

the scope of the regulation be expanded to cover scholarships and fellowship grants awarded by charitable trusts. The final regulation changes the proposed language of "U.S. citizen or resident, a domestic corporation, \* \* \*" in paragraph (d)(2)(i) to include a domestic partnership, or an estate or trust (other than a foreign estate or trust within the meaning of section 7701(a)(31)). The special rule of paragraph (d)(2)(iii) has been clarified to apply to scholarships, fellowship grants, targeted grants, and achievement awards received by a person other than a U.S. person as defined in section 7701(a)(30).

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has 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 this regulation, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal authors of this regulation are George A. Hani, formerly of the Office of Associate Chief Counsel (International), IRS and David Bergkuist of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in its development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reports 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 is amended by adding an entry in numerical order to read as follows:

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

Section 1.863-1 also issued under 26 U.S.C. 863(a). \* \* \*

**Par. 2.** In § 1.863-1, paragraph (d) is added to read as follows:

**§ 1.863-1 Allocation of gross income under section 863(a).**

\* \* \* \* \*

(d) *Scholarships, fellowship grants, grants, prizes and awards*—(1) *In general.* This paragraph (d) applies to scholarships, fellowship grants, grants, prizes and awards. The provisions of this paragraph (d) do not apply to amounts paid as salary or other compensation for services.

(2) *Source of income.* The source of income from scholarships, fellowship grants, grants, prizes and awards is determined as follows:

(i) *United States source income.* Except as provided in paragraph (d)(2)(iii) of this section, scholarships, fellowship grants, grants, prizes and awards made by a U.S. citizen or resident, a domestic partnership, a domestic corporation, an estate or trust (other than a foreign estate or trust within the meaning of section 7701(a)(31)), the United States (or an instrumentality or agency thereof), a State (or any political subdivision thereof), or the District of Columbia shall be treated as income from sources within the United States.

(ii) *Foreign source income.* Scholarships, fellowship grants, grants, prizes and awards made by a foreign government (or an instrumentality, agency, or any political subdivision thereof), an international organization (as defined in section 7701(a)(18)), or a person other than a U.S. person (as defined in section 7701(a)(30)) shall be treated as income from sources without the United States.

(iii) *Certain activities conducted outside the United States.* Scholarships, fellowship grants, targeted grants, and achievement awards received by a person other than a U.S. person (as defined in section 7701(a)(30)) with respect to activities previously conducted (in the case of achievement awards) or to be conducted (in the case of scholarships, fellowships grants, and targeted grants) outside the United States shall be treated as income from sources without the United States.

(3) *Definitions.* The following definitions apply for purposes of this paragraph (d):

(i) *Scholarships* are defined in section 117 and the regulations thereunder.

(ii) *Fellowship grants* are defined in section 117 and the regulations thereunder.

(iii) *Prizes and awards* are defined in section 74 and the regulations thereunder.

(iv) *Grants* are amounts described in subparagraph (3) of section 4945(g) and the regulations thereunder, and are not amounts otherwise described in

paragraphs (d)(3) (i), (ii), or (iii) of this section. For purposes of this paragraph (d), the reference to section 4945(g)(3) is applied without regard to the identity of the payor or recipient and without the application of the objective and nondiscriminatory basis test and the requirement of a procedure approved in advance.

(v) *Targeted grants* are grants—

(A) Issued by an organization described in section 501(c)(3), the United States (or an instrumentality or agency thereof), a State (or any political subdivision thereof), or the District of Columbia; and

(B) For an activity undertaken in the public interest and not primarily for the private financial benefit of a specific person or persons or organization.

(vi) *Achievement awards* are awards—

(A) Issued by an organization described in section 501(c)(3), the United States (or an instrumentality or agency thereof), a State (or any political subdivision thereof), or the District of Columbia; and

(B) For a past activity undertaken in the public interest and not primarily for the private financial benefit of a specific person or persons or organization.

(4) *Effective dates.* The following are the effective dates concerning this paragraph (d):

(i) *Scholarships and fellowship grants.* This paragraph (d) is effective for scholarship and fellowship grant payments made after December 31, 1986. However, for scholarship and fellowship grant payments made after May 14, 1989, and before June 16, 1993, the residence of the payor rule of paragraph (d)(2) (i) and (ii) of this section may be applied without applying paragraph (d)(2)(iii) of this section.

(ii) *Grants, prizes and awards.* This paragraph (d) is effective for payments made for grants, prizes and awards, targeted grants, and achievement awards after September 25, 1995. However, the taxpayer may elect to apply the provisions of this paragraph (d) to payments made for grants, prizes and awards, targeted grants, and achievement awards after December 31, 1986, and before September 26, 1995.

**Margaret Milner Richardson,**  
*Commissioner of Internal Revenue.*

Approved: August 3, 1995.

