certain provisions of OMB Circular A-126 and OMB Bulletin Number 93-11.

4. Section 101-37.401 is revised to read as follows:

§ 101-37.401 Definitions.

For purposes of this subpart, the following terms shall have the meanings set forth in this section.

Actual cost means all costs associated with the use and operation of an aircraft as specified in § 101-37.406(b).

Full coach fare means a coach fare available to the general public between the day that the travel was planned and the day the travel occurred.

Government aircraft means any aircraft owned, leased, chartered, or rented and operated by an executive agency.

Mission requirements mean activities that constitute the discharge of an agency's official responsibilities. Such activities include, but are not limited to, the transport of troops and/or equipment, training, evacuation (including medical evacuation), intelligence and counter-narcotics activities, search and rescue, transportation of prisoners, use of defense attaché-controlled aircraft, aeronautical research and space and science applications, and other such activities. Mission requirements do not include official travel to give speeches, to attend conferences or meetings, or to make routine site visits.

Official travel means travel for the purpose of mission requirements, required use travel, and other travel for the conduct of agency business.

Reasonably available means commercial airline or aircraft (including charter) is able to meet the traveler's departure and/or arrival requirements within a 24-hour period (unless the traveler demonstrates that extraordinary circumstances require a shorter period of time).

Required use means use of a Government aircraft for the travel of an executive agency officer or employee to meet bona fide communications or security requirements of the agency or exceptional scheduling requirements. An example of a bona fide communications requirement is having to maintain continuous 24-hour secure communications with the traveler. Bona fide security requirements would include, but not be limited to, highly unusual circumstances which present a clear and present danger, such as threats which could endanger lives. Exceptional scheduling requirements could include emergencies and other operational considerations, which make commercial transportation unacceptable.

Senior executive branch official means civilian officials appointed by the President with the advice and consent of the Senate and civilian employees of the Executive Office of the President (EOP).

Senior Federal official means a person:

(1) Employed at a rate of pay specified in, or fixed according to, subchapter II of chapter 53 of title 5 of the United States Code;

(2) Employed in a position in an executive agency, including any independent agency, at a rate of pay payable for level I of the Executive Schedule or employed in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule;

(3) Employed in an executive agency position that is not referred to in paragraph (1) of this definition (other than a position that is subject to pay adjustment under 37 U.S.C. 1009) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under 5 U.S.C. 5304 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of the basic pay payable for the Senior Executive Service (5 U.S.C. 5382); or

(4) Appointed by the President to a position under 3 U.S.C. 105(a)(2) (A), (B), or (C) or by the Vice President to a position under 3 U.S.C. 106(a)(1) (A), (B), or (C). Generally, a senior Federal official is employed by the White House or an executive agency, including independent agencies, at a rate of pay equal to or greater than the minimum rate of basic pay for the Senior Executive Service. The term senior Federal official does not include an active duty military officer.

Space available means travel using aircraft capacity, that is already scheduled for use for an official purpose, that would otherwise be unutilized.

5. Section 101–37.402 is revised to read as follows:

§ 101–37.402 Policy.

Government aircraft shall be used for official purposes only in accordance with applicable laws and regulations, including this subpart.

(a) Use of Government aircraft. Agencies shall operate Government aircraft only for official purposes. Official purposes include the operation of Government aircraft for:

(1) Mission requirements, and

(2) Other official travel.

(b) Use of Government aircraft for official travel or on space available travel is subject to paragraphs (b)(1) and (2) of this section.

(1) Use of a Government aircraft for official travel other than required use travel or mission requirement travel; i.e., for the conduct of agency business, shall be authorized only when:

(i) No commercial airline or aircraft service (including charter) is reasonably available to fulfill effectively the agency's requirement; or

(ii) The actual cost of using a Government aircraft is not more than the cost of commercial airline or aircraft service (including charter). When a flight is made for mission requirements or required use travel (and is certified as such in writing by the agency which is conducting the mission), it is presumed that secondary use of the aircraft for other travel for the conduct of agency business will result in cost savings.

(2) Use of a Government aircraft on a space available basis is authorized only when:

(i) The aircraft is already scheduled for use for an official purpose;

(ii) Space available travel does not require a larger aircraft than needed for the already scheduled official purpose;

(iii) Space available use results in no, or only minor, additional cost to the Government; and

(iv) Reimbursement is provided as set forth in § 101–37.403 of this subpart.

