

REQUEST FOR OMB REVIEW

(Under the Paperwork Reduction Act and Executive Order 12291)

Important — Read instructions (SF-83A) before completing this form. Submit the required number of copies of SF-83, together with the material for which review is requested to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

1. Department/Agency and Bureau/Office originating request U.S. Nuclear Regulatory Commission	3. Name(s) and telephone number(s) of person(s) who can best answer questions regarding request Pat Woolley (301) 492-8137
2. 6-digit Agency/Bureau number (first part of 11-digit Treasury Account No.) 3 1 0 2 0 0	4. 3-digit functional code (last part of 11-digit Treasury Account No.) 2 7 6
5. Title of Information Collection or Rulemaking Equal Access to Justice, 10 CFR 2	C. Is this a rulemaking submission under Section 3504(h) of P.L. 96-511? (Check one) 1 <input checked="" type="checkbox"/> No (Section 3507 submission) 2 <input type="checkbox"/> Yes, NPRM. Expected date of publication: _____ 3 <input type="checkbox"/> Yes, final rule. Expected date of publication: _____ Effective date: _____
6. A. Is any information collection (reporting or recordkeeping) involved? (Check one) 1 <input checked="" type="checkbox"/> Yes and proposal is attached for review 2 <input type="checkbox"/> Yes but proposal is not attached — skip to question D. 3 <input type="checkbox"/> No — skip to question D. B. Are the respondents primarily educational agencies or institutions or is the purpose related to Federal education programs? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	D. At what phase of rulemaking is this submission made? (Check one) 1 <input checked="" type="checkbox"/> Not applicable 2 <input type="checkbox"/> Major rule, at NPRM stage 3 <input type="checkbox"/> Major Final rule for which no NPRM was published 4 <input type="checkbox"/> Major Final rule, after publication of NPRM 5 <input type="checkbox"/> Nonmajor rule, at NPRM stage 6 <input type="checkbox"/> Nonmajor rule, at Final stage

COMPLETE SHADED PORTION IF INFORMATION COLLECTION PROPOSAL IS ATTACHED

7. Current (or former) OMB Number N/A	8. Requested Expiration Date 12/31/81	12. Agency report form number(s) N/A
Expiration Date N/A		13. Are respondents only Federal agencies? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
9. Is proposed information collection listed in the information collection budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	10. Will this proposed information collection cause the agency to exceed its information collection budget allowance? (If yes, attach amendment request from agency head.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	14. Type of request (Check one) 1 <input type="checkbox"/> preliminary plan 2 <input type="checkbox"/> new (not previously approved or expired more than 6 months ago) 3 <input type="checkbox"/> revision 4 <input type="checkbox"/> extension (adjustment to burden only) 5 <input type="checkbox"/> extension (no change) 6 <input type="checkbox"/> reinstatement (expired within 6 months)
11. Number of report forms submitted for approval		
15.	16. Classification of Change in Burden (explain in supporting statement)	
a. Approximate size of universe (if sample)		
b. Size of sample	6	
c. Estimated number of respondents or record keepers per year	6	
d. Reports annually by each respondent (item 25)	1	
e. Total annual responses (item 15c x 15d)	6	
f. Estimated average number of hours per response		
g. Estimated total hours of annual burden in Fiscal Year (item 15e x 15f)	150	
	a. In inventory	No. of Responses
	b. As proposed	No. of Reporting Hours
	c. Difference (b-a)	Cost to the Public
	Explanation of difference (indicate as many as apply)	
	Adjustments	
	d. Correction-error	
	e. Correction-reestimate	
	f. Change in use	
	Program changes	
	g. Increase	
	h. Decrease	

Equal Access to Justice Act (P.L. 96-48) requires NRC to obtain information from prevailing parties in NRC Advisory Adjudications.

18. Related report form(s) (give OMB number(s), IRCN(s), internal agency report form number(s) or symbol(s))	20. Catalog of Federal Domestic Assistance Program Number
N/A	N/A
19. Type of affected public (Check as many as apply)	21. Small business or organization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> individuals or households <input type="checkbox"/> state or local governments <input type="checkbox"/> farms <input checked="" type="checkbox"/> businesses or other institutions (except farms)	22. Type of activity of affected public—indicate 3-digit Standard Industrial Classification (SIC) code(s) (up to 10) — if over 10, check <input type="checkbox"/> Multiple or <input checked="" type="checkbox"/> All
23. Brief description of affected public (e.g., "retail grocery stores," "State education agencies," "households in 50 largest SMSAs")	