**Leslie Samuels,**  
*Assistant Secretary of the Treasury.*  
[FR Doc. 95-21089 Filed 8-24-95; 8:45 am]

**DEPARTMENT OF JUSTICE****28 CFR Part 49**

[AG Order No. 1985-95]

RIN 1105-AA37

**Use and Examination of Materials Submitted Pursuant to the Antitrust Civil Process Act**

AGENCY: Department of Justice.

ACTION: Interim rule.

**SUMMARY:** This rule revises the existing Department of Justice regulation concerning the use and examination of materials submitted pursuant to the Antitrust Civil Process Act ("ACPA" or "Act") to add references to "answers to interrogatories" and "transcripts of oral testimony" as types of material subject to the provisions of the ACPA, and to add references to "agents" of the Department of Justice having the authority to use and copy such materials. These changes are necessary to conform the language of the regulation to the current provisions of the Act. The rule also makes minor changes to the spelling and capitalization of certain words used in the regulation for purposes of conformity with the Act and internal consistency.

**DATES:** This Interim Rule is effective August 25, 1995. Written comments must be submitted on or before October 24, 1995.

**ADDRESSES:** Please submit written comments to the Director, Office of Operations, Antitrust Division, Room 3214 Main Building, U.S. Department of Justice, 10th & Pennsylvania Avenue NW, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Howard Blumenthal, Assistant Chief, Legal Policy Section, Antitrust Division, Room 3121 Main Justice Building, 10th & Pennsylvania Avenue NW, Washington, DC 20530; telephone (202) 514-2513.

**SUPPLEMENTARY INFORMATION:** Congress enacted the ACPA, Pub. L. 87-664 (codified at 15 U.S.C. 1311-14, as amended), in 1962 to provide the Antitrust Division ("Division") of the Department of Justice with the authority to issue civil investigative demands ("CIDs"), a type of pre-complaint compulsory process. CIDs enable the Division to gather information concerning possible civil violations of the antitrust laws before filing lawsuits, which often permits the Department of Justice to determine that no antitrust violation has occurred without resort to litigation. Thus, the use of CIDs will

frequently save the Department of Justice, the parties being investigated, and the federal court system time and money through the avoidance of unnecessary litigation or the streamlining of any litigation that does result from an investigation.

The CID authority provided to the Division in 1962 was relatively narrow. The only type of information that the Division could acquire by CID was documentary material. Without the consent of the person who produced such material, access to CID information in the possession of the Division was generally limited to officers, members, or employees of the Department of Justice.

The Division's CID authority was expanded by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), Pub. L. 94-435. In addition to producing documentary material, CID recipients could now be required to answer in writing written interrogatories and to give oral testimony. In the Antitrust Procedural Improvements Act of 1980 ("APIA"), Pub. L. 96-349, Congress clarified that CID information in the possession of the Division could be disclosed to and used by agents of the Department of Justice (for example, expert witnesses or independent contractors) as well as by officers and employees.

The ACPA requires the Attorney General to promulgate regulations setting forth the manner in which CID materials in the possession of the Division will be made available for official use by the Department of Justice, and to prescribe the terms and conditions under which such materials may be examined by the persons who produced them to the Division. The Attorney General promulgated 28 CFR Part 49 in 1963 to comply with this requirement. However, this regulation was not amended to reflect the changes to the Act made by the HSR Act in 1976 or the APIA in 1980. The purpose of this order is to amend the existing regulation to conform with the current provisions of the ACPA.

The Interim Rule differs from the existing regulation in two main respects. First, references in the existing regulation to the use and examination of documentary material in the possession of the Division are expanded, where and as appropriate, to also refer to answers to interrogatories and transcripts of oral testimony to take into account the additional types of information that can be acquired under the ACPA as amended by the HSR Act. Second, references to the use and copying of CID information by officers and employees of the Department of Justice are

expanded to also include agents of the Department of Justice to reflect the change to the Act made by the APIA. The Interim Rule also differs from the existing regulation in several technical respects. Essentially, the capitalization of certain words (Act, custodian, civil investigative demand) is made consistent throughout the regulation, and the term "civil investigation demand" is changed to "civil investigative demand," which is the term used in the statute.

**Administrative Procedure Act, 5 U.S.C. 553**

Because these regulations are conforming and editorial in nature and impose no new requirements or restrictions, the Department of Justice finds good cause for exempting them from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date.

**Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12612**

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

**Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

**List of Subjects in 28 CFR Part 49**

Antitrust, Confidential business information, Government employees.

Accordingly, part 49 of chapter I of Title 28 of the Code of Federal Regulations is revised to read as follows:

**PART 49—ANTITRUST CIVIL PROCESS ACT**

Sec.

- 49.1 Purpose.  
 49.2 Duties of custodian.  
 49.3 Examination of material.  
 49.4 Deputy custodians.