(c) The Secretary of State, Secretary of Defense, Attorney General, Director of the Federal Bureau of Investigation, and the Director of Central Intelligence may use Government aircraft for travel other than:

(1) To meet mission requirements, or

(2) For the conduct of agency business, but only upon reimbursement at full coach fare and with authorization by the President or his designated representative on the grounds that a threat exists which could endanger lives or when continuous 24-hour secure communication is required.

6. Sections 101–37.403 through 101–37.408 are added as follows:

§ 101–37.403 Reimbursement for the use of Government aircraft.

A passenger transported by Government aircraft is required to reimburse the Government under the circumstances specified, and in the amount indicated, in paragraphs (a) through (d) of this section.

(a) For travel that is not required use travel:

(1) Any incidental private activities (personal or political) of an employee undertaken on an employee's own time while on official travel shall not result in any increase in the actual costs to the Government of operating the aircraft, and

(2) The Government shall be reimbursed the appropriate share of the full coach fare for any portion of the time on the trip spent on political activities (except as otherwise provided in paragraph (d) of this section).

(b) For required use travel (except as otherwise provided in paragraph (d) of this section).

(1) For a wholly personal or political trip, the Government shall be reimbursed the full coach fare for the trip,

(2) For an official trip during which the employee engages in political activities, the Government shall be reimbursed the appropriate share of the full coach fare for the entire trip, and

(3) For an official trip during which the employee flies to one or more locations for personal reasons, the Government shall be reimbursed the excess of the full coach fare of all flights taken by the employee on the trip over the full coach fare of the flights that would have been taken by the employee had there been no personal activities on the trip.

(c) For space available travel, whether on mission requirements or other flights, the Government shall be reimbursed at the full coach fare except:

(1) As authorized under 10 U.S.C. 4744 and regulations implementing that statute, and

(2) By civilian personnel and their dependents in remote locations not reasonably accessible to regularly scheduled commercial airline service.

(d) In any case of political travel, reimbursement shall be made in the amount required by law or regulation (e.g., 11 CFR 106.3) if greater than the amount otherwise required under paragraphs (a) through (c) of this section.

§ 101–37.404 Approving the use of Government aircraft for transportation of passengers.

(a) Use of agency aircraft for official travel may be approved only by the agency head or official(s) designated by the agency head.

(b) Whenever a Government aircraft used to fulfill a mission requirement is used also to transport senior Federal officials, members of their families or other non-Federal travelers on a space available basis (except as authorized under 10 U.S.C. 4744 and regulations implementing that statute), the agency that is conducting the mission shall certify in writing prior to the flight that the aircraft is scheduled to perform a bona fide mission activity, and that the minimum mission requirements have not been exceeded in order to transport such space available travelers. In emergency situations, an after-the-fact written certification by the agency is permitted.

§ 101–37.405 Approving travel on Government aircraft.

Policy and practices under which travel on Government aircraft may be approved by the agency are specified in paragraphs (a) through (c) of this section.

(a) All travel on Government aircraft must have advance authorization by the sponsoring agency in accordance with its travel policies, OMB Circular A–126 and, when applicable, documented on an official travel authorization. Where possible, such travel authorization must be approved by at least one organizational level above that of the person(s) traveling. If review by a higher organizational level is not possible, another appropriate approval is required.

(b) All required use travel must have written approval on a trip-by-trip basis from the agency's senior legal official or the principal deputy, unless:

(1) The President has determined that all travel or travel in specified categories by an agency head is qualified as required use travel, or

(2) The agency head has determined that all travel or travel in specified categories by an officer or employee other than the agency head, is qualified as required use travel.

(i) Any determination by an agency head that travel by an officer or employee of that agency qualifies as required use travel must be in writing and set forth the basis for that determination. In emergency situations an after-the-fact written certification by an agency is permitted.

(ii) An agency head opting to determine that travel by an officer or employee may be required use travel shall establish written standards for determining when required use travel is permitted. Such travel shall not be permitted unless the travel is in conformance with the written standards.

(c) All travel by senior Federal officials, family members of senior Federal officials, and non-Federal travelers that is not to meet mission requirements or required use travel must be authorized in advance and in writing.