NRC Adjudicants

24. Purpose (Check as many as apply. If more than one, indicate predominant by an asterisk)	26. Collection method (Check as many as apply)
<input type="checkbox"/> application for benefits <input type="checkbox"/> program evaluation <input type="checkbox"/> general purpose statistics <input checked="" type="checkbox"/> regulatory or compliance <input type="checkbox"/> program planning or management <input type="checkbox"/> research	<input checked="" type="checkbox"/> mail self-administered <input type="checkbox"/> other self-administered <input type="checkbox"/> telephone interview <input type="checkbox"/> personal interview <input type="checkbox"/> recordkeeping requirement: _____ years <input type="checkbox"/> other—describe: _____
25. Frequency of Use	27. Collection agent (Check one)
<input type="checkbox"/> Nonrecurring Recurring (check as many as apply) <input checked="" type="checkbox"/> on occasion <input type="checkbox"/> semiannually <input type="checkbox"/> weekly <input type="checkbox"/> annually <input type="checkbox"/> monthly <input type="checkbox"/> biennially <input type="checkbox"/> quarterly <input type="checkbox"/> other—describe: _____	<input checked="" type="checkbox"/> requesting Department/Agency <input type="checkbox"/> other Federal Department/Agency <input type="checkbox"/> private contractor <input type="checkbox"/> recordkeeping requirement <input type="checkbox"/> other—describe: _____
28. Authority for agency for information collection or rulemaking—indicate statute, regulation, judicial decree, etc.	30. Do you promise confidentiality? (If yes, explain basis for pledge in supporting statement.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Atomic Energy Act of 1954	31. Will the proposed information collection create a new or become part of an existing Privacy Act system of records? (If yes, attach Federal Register notice or proposed draft of notice.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
29. Respondent's obligation to reply (Check as many as apply)	32. Cost to Federal Government of information collection or rulemaking \$18,000
<input type="checkbox"/> voluntary <input type="checkbox"/> required to obtain or retain benefit <input checked="" type="checkbox"/> mandatory—cite statute, not CFR (attach copy of statutory authority) P.L. 96-481	

COMPLETE ITEMS 33 THRU 35 ONLY IF RULEMAKING SUBMISSION

33. Compliance costs to the public	34. Is there a regulatory impact analysis attached?	35. Is there a statutory or judicial deadline affecting issuance?
\$ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes. Enter date: _____ <input type="checkbox"/> No

CERTIFICATION BY AUTHORIZED OFFICIALS SUBMITTING REQUEST—We certify that the information collection or rulemaking submitted for review is necessary for the proper performance of the agency's functions, that the proposal represents the minimum public burden and Federal cost consistent with need, and is consistent with applicable OMB and agency policy directives. Signature and title of:

APPROVING POLICY OFFICIAL FOR AGENCY	DATE	SUBMITTING OFFICIAL	DATE
Daniel J. Donoghue	11-20-81	R. Stephen Scott	11/28/81

hour) to the appropriate NRC Regional Office, (2) require that all abnormal incidents be reported immediately (within one half hour) to a designated State agency within 200 miles of the incident, and (3) define an abnormal incident as one which involves radioactive releases to air or water.

Response to Petition

The staff began its evaluation of the petition and the public comment letters in the early part of 1978, but it was after the Three Mile Island accident when the NRC staff acted to ensure the timely flow of information from nuclear power reactor operators following significant events relating to the public health and safety. Dedicated telephone lines have been installed from all operating plants to the NRC Operations Center and Regional Offices. New regulations have been published which modified § 20.403 and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities" (45 FR 13434-5, February 29, 1980). The regulations in 10 CFR 50.47 and 50.72 are now effective. Section 50.72 includes a provision that each nuclear power reactor licensee must notify NRC as soon as possible, and in all cases within one hour, of twelve specified significant events. These include the initiation of the licensee's emergency plan (or any section thereof) as well as an accidental, unplanned, or uncontrolled radioactive release.¹

Likewise, on August 19, 1980, the NRC published final regulations relating to Emergency Planning and Preparedness (45 FR 55402). These regulations, in Appendix E, Section D.3. of 10 CFR Part 50, require that "a licensee shall have the capability to notify responsible State and local governmental agencies within 15 minutes after declaring an emergency." See also, 10 CFR 50.47(b)(5).

In addition, the new Emergency Preparedness regulations refer to NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" for further discussion of emergency plans. NUREG-0654 specifies

¹In fact, comments have been received concerning the notification requirements in § 50.72 and the staff has had approximately 16 months experience implementing this regulation. The staff is now in the process of making certain minor modifications in order to clarify the notification requirements in § 50.72. One such change that the NRC staff is considering proposing to the Commission is to add the following sentence to § 50.72: "All such notifications (of the four classes of emergencies) to the NRC shall be made immediately after notification to the State or local agencies and shall identify that the notice is being made pursuant to this paragraph."

that power reactor licensees should promptly notify State and local authorities when any unusual event occurs.

The effective regulations and the guidance documents, while not requiring exactly what the petitioner requested, do establish prompt notification requirements which follow the basic intent of the petition. In addition, rescission of 10 CFR 20.403 would affect all NRC licensees for source, byproduct, and special nuclear material and would not be limited to nuclear power reactor licensees. Therefore, the CURE petition is being treated by the NRC as having been granted in substance. In light of present NRC regulatory requirements concerning immediate notification of the NRC and State and local officials of significant events at nuclear power reactors, further NRC action would be unnecessary and duplicative. Accordingly, the docket has been closed.

Dated at Bethesda, Maryland this 16th day of October, 1981.

For the Nuclear Regulatory Commission,
William J. Dircks,
Executive Director for Operations.

