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PART VIII



DEPARTMENT OF TRANSPORTATION

**National Highway Traffic
Safety Administration**

■

FINANCIAL ASSISTANCE TO PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

**Final Rule and Advance Notice of
Proposed Rulemaking**

Title 49—Transportation

CHAPTER V—DEPARTMENT OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

(OST Docket No. 48)

FINANCIAL ASSISTANCE TO PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

Agency: Department of Transportation.

Action: Final rule and advance notice of proposed rulemaking.

Summary: The first part of the preamble of this notice announces and discusses the issuance by the Department of Transportation (DOT) of a regulation establishing procedures to govern a one-year demonstration program of financial assistance to participants in certain administrative proceedings of the National Highway Traffic Safety Administration (NHTSA). This demonstration program has been established to determine whether the process governing the making of administrative decisions will be enhanced by financially assisting participants whose representation contributes or can reasonably be expected to contribute to a full and fair determination of the issues, but who would otherwise be financially unable to participate effectively.

The second part of the preamble is an advance notice of proposed rulemaking, inviting public comment on whether financial assistance to participants in administrative proceedings, under appropriate circumstances, on a department wide and permanent basis ought to be established. The public is invited to comment also on the applicable scope, criteria, and procedures that should govern such a program of assistance.

Dates: The regulation is effective on January 13, 1977. Comments on the Advance Notice of Proposed Rulemaking must be received on or before April 20, 1977.

Address: Comments on the Advance Notice of Proposed Rulemaking should be addressed to:

Docket Clerk, OST Docket Number 48, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590.

For further information contact:

Robert B. Donlin, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590 (202) 426-4704.

Supplementary information: During the preceding year, the DOT has intensively considered promulgating regulations that would enhance the presentation of relevant information and points of view in its administrative proceedings. In reaching the position announced today, the DOT has taken cognizance of several legislative initiatives, S. 2715 and H.R. 12762, of the 94th Congress, 2d Session, to affirm the authority of Federal agencies to fund participants in administrative proceedings and to provide guidelines for the exercise of that authority. The DOT has also been considering an opinion of the Comptroller General, cited below, determining that the NHTSA already possesses sufficient authority to

fund participants in its proceedings, and letters from Congressman John E. Moss and Senator Warren G. Magnuson, urging the NHTSA to use its existing authority to assist participants financially under the appropriate circumstances. This notice also responds to a petition for rulemaking submitted by the Center for Auto Safety, Environmental Defense Fund and Consumers Union. That petition requested that the DOT promulgate regulations to provide for compensation of costs incurred in the presentation of views in certain proceedings of the NHTSA and the other operating administrations of the DOT.

PART I: DEMONSTRATION PROGRAM

Purpose of the demonstration program. The goal of this demonstration is to provide added assurance that a full range of views and all relevant information are presented to the NHTSA in its consideration of regulatory actions. The DOT has already sought to encourage wider consumer participation in decisionmaking through the formulation of a Consumer Representation Plan which outlines the opportunities for communication of views regarding regulation, policymaking and program development and sets out Departmental procedures intended to increase participation. (41 FR 42822, September 28, 1976)

In the past, however, it has sometimes been difficult for some consumer, environmental and other groups of citizens that are either widely dispersed or poorly financed to bear the cost of participating in federal regulatory proceedings. By contrast, better financed and organized groups, frequently representative of the regulated industry, are often able to participate vigorously and effectively. Of course, there are other adequately financed public interest groups to which this program may not pertain and there may be groups representing regulated parties which are not able to finance effective participation. There is a risk that because of this financial and organizational imbalance, the views of those who are now financially able to participate in regulatory proceedings may have a disproportionate influence on government decisionmaking. It is hoped that by removing some of the financial barriers to effective participation, under appropriate circumstances, this imbalance may be reduced or eliminated.

Where public interest groups have possessed sufficient resources to participate in administrative proceedings, they generally have made a valuable contribution. As Judge Harold Leventhal recently observed:

Administrative law and regulation have been profoundly influenced by the participation, in both agencies and courts of public interest representatives who have identified issues and caused agencies and courts to look squarely at the problems that otherwise would have been swept aside and passed unnoticed. They have made complaints, adduced and marshaled evidence, offered different insights and viewpoints, and presented scientific, historical, and legal research. They have been of significant service to the entire decisional process.¹

Although the reimbursement of costs that would otherwise pose a bar to future participation by such groups benefits the assisted participants, this demonstration program is primarily aimed at benefiting the general public by promoting fair, balanced, and effective regulation.