**Authority:** 15 U.S.C. 1313.**§ 49.1 Purpose.**

The regulations in this part are issued in compliance with the requirements imposed by the provisions of section 4(c) of the Antitrust Civil Process Act, as amended (15 U.S.C. 1313(c)). The terms used in this part shall be deemed to have the same meaning as similar terms used in that Act.

**§ 49.2 Duties of custodian.**

(a) Upon taking physical possession of documentary material, answers to interrogatories, or transcripts of oral testimony delivered pursuant to a civil investigative demand issued under section 3(a) of the Act, the antitrust document custodian designated pursuant to section 4(a) of the Act (subject to the general supervision of the Assistant Attorney General in charge of the Antitrust division), shall unless otherwise directed by a court of competent jurisdiction, select, from time to time, from among such documentary material, answers to interrogatories or transcripts of oral testimony, the documentary material, answers to interrogatories or transcripts of oral testimony the copying of which the custodian deems necessary or appropriate for the official use of the Department of Justice, and shall determine, from time to time, the number of copies of any such documentary material, answers to interrogatories or transcripts of oral testimony that are to be reproduced pursuant to the Act.

(b) Copies of documentary material, answers to interrogatories, or transcripts of oral testimony in the physical possession of the custodian pursuant to a civil investigative demand may be reproduced by or under the authority of any officer, employee, or agent of the Department of Justice designated by the custodian. Documentary material for which a civil investigative demand has been issued but which is still in the physical possession of the person upon whom the demand has been served may, by agreement between such person and the custodian, be reproduced by such person, in which case the custodian may require that the copies so produced be duly certified as true copies of the original of the material involved.

**§ 49.3 Examination of the material.**

Documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to the Act, while in the custody of the custodian, shall be for the official use of officers, employees, and agent of the Department of Justice in accordance with the Act. Upon reasonable notice to the custodian—

(a) Such documentary material or answers to interrogatories shall be made available for examination by the person who produced such documentary material or answers to interrogatories, or by any duly authorized representative of such person; and

(b) Such transcripts of oral testimony shall be made available for examination by the person who produced such testimony, or by such person's counsel, during regular office hours established for the Department of Justice. Examination of such documentary material, answers to interrogatories, or transcripts of oral testimony at other times may be authorized by the Assistant Attorney General or the custodian.

**§ 49.4 Deputy custodians.**

Deputy custodians may perform such of the duties assigned to the custodian as may be authorized or required by the Assistant Attorney General.

Dated: August 18, 1995.

**Janet Reno,***Attorney General.*

[FR Doc. 95-20984 Filed 8-24-95; 8:45 am]

BILLING CODE 4410-01-M

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Parts 356, 358, 372, and 393****Organizational Charter; Removal of Parts****AGENCY:** Department of Defense.**ACTION:** Final rule.

**SUMMARY:** This document removes Department of Defense's organizational charters on the Advanced Research Projects Agency (ARPA), Assistant Secretary of Defense for Policy and Plans (ASD(P&P)), Assistant Secretary of Defense for Democracy and Peacekeeping, and the American Forces Information Service (AFIS) codified in the CFR. The parts have served the purpose for which they were intended in the CFR and are no longer necessary.

**EFFECTIVE DATE:** August 25, 1995.**FOR FURTHER INFORMATION CONTACT:**

L. Bynum or P. Toppings, 703-697-4111.

**SUPPLEMENTARY INFORMATION:** DoD Directive 5105.41 (32 CFR part 393) was canceled by DoD Directive 5134.10. DoD Directive 5111.6 (32 CFR part 358) was canceled by DoD Directive 5111.5. DoD Directive 5111.4 (32 CFR part 356) was canceled by DoD Directive 5111.10. DoD Directive 5122.10 (32 CFR part 372) exists in the DoD Directive system, however, the most recent version is dated March 22, 1995. All of the current documents may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

**List of Subjects in 32 CFR Parts 356, 358, 372, and 393**

Organization and functions.

**PARTS 356, 358, 372, and 393— [REMOVED]**

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR parts 356, 358, 372, and 393 are removed.

Dated: August 22, 1995.

**L.M. Bynum,***Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[OH87-1-7075a; FRL-5285-6]

**Determination of Attainment of the Ozone Standard by the Cleveland, Toledo, Dayton and Cincinnati-Hamilton Interstate Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Ohio**

**AGENCY:** United States Environmental Protection Agency (USEPA).**ACTION:** Final rule; removal.

**SUMMARY:** On June 29, 1995, the USEPA published a final rule, through the "direct final" procedure, determining that the Cleveland (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the Counties of Clark, Greene, Miami and Montgomery); and the Ohio portion of the Cincinnati-Hamilton Interstate (which includes the Counties of Butler, Clermont, Hamilton