(FR Doc. 81-31222 Filed 10-27-81; 8:45 am)
BILLING CODE 7590-01-M

10 CFR Parts 1 and 2

Procedures Involving the Equal Access to Justice Act: Implementation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its rules of practice to add new provisions designed to implement the recently enacted Equal Access to Justice Act, Pub. L. No. 96-481. That Act provides for the award of fees and expenses to certain individuals and businesses that prevail in agency adjudications in which the agency's position is determined not to have been substantially justified. The basis for these proposed regulations is a set of model rules issued by the Administrative Conference of the United States, which have been modified to conform to the Nuclear Regulatory Commission's established rules of practice.

DATE: Comment period expires November 27, 1981. Comments received after this date will be considered if practical to do so but assurance of consideration cannot be given except to comments received on or before this date.

ADDRESSES: Written comments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attn: Docketing and Service Branch. Copies of all comments received may be examined and copied for a fee in the Commission's Public Document Room at 1717 H Street, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Paul Bollwerk, Esq., Office of the General Counsel, (202) 634-3224, U.S. Nuclear Regulatory Commission, Washington, DC, 20555.

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1980, President Carter signed into law Equal Access to Justice Act (EAJA), Pub. L. No. 96-481, 94 Stat. 2325, 5 U.S.C. § 504. Under its terms, which become effective October 1, 1981, individuals and business entities meeting certain net worth and other requirements may be awarded fees and expenses incurred in connection with agency "adversary adjudications" if they prevail over the agency unless the presiding adjudicatory official determines that the agency's position was substantially justified or that special circumstances preclude an award as unjust. 5 U.S.C. 504(a). The Act also provides that each agency, after consultation with the Administrative Conference of the United States (ACUS), is to establish uniform procedures for the submission and consideration of applications for awards of fees and expenses. *Id.* § 504(c)(1). To facilitate this statutory requirement, ACUS developed and issued model rules for consideration and utilization by those agencies affected by the EAJA's requirements. 48 FR 15895 (March 10, 1981) and 48 FR 32900 (June 25, 1981). The basis for the rules now proposed by the Nuclear Regulatory Commission (NRC) are those ACUS model rules, except to the extent, as more fully explained herein, they are deemed unnecessary or not consistent with present NRC procedure. The proposed rules, if adopted, will be added to the Commission's regulations in 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings," as a new subpart J and will apply to adversary adjudications pending before the NRC on October 1, 1981, or thereafter. In addition certain minor changes would be made to 10 CFR Part 1 and other sections of Part 2 to indicate the role of the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board in ruling on EAJA applications.

agency will follow in considering requests for EAJA awards. A sentence has been added to proposed § 2.1025(a) to indicate that, absent a Commission designation of another official pursuant to proposed § 2.1006, the presiding officer with responsibility for the underlying proceeding will preside over the determination of any EAJA application. In addition, the time limits for the answer, reply, and presiding officer's decision are slightly longer than those now allowed for comparable submissions in the course of a licensing hearing. Compare 10 CFR 2.705 (twenty days for answer), 2.706 (ten days for reply), and Part 2, App. A, § III(d) (thirty-five days for presiding officer's initial decision) with proposed 10 CFR 2.1021 (thirty days for answer to application), 2.1022 (fifteen days for reply), and 2.1028 (forty-five days for presiding officer's initial decision). The unique nature of the questions presented in determining whether an EAJA award should be made as well as the fact that the time expended in reaching such a determination will not impact on the operation of the facility involved in the underlying adversary adjudication makes such longer limitations acceptable. A further change is found in proposed § 2.1027, in that the provision of its ACUS Model Rules counterpart, § 0.308, providing for discretionary agency review of an initial EAJA award decision has been dropped as inconsistent with present NRC regulations that provide an appeal of right in agency adjudications. Also deleted is the final sentence of Model Rule § 0.308, which denotes those actions that may be taken by the reviewing body, and Model Rule § 0.309, which indicates that judicial review of a final agency decision on an EAJA application is available under 5 U.S.C. § 504(c)(2). Both of these provisions are considered unnecessary in light of existing regulations and the terms of the EAJA.

Finally, conforming amendments indicating the applicability of the Equal Access to Justice Act are proposed to be made to existing NRC regulations 10 CFR 1.12, which gives a general description of the Atomic Safety and Licensing Appeal Board's duties; 10 CFR 2.1, which defines the scope of the procedural rules found in Part 2; and 10 CFR 2.721 and 2.785, which respectively set forth the functions of the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board.

In accordance with 5 U.S.C. 553(d)(3), it is the Commission's intention to make these proposed rules immediately

effective when they are published in final form. Good cause exists for such action in that the rules are procedural and, as such, will not adversely affect any member of the public.

III. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. A recent ACUS estimate based on the Uniform Caseload Accounting system indicates that the number of small entities involved will amount to perhaps one-half dozen per year. Moreover, the rule will have a beneficial effect for such entities by establishing a procedural framework for the submission and determination of applications for fees and expenses incurred in participating in NRC adversary adjudications.

IV. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 44 U.S.C. 3501-3520, this proposed rule has been submitted to the Office of Management and Budget (OMB) for clearance of its reporting/recordkeeping/application requirements. The 6F-83, "Request for Clearance," a supporting statement, and other related documentation submitted to OMB have been placed in the NRC Public Document Room at 1717 H Street, NW., Washington, DC 20555 for inspection and copying for a fee.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that the following revisions to Title 10, Chapter 1, Parts 1 and 2, Code of Federal Regulations are contemplated:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 is revised to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); secs. 201, 203, 204, 205, and 209, Pub. L. 93-438, 88 Stat. 1242, 1244, 1245, 1246, and 1248 (42 U.S.C. 5841, 5843, 5844, and 5849); Pub. L. 94-79, 89 Stat. 413; and 5 U.S.C. 504, 552, and 553.