(1) Such authorization must be approved on a trip-by-trip basis and must be signed by the agency's senior legal official or the principal deputy, or be in conformance with an agency review and approval system that has been approved by the Office of Management and Budget (OMB). In emergency situations, an after-the-fact written certification by an agency is permitted.

(2) In addition to the provisions of this subpart, Federal employees on official travel shall be subject to all other applicable travel rules and regulations. Travel by such individuals that is not official travel, for purposes of this subpart, is subject to the reimbursement requirements in § 101–37.403(c) of this subpart for space available travel.

§ 101–37.406 Justification of the use of Government aircraft for transportation of passengers.

(a) The cost comparison justifying the use of a Government aircraft for a proposed trip as required by § 101–37.402(b)(1)(ii) of this subpart should be made prior to authorizing the use of the aircraft for that trip. Standard trip cost justification schedules developed by agencies may be used for this purpose. Agencies that are not able to use such schedules are required to conduct a cost justification on a case-by-case basis.

(b) When conducting a cost comparison, the agency must compare the actual cost of using a Government aircraft to the cost of using a commercial aircraft (including charter) or airline service. The actual cost of using a Government aircraft is either:

(1) The amount that the agency will be charged by the organization that provides the aircraft,

(2) The variable cost of using the aircraft, if the agency operates its own aircraft, or

(3) The variable cost of using the aircraft as reported by the owning agency, if the agency is not charged for the use of an aircraft owned by another agency.

(c) The cost of using commercial airline or aircraft services for the purpose of justifying the use of Government aircraft:

(1) Must be the current Government contract fare or price, or the lowest fare or price available for the trip(s) in question,

(2) Must include, as appropriate, any differences in the cost of ground travel, per diem and miscellaneous travel (e.g., taxis, parking, etc.), and lost employees' work time (computed at gross hourly costs to the Government, including benefits), between using Government aircraft and commercial aircraft services, and

(3) Must include only the costs associated with passengers on official business. Costs associated with passengers traveling on a space available basis may not be used in the cost comparison.

§ 101–37.407 Documentation.

All uses of Government aircraft must be documented, and this documentation must be retained for at least 2 years by the aircraft operations manager. The documentation of each use of Government aircraft must include the information specified in paragraphs (a) through (g) of this section:

(a) Aircraft registration number (the registration number assigned by the Federal Aviation Administration or military-designated tail number);

(b) Purpose of the flight (the mission the aircraft was dispatched to perform);

(c) Route(s) flown;

(d) Flight date(s) and times;

(e) Name of each traveler;

(f) Name(s) of the pilot(s) and aircrew;

(g) When Government aircraft are used to support official travel, the documentation must also include evidence that § 101–37.408 and other applicable provisions of this FPMR have been satisfied.

§ 101–37.408 Reporting travel by senior Federal officials.

Agencies shall submit semi-annual reports for the periods October 1 through March 31 (due May 31), and April 1 through September 30 (due November 30) to the General Services Administration, Aircraft Management Division (FBA), Washington, DC 20406. A copy of each report shall also be submitted to the Assistant Director for General Management, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Agencies shall submit report data using the Federal Aviation Management System (FAMIS) structure and management codes for automated reporting or GSA Form 3641, Senior Federal Travel. These reports shall be disclosed to the public upon request unless classified.

(a) Reports shall include data on all non-mission travel by senior Federal officials on Government aircraft (including those senior Federal officials acting in an aircrew capacity when they are also aboard the flight for transportation), members of the families of such officials, any non-Federal travelers (except as authorized under 10 U.S.C. 4744 and regulations implementing that statute), and all mission and non-mission travel for senior executive branch officials. The reports shall include:

(1) The names of the travelers;

(2) The destinations;

(3) The corresponding commercial cost had the traveler used commercial airline or aircraft service (including charter);

(4) The appropriate allocated share of the full operating cost of each trip;

(5) The amount required to be reimbursed to the Government for the flight;

(6) The accounting data associated with the reimbursement; and

(7) The data required by § 101–37.407 (a), (b) and (d) of this subpart.

(b) Each agency is responsible for reporting travel by personnel transported on aircraft scheduled by that agency.