2. Section 1.12 of Part 1 is revised to read as follows:

§ 1.12 Atomic Safety and Licensing Appeal Panel.

The Atomic Safety and Licensing Appeal Panel is the organizational group from which Atomic Safety and Licensing Appeal Boards are selected. Under

powers delegated by the Commission, these three-member Boards exercise the authority and perform the regulatory review functions which would otherwise be exercised and performed by the Commission. They perform these functions in proceedings on licenses under 10 CFR Part 50, and such other licensing proceedings as the Commission may specify, reviewing initial decisions and other issuances of Atomic Safety and Licensing Boards and other presiding officers. They shall also perform these functions in proceedings under the Equal Access to Justice Act. The Panel shall be comprised of a Chief Administrative Judge who shall be Chairman and such other Administrative Judges as may be appointed members of the Panel.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEDURE

3. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161p and 181, Pub. L. 83-703, 68 Stat. 950 and 953 (42 U.S.C. 2201(p) and 2231); sec. 191, as amended, Pub. L. 87-615, 78 Stat. 406 (42 U.S.C. 2241); sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841); 5 U.S.C. 522; 5 U.S.C. 504; unless otherwise noted. Sections 2.200-2.206 also issued under sec. 186, Pub. L. 83-703, 68 Stat. 953 (42 U.S.C. 2236) and sec. 206, Pub. L. 83-438, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.800-2.808 also issued under 5 U.S.C. 553.

4. Section 2.1 of Part 2 is revised to read as follows:

§ 2.1 Scope.

This part governs the conduct of all proceedings, other than export and import licensing proceedings described in Part 110, under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, for: (a) Granting, suspending, revoking, amending, or taking other action with respect to any license, construction permit, or application to transfer a license; (b) imposing civil penalties under section 234 of the Act; and (c) public rulemaking. This part also governs proceedings under the Equal Access to Justice Act.

5. In Part 2, section 2.721, paragraph (a) is revised to read as follows:

§ 2.721 Atomic safety and licensing boards.

(a) The Commission or the Chairman of the Atomic Safety and Licensing Board Panel may from time to time establish one or more atomic safety and licensing boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of

§ 2.1003 Allowable 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 NRC pays expert witnesses. An award may 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 these expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the presiding officer 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) 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.

§ 2.1004 Rulemaking on maximum rates for attorney or agent fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys or agents qualified to handle certain types of proceedings), the NRC may adopt regulations providing that attorney or agent fees may be awarded at a rate higher than \$75 per hour in some or all of the types of proceedings covered by this subpart. Any person may file with this agency a petition for rulemaking to increase the maximum rate for attorney or agent fees, in accordance with 10.CFR 2.802. The petition should identify the rate the petitioner believes this agency should establish and the types of proceedings in which the rate should be

used. It should also explain fully the reasons why the higher rate is warranted.

§ 2.1005 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the NRC and takes a position that is not substantially justified, the award or an appropriate portion of the award must be made against that agency.

§ 2.1006 Delegations of authority.

The Commission delegates to the presiding officer and the Atomic Safety and Licensing Appeal Board authority to take final action on matters pertaining to the Equal Access to Justice Act, 5 U.S.C. 504, in adversary adjudications before these officials. The Commission may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases to other subordinate officials or bodies.

Information Required From Applicants**§ 2.1010 Contents of application.**

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

(b) The application must also include a statement that the applicant's net worth does not exceed \$1 million (if an individual) or \$5 million (for all other applicants, including their affiliates). 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 must 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 the NRC to consider in determining whether and in what amount an award should be made.

(e) The application must be signed by the applicant or an authorized officer or attorney of the applicant. It must 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.

§ 2.1011 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, shall provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 2.1001(f) of this subpart) when the proceeding was initiated. 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 subpart. The presiding officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit is 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 presiding officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion must 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 net worth material in question must 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. The motion to withhold the information shall be served on all parties to the proceeding, who shall have ten (10) days within which to file any reply supporting or contesting the request for nondisclosure. If the presiding officer finds that the information should not be withheld from disclosure, it must be placed in the public record of the proceeding, unless

justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision must allocate responsibility for payment of any award made among the agencies, and must explain the reasons for the allocation made.

§ 2.1027 Agency review.

Review of the initial decision on the fee application shall be requested and conducted in accordance with §§ 2.760, 2.762-.763, 2.770-.772, and 2.785-.787. If neither the applicant nor staff counsel seeks review and neither the Atomic Safety and Licensing Appeal Board nor the Commission takes review on its own initiative, the initial decision on the application becomes a final decision of the agency thirty (30) days after it is issued.

§ 2.1028 Payment of award.

An applicant seeking payment of an award from the NRC shall submit a copy of the agency'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 to Director, Division of Accounting, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. The agency will pay the amount awarded to the applicant within sixty (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.

Dated at Washington, DC, this 23d day of October 1981.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc #1-31250 Filed 10-27-81; 8:45am]

BILLING CODE 7590-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 298

[EDP-434; Docket No. 40135; Dated: October 14, 1981]

Classification and Exemption of Air Taxi Operators; Commuter Air Carrier

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to change the definition of commuter air carrier in order to remove cargo and mail carriers from that classification. Small cargo and mail carriers would continue to be considered air taxis but not commuters.

This action is taken at the Board's own initiative in order to reduce the reporting and other regulatory burdens on these small airlines.

DATES: Comments by: December 28, 1981. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List: November 12, 1981. The Docket Section prepares the Service List and sends it to each person listed on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 40135, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: Part 298 of the Board's rules (14 CFR Part 298) establishes a class of carriers known as air taxi operators. These are carriers that operate small aircraft, presently considered to be aircraft having a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less. Air taxis register with the Board rather than obtaining a certificate of public convenience and necessity, and are exempted from several provisions, such as the tariff filing requirement, of the Federal Aviation Act.

Within the class of air taxis is a subclass known as commuter air carriers. These are air taxi operators that perform at least five round trips per week between two or more points and publish flight schedules that specify the times, days of the week, and places between which these flights are performed. This subclass presently includes both carriers of passengers and carriers of cargo. It also includes carriers of mail under a contract with the United States Postal Service when the total amount of the contract or contracts is estimated to be in excess of 20,000 dollars over the next 12 months. This notice proposes to remove carriers of only cargo or mail from the subclass of commuter air carriers. If adopted, they would be treated like any other air taxi operator.

Under the present Part 298, commuters are subject to more rules than other air taxis. Commuters must file quarterly

reports, tariffs reflecting joint fare agreements with certificated carriers, and copies of their current flight schedules and charges. They must become signatories to the Warsaw Convention concerning international limits of liability by executing a counterpart to Agreement 18900 and filing a one-page tariff. In addition, commuters that wish to provide scheduled passenger service must, under section 419(c)(2) of the Act, be found fit, willing, and able to perform such service.

These additional requirements allow the Board to monitor and regulate the passenger operations of commuter air carriers. Yet, because the present definition of commuter air carrier in § 298.2(f) encompasses carriers providing mail and cargo service, those carriers are also subject to the filing and reporting requirements applicable to the passenger commuters.

We do not see any need to require mail and scheduled all-cargo carriers operating small aircraft to file quarterly operational reports or to meet the other requirements imposed on passenger commuters by Part 298. The Board has almost completely deregulated the domestic cargo area, where the bulk of the commuter cargo operations are conducted. We no longer differentiate, for regulatory purposes, between scheduled and nonscheduled cargo operations conducted with large aircraft. There appears to be no reason to continue such a distinction with respect to similar operations with small aircraft. In any event, since we do not use the information filed by cargo and mail carriers, there is no need to continue these requirements. We therefore propose to amend the definition of commuter air carrier in § 298.2(f) to exclude mail and cargo carriers from that subclass of air taxi operators. Changes are also made in the language of that definition to clarify that the commuter itself need not be the one publishing the schedule in order to fall within the definition of commuter.

This rule would not affect the reporting requirements applicable to those cargo air taxis that also hold certificates under section 418 of the Act. Those carriers must still comply with the reporting requirements of 14 CFR Part 291.

This action is consistent with the Regulatory Flexibility Act, Pub. L. 96-354, which took effect on January 1, 1981. It will, if adopted, reduce the reporting requirements and the regulatory obligations of small all-cargo and mail carriers without affecting any other small entity. The need, objectives,

SUPPORTING STATEMENT FOR REGULATIONS
TO IMPLEMENT EQUAL
ACCESS TO JUSTICE ACT

1. Justification

Effective October 1, 1981, under the Equal Access to Justice Act (EAJA), Pub. L. No. 96-481, 5 U.S.C. § 504, prevailing parties in NRC adversary adjudications can apply to the agency for an award of fees and expenses. Such an award can be made if the presiding official determines that the agency's position was not substantially justified. The Act specifically sets forth certain net worth and other requirements that a prevailing party must meet and requires that the party file an application that both shows the party is eligible for an EAJA award and indicates by way of an itemized statement what fees or expenses are claimed. 5 U.S.C. § 504(a)(1). In order to implement this statutory mandate, the NRC's proposed rules will require the filing of an application and accompanying itemized statement of fees and expenses.

The information supplied by the applicant will be used by the other parties to the agency proceeding, including the agency staff, to prepare responses to the request for an award and by the presiding official or officials to determine whether an award is justified. Similar information that might be submitted by the same applicant in seeking an EAJA award in another adjudication before the NRC or some other agency would not be sufficient because the Act provides that an applicant's eligibility is to be determined as of the time the particular proceeding is instituted and because the information that is supplied relevant to the question of whether the agency has substantially prevailed and to the amount of the fee award requested will depend on the circumstances of the particular proceeding.