(c) The agency using the aircraft must also maintain the data required by this section for classified trips. This information shall not be reported to GSA or OMB but must be made available by the agency for review by properly cleared personnel.

Dated: June 18, 1993.

Julia Stasch,

Acting Administrator of General Services.

[FR Doc. 93–25387 Filed 10–15–93; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 90–571; FCC 93–463]

Telecommunications Relay Services (TRS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Second Order on Reconsideration and Fourth Report and Order (Fourth R&O) approves the TRS Interim Fund Administrator's payment formula, fund size, and payment schedule for the interstate TRS Fund. This action is pursuant to requirements of the Americans with Disabilities Act of 1990 (ADA) which, among other things, amended Title II of the Communications Act of 1934 by adding section 225, and will have the effect of implementing an effective cost recovery program for interstate TRS costs.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Dubroof, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1808, or James Lande, Industry Analysis Division, Common Carrier Bureau, (202) 632–1371.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Fourth R&O adopted September 28, 1993, and released September 29, 1993, in the matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Second Order on Reconsideration and Fourth Report and Order (CC Docket 90–571, FCC 93–463). The Fourth R&O and supporting file are available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, room 239, 1919 M St., NW., Washington, DC, or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M St., Suite 140, Washington DC 20037, phone (202) 857–3800. The Fourth R&O will be published in the FCC Record.

Analysis of Proceeding

In the Report and Order and Request for Further Comments, 6 FCC Rcd 4657 (1991), (56 FR 36729, August 1, 1991), the Commission revised Subpart F of part 64 of the rules to implement the ADA. The amended rules require each common carrier providing telephone voice transmission services to provide TRS not later than July 26, 1993, throughout the area in which it offers services. Carriers may provide services individually, through designees, through a competitively selected vendor, or in concert with other carriers. The Commission also fashioned a comprehensive set of rules which set forth terminology and definitions of TRS, prescribe operational, technical, and functional minimum standards of all TRS providers, and delineate the state certification process. Specifically, the Commission's rules require that TRS shall be capable of handling any type of call normally provided by common carriers. The burden of proving the infeasibility of handling any type of call is on the carriers. With regard to confidentiality, the Commission's rules require that, consistent with the obligations of common carrier operators, TRS communications assistants (CAs) are prohibited from disclosing the content of any relayed conversation regardless of content. Furthermore, the Commission, noting that the record was not adequate to determine a specific cost recovery mechanism, sought specific proposals on interstate cost recovery.

In an Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802 (1993), (58 FR 12175, Mar. 3, 1993; 58 FR 12204, Mar. 3, 1993) (TRS II), the Commission proposed rules tasking the National Exchange Carrier Association, Inc. (NECA) with the responsibility for administering the shared-funding plan, but the Commission invited other proposals. Under the proposed rules, the Administrator's performance would be reviewed after an initial two-year period.

In a Third Report and Order, 8 FCC Rcd 5300 (1993), (58 FR 39671, July 26, 1993) (Third R&O), the Commission adopted rules implementing the TRS Fund, a shared-funding mechanism to recover interstate TRS costs. The Commission, in that Third R&O, determined that the TRS Fund will be administered for two years, on an interim basis, by NECA. The Third R&O also clarified the Commission's proposed rule defining "interstate" service and set forth a method of calculating contributions to, and payments from, the TRS Fund. The Commission affirmed that contributions shall be based on each interstate service provider's relative share of gross interstate revenues, and that interstate carriers services contributions shall include, but are not limited to: resale, cellular, access (including federal subscriber line charges), personal communications services (PCS), packet-switched, WATS, video, telex, mobile radio, 800, 900, operator, message telephone (MTS), private dedicated, international, satellite, and intraLATA service providers. Initial contributions to the TRS Fund were due September 26, 1993. Appendix D of the Third R&O "TRS Fund Worksheet" outlined procedures for contributors to make their contributions to the TRS Fund Administrator. Payments from the TRS Fund to TRS providers are based on the average rate of interstate TRS minutes of use. The Commission found that imposition of Part 36 jurisdictional separations requirements on TRS providers who are not common carriers presents unnecessary administrative burdens. The Commission directed the administrator to fashion a form that would establish adequate account definitions and procedures reasonably tailored to meet the needs of TRS. Further, the Commission found that existing accounting and separations rules should be adequate to deal with