While the Act's net worth and employee limitations make it quite likely that individuals and entities employing fewer than 300 persons will be respondents and it is likely the applications will take in excess of one-half hour to prepare, the information requested is needed to ensure that the requirements of the act are satisfied in order to authorize an award of government funds. The Commission's proposed rules also require that copies of any application be provided to all parties to the adversary proceeding, including the agency's staff, and that an original and two copies be provided to the Office of the Secretary. This copy requirement is in line with the standard Commission rules on filing and service in all agency adjudications.

2. Description of Information Collection

The information required from applicants is described in proposed sections 2.1010-.1013, which are based on Model Rules issued by the Administrative Conference of the United States, 46 Fed. Reg. 32900 (June 25, 1981). These provisions are designed to elicit information to enable a presiding officer, as well as the other parties to an adjudication, to determine if the individual or entity applying meets the EAJA's qualifications for an award and to determine the amount and justification for the fees and expenses claimed. No standard application form will be required; rather, the necessary information may be supplied in a manner that is consistent with the Commission's standard rules for the submission of documents in adjudications. 10 CFR § 2.708.

The applicant's submission is to indicate the identity of the applicant, the proceeding for which an award is sought, the applicant's status as a prevailing party, and the position of the agency in the proceeding that was not substantially justified. In addition, in the case of an individual, he must state that his net worth does not exceed the EAJA limitation of \$1 million. An organization or business entity must state the number of its employees, describe briefly the type and purpose of its organization or business, and indicate that its net worth does not exceed the EAJA limitation of \$5 million or that it is a tax-exempt organization or an agricultural cooperative association. The total amount of fees and expenses sought must also be stated. In addition, unless it is a tax-exempt organization or cooperative association, the applicant must supply a detailed exhibit, in a form convenient to the applicant, that will provide full disclosure of assets and liabilities sufficient to allow a determination of net worth. Finally, there must be an itemized statement of the fees and expenses sought. This application, net worth statement, and itemized statement of fees and expenses may be submitted when the underlying adversary adjudication has been finally determined by the agency and no judicial review is being sought.

The Act's applicability is limited in the case of NRC adjudications, only proceedings for the revocation, supervision, or modification of reactor licenses appear to be covered. A recent estimate of the Administrative Conference of the United States based on the Uniform Caseload Accounting System indicates that only approximately six proceedings a year will be adversary adjudications in which eligible, prevailing applicants will be participating

so as to submit an EAJA request. The number of individuals or entities involved will be quite low, limited to perhaps a half-dozen per year.

In line with the Commission's current practices regarding documents filed in the official record of adjudicatory proceedings, all EAJA applications will be retained in the active files of the Docketing and Service Branch of the Office of the Secretary for two years and then will be retired to inactive status in NRC facilities in Bethesda, Maryland, where they will be retained indefinitely. All EAJA applications will be made part of the public record, consistent with Commission practice concerning submissions in adjudicatory proceedings, except to the extent a request is made, as is provided in proposed section 2.1011(b), that a net worth statement be withheld from the public as confidential. However, absent any specific statutory exemption from disclosure, the propriety of the agency's refusal to disclose such information pursuant to a Freedom of Information Act request is open to question. The Privacy Act will not be applicable to the information filed because it will not be maintained in a "system of records" as defined by the Act, 5 U.S.C. § 552a(a) (5).

The Administrative Conference of the United States is required by the EAJA to prepare an annual report for Congress to help it evaluate the scope and impact of the Act. 5 U.S.C. § 504(e). The Act also directs each agency to provide the Chairman of the Administrative Conference with such information as is necessary to allow him to comply with that reporting requirement. The Administrative Conference has indicated that it is considering requesting an as yet undetermined amount of agency data on a quarterly basis for compilation of the annual report. The only present agency intention to tabulate and publish data derived from the EAJA award applications would be to comply with an Administrative Conference request, although inclusion of similar material in the NRC's Annual Report is a possibility.

3. Time Schedule for Information Collection and Publication

EAJA applications can be filed in all proceedings pending on, or commencing after, October 1, 1981. The act has a sunset provision which will repeal it effective October 1, 1984, except as for those proceedings commenced before the date of repeal.

4. Consultations Outside the Agency

The information collection requirements of the proposed rules are based on the Model Rules developed by the Administrative Conference of the United States. As is required by the EAJA, the proposed rules will be submitted to the Chairman of the Administrative Conference for his further comment. In addition, a publicly-noticed comment period of thirty days is being provided for the proposed rules.

5. Estimate of Compliance Burden

Because of the potential difference in the types of applicants (i.e. an individual citizen as opposed to a corporation with a net worth of up to \$5 million and up to 500 employees) there may be a broad range of burdens imposed on applicants. The regulations have been drawn, however, to minimize this burden by allowing the applicant to submit the information in a form convenient to him, so long as the data is sufficient to show eligibility under the act and the amount of and justification for the fees and expenses sought. Less time to draw up a complete application would probably be needed by many individual applicants than by organizations or businesses. The individual's net worth exhibit might consist merely of a copy of the most recent income tax statement supplemented to show current income and holdings and his itemized expense statement may consist only of compilation of the various bills submitted for legal and other services. To the extent that the finances of business entities are likely to be more complicated, more time for application preparation will be required. Considering this range of applicants, the average total annual compliance burden, on the basis of six applications filed in one year, is estimated to be 150 hours.

6. Sensitive Questions

To the extent that net worth data may be considered of a sensitive nature, provisions have been made in proposed section 2.1011(b) for its confidential treatment, subject to the requirements of the Freedom of Information Act.

7. Estimate of Cost to Federal Government

Because the few applications expected to be submitted by individuals or entities will be collected and retained by agency personnel in accordance with existing procedures, the collection and recordkeeping costs to the agency are estimated to be minimal, amounting to approximately \$500 per

year or less. A larger expense, however, may be in the cost of analyzing the data, both by the agency's staff in filing an answer to the award application and by the presiding officer or officers (in the case of a three-person Atomic Safety and Licensing Board) in considering the application and issuing a written determination about the propriety of any award. The annual cost of such agency action on six applications per year is estimated to be approximately \$18,000.

INSTRUCTIONS FOR COMPLETING NRC FORM 187

NRC Form 187, "Security/Classification Requirements", including attachments and supplements, furnishes the basis for providing security and classification requirements to prime contractors, subcontractors or others (e.g., bidders) who have or may have an NRC contractual relationship which requires access to classified information or matter, access on a continuing basis (in excess of 30 days) to NRC Headquarters controlled buildings or otherwise requires NRC photo identification or card-key badges.

Who Uses NRC Form 187: All organizations which have or may have an NRC contractual relationship of the nature set forth above.

When to Use: Responsibility for initiation of NRC Form 187 rests with the Office or Division sponsoring a contract, project, or consultant, or requesting that classified work be conducted (e.g., at a Department of Energy (DOE) National Laboratory).

Early preparation and submission of this form will help assure that all necessary classification and security actions are completed prior to the required contract or subcontract date. Experience has shown that the lack of necessary information or information submitted too closely to the date of the beginning of contract performance delays the security-contractual process.

Where to Send: Send two (2) copies of this form to the NRC Division of Contracts when the interest does not involve a DOE security interest or consultant. If the interest involves a DOE National Laboratory or Consultant and does not require action by the Division of Contracts one (1) copy of the form should be forwarded directly from the responsible Office or Division to the Division of Security.

Preparation: Item instructions correspond to the numbered items on the NRC Form 187, "Security/Classification Requirements."

1. Check 1a, b, c, or d as applicable. Item 1d will be utilized for consultants or others who do not fall under 1a, b, or c. If item 1a is appropriate, enter the data identifying the IFB, RFP, and RFQ. If this requirement is for a prime contract enter the NRC contract number in 1b, as well as the estimated date of completion. If NRC Form 187 is used for a subcontract, enter in item 1c the necessary identifying data in addition to identifying the prime contractor in 1b. Where block 1a has been completed, blocks 3, 4, and 5 will be left blank, except in the case of a proposed noncompetitive award or a request for an award based on an unsolicited proposal.
2. Check either 2a, b, or c as appropriate. The Division of Contracts will complete the effective date of the requirements.
3. If the NRC Form 187 is not for a follow-on contract, check block "Does Not Apply". If it is for a follow-on contract, enter preceding contract identification number from which this contract evolves and its actual or anticipated completion date.
4. If a prime contract is intended, complete item 4a to show the complete name and address of the prime contractor's facility which will receive classified matter or be otherwise involved in the performance of the prime contract referenced in item 1b. The Division of Security will evaluate the information furnished on the form and complete item 4b.

If other than a prime contract or subcontract is involved, e.g., a proposed noncompetitive award or a request for an award based on an unsolicited proposal, complete item 4a as in the case of a prime contract. The Division of Security will complete item 4b.
5. If a subcontract is intended, complete item 5a to show the complete name and address of the subcontractor's facility which will receive classified information or be otherwise involved in performance of the subcontract referenced in 1c. The Division of Security will evaluate the information furnished on the form and complete item 5b.
6. Include project title and a brief unclassified statement setting forth sufficient information to identify the nature of the project.

7. Check appropriate boxes in each of the seven columns for all items. Completion of this section should be coordinated with the sponsoring Office Authorized Classifier as well as the Project Manager to assure complete and accurate information.
8. Prime contractors listed in 4a will submit proposed releases to the NRC Division of Contracts for approval prior to release. Subcontractors shall be instructed to submit proposed releases through the prime contractor listed in 4a to the NRC Division of Contracts.
9. Check the applicable block(s) to indicate the manner in which classification guidance will be conveyed for any contract, subcontract, or other activity involved.

When the block "Nature of Classification Guidance" is used, identify the areas of classified information involved and, in particular, provide adequate unclassified narrative comment to describe specific items of information within these areas which may require classification guidance.

10. Furnish name and title of position of authorized classifier if Division of Security is not checked.
11. The Division of Contracts will assure distribution of this document when completed to all responsible organizations.
12. After reviewing the NRC Form 187 to assure adequacy, the officials cited will complete item 12.

Additional comments relating to any of the items may be included under "Remarks," to assure that reviewers evaluate the information properly.

NRC FORM 187 (4-80) NRCM 2101			U.S. NUCLEAR REGULATORY COMMISSION			AUTHORITY The policies, procedures, and criteria of NRCM 2101, NRC Security Program, apply to performance of this contract, subcontract or other activity.						
SECURITY/CLASSIFICATION REQUIREMENTS												
1. REASON FOR REQUIREMENT		CONTRACT NUMBER OR OTHER IDENTIFYING NUMBER <small>(Prime contract number must be shown for all subcontracts)</small>		PROJECTED COMPLETION DATE		2. THIS SUBMISSION IS: <small>(See note below)</small>		EFFECTIVE DATE				
a. INVITATION FOR BID, REQUEST FOR PROPOSAL OR REQUEST FOR QUOTE						a. ORIGINAL						
b. PRIME CONTRACT						b. REVISED <small>(Supersedes all previous submissions)</small>						
c. SUBCONTRACT						c. OTHER <small>(Specify)</small>						
d. OTHER <small>(Specify)</small>												
3. FOR FOLLOW-ON CONTRACT, ENTER PRECEDING CONTRACT NUMBER AND DATE COMPLETED. <input type="checkbox"/> DOES NOT APPLY												
CONTRACT NUMBER						DATE COMPLETED						
4a. NAME OF PRIME CONTRACTOR, OFFEROR, OTHER <small>(Specify)</small>					b. NAME OF RESPONSIBLE SECURITY OFFICE							
STREET ADDRESS					STREET ADDRESS							
CITY		STATE	ZIP CODE		CITY		STATE	ZIP CODE				
5a. NAME OF SUBCONTRACTOR <small>(Specify)</small>					b. NAME OF RESPONSIBLE SECURITY OFFICE							
STREET ADDRESS					STREET ADDRESS							
CITY		STATE	ZIP CODE		CITY		STATE	ZIP CODE				
6. PROJECT TITLE AND OTHER IDENTIFYING INFORMATION												
7. PERFORMANCE WILL REQUIRE						YES	NO	TS	S	C	NSI	RD
a. ACCESS TO NRC FACILITIES ONLY.												
b. ACCESS TO CLASSIFIED MATTER OR OTHER CLASSIFIED INFORMATION.												
c. RECEIPT, STORAGE, OR OTHER SAFEGUARDING OF CLASSIFIED DOCUMENTS.												
d. GENERATION OF CLASSIFIED DOCUMENTS.												
e. ACCESS TO CLASSIFIED COMSEC MATERIAL OR OTHER CLASSIFIED COMSEC INFORMATION.												
f. ACCESS TO CLASSIFIED MATTER OR CLASSIFIED INFORMATION POSSESSED BY ANOTHER AGENCY.												
g. USE OF AN AUTOMATIC DATA PROCESSING SYSTEM.												
h. ACCESS TO NRC HEADQUARTERS, POSSESSION OF NRC PHOTO IDENTIFICATION OR CARD-KEY BADGES.												
i. OTHER <small>(Specify)</small>												
8. INFORMATION PERTAINING TO THESE REQUIREMENTS OR THIS PROJECT, EVEN THOUGH SUCH INFORMATION IS CONSIDERED UNCLASSIFIED, SHALL NOT BE RELEASED FOR DISSEMINATION EXCEPT AS APPROVED BY:												
NAME <small>(Signature)</small>						CONTRACTING OFFICER <small>(Signature)</small>						

9. SECURITY CLASSIFICATION REQUIREMENTS

- a. GUIDANCE FURNISHED IN WRITING BY AUTHORIZED CLASSIFIER AND ATTACHED OR AS STATED IN 9c BELOW.
- b. GUIDANCE FURNISHED IN WRITING BY DIVISION OF SECURITY AND ATTACHED OR AS STATED IN 9c BELOW.
- c. NATURE OF CLASSIFICATION GUIDANCE
(Indicate in space below)

10. CLASSIFICATION REVIEW OF CONTRACTOR/SUBCONTRACTOR REPORT(S) AND OTHER DOCUMENTS WILL BE CONDUCTED BY

NAME OF AND TITLE OF POSITION OF AUTHORIZED CLASSIFIER

☐ DIVISION OF SECURITY

11. REQUIRED DISTRIBUTION OF NRC FORM 187 (Check appropriate box(es))

SPONSORING NRC OFFICE OR DIVISION (Item 12a)	PRIME CONTRACTOR (Item 4a)
DIVISION OF SECURITY (Item 12b)	SUBCONTRACTOR (Item 5a)
DIVISION OF CONTRACTS (Item 12c)	RESPONSIBLE SECURITY OFFICE (Items 4b and 5b)

SECURITY/CLASSIFICATION REQUIREMENTS FOR SUBCONTRACTS RESULTING FROM THIS CONTRACT WILL BE APPROVED BY THE OFFICIALS NAMED IN ITEMS 12b AND 12c BELOW.

12. THE SECURITY/CLASSIFICATION REQUIREMENTS AND ATTACHMENTS REFERENCED HEREIN HAVE BEEN APPROVED BY THE OFFICIALS NAMED IN 12a AND b BELOW. FINAL CONTRACTING APPROVAL BY THE DIRECTOR, DIVISION OF CONTRACTS OR HIS REPRESENTATIVE IS TO BE INCLUDED IN 12c BELOW:

NAME	SIGNATURE	DATE
a. DIRECTOR, OFFICE OR DIVISION		
b. DIRECTOR, DIVISION OF SECURITY		
c. DIRECTOR, DIVISION OF CONTRACTS		

REMARKS