At the same time, designing a system to fund citizen participation in regulatory proceedings poses difficult questions of cost, feasibility and fairness. Among these issues are the criteria for eligibility, expense to the public (including both the cost of administration and the cost of disbursements), the appropriate procedure for selection of recipients of financial support, and the determination of what costs should be reimbursable by the DOT. In order to gain experience which will indicate whether, and in what form, such a program of financial support shall be permanently adopted, the DOT has decided to undertake a one-year demonstration limited in scope to certain proceedings of the NHTSA.

Statutory authority for program. The DOT has adequate statutory authority to conduct this program of assistance. Under the Department of Transportation Act, 49 U.S.C. § 1651, et seq. and related statutes,² the DOT and its component agencies have broad responsibility for safety regulation, energy conservation and the sound development of the various transportation modes. The Comptroller General has held that while 31 U.S.C. § 628 prohibits agencies from using appropriated funds except for the purpose for which the appropriation was made, an appropriation made for a particular object, purpose of program "is available to finance expenses which are reasonably necessary and proper or incidental to the execution of the object, purpose or program for which the appropriation was made . . ." 53 Comp. Gen. 351, 364 (1973). See also 50 Comp. Gen. 534, 536 (1971); 44 Comp. Gen. 312, 314 (1964); *Northern States Power Co. v. FPC*, 118 F. 2d 141, 143 (7th Cir. 1941). In an opinion issued February 19, 1976, (Decision B-92288) the Comptroller General advised the Nuclear Regulatory Commission (NRC) that, under this principle, it could lawfully reimburse intervenors in licensing proceedings where (1) it believes that such participation is required by statute or necessary to represent adequately opposing points of view on a matter, and (2) the intervenor is indigent or otherwise unable to bear the financial costs of participation in the proceeding.

A subsequent opinion has clarified both of these standards. (Decision B-139703, December 3, 1976). This opinion is addressed to the Food and Drug

¹ "Attorneys' Fees for Public Interest Representation," 62 ABA Journal 1134 (September, 1976).

² With respect to NHTSA, for example, see the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1381 et seq., the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1901, et seq., and the Highway Safety Act of 1966, 23 U.S.C. § 401, et seq.

Administration but appears equally applicable to other agencies. The December 3 opinion expressly provided that an agency need not determine that a person's participation is essential to a full and fair determination in a proceeding in order for the agency to be able to fund that person's participation. With respect to the second standard, the recent opinion stated

• • • (I) t is our view that FDA may not extend financial assistance to a party requesting to participate which has the financial resources to participate but does not, for whatever reason, wish to use its resources for this purpose.

At the same time, the December 3 opinion rejected giving financial assistance based upon an applicant's having an economic interest in a proceeding that is small in comparison with the costs of effective participation. The GAO found that eligibility criterion to be unacceptable under its prior decisions and in the absence of specific statutory authority.

Since the appropriation for DOT and its component agencies provides for "necessary expenses," Pub. L. No. 94-387, 90 Stat. 1171 (1976), it is clear that DOT may, under appropriate circumstances, reimburse the cost of participation in the administrative proceedings of any of its operating components. Moreover, the Comptroller General has specifically advised that "the rationale of our February 19 decision to NRC is equally applicable" to the NHTSA, and that therefore payments may be made to cover participation in the NHTSA's proceedings. See letter of May 10, 1976, from R. F. Keller, Deputy Comptroller General, to Hon. John E. Moss, Chairman, Oversight and Investigations Subcommittee, House Commerce Committee (B-180224) (reprinted as Appendix B to Food and Drug Administration Advance Notice of Proposed Rulemaking, 41 FR 35855, 35860 (August 25, 1976)).

Standards and procedures of the program. The regulation set forth in this notice adopts a standard for compensation based on the Comptroller General's decisions discussed above. Funding determinations are to be made by a 3-member evaluation board composed of the following three officials or their delegates: the Assistant Secretary for Environment, Safety, and Consumer Affairs, the NHTSA Associate Administrator for Planning and Evaluation, and the NHTSA Chief Counsel. Applications may be submitted for funding for participation in any NHTSA rulemaking proceeding, selected by the Administrator, under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, or any proceeding under section 152(a) of that Act for the presentation of data, views, and arguments following an initial determination of a noncompliance or safety-related defect. The possibility of funding participation in investigations preceding such initial determinations was also considered. Since investigations are not public proceedings and because it is desirable to keep the demonstration program limited in scope, the DOT decided not to fund participation in those areas.

Applications may also be submitted for funding for participation in any proceeding, selected by the Administrator, under the Motor Vehicle Information and Cost Savings Act, as amended, and the Highway Safety Act of 1966, as amended.

Applications for a proceeding are to be submitted to the NHTSA official immediately responsible for the program under which the proceeding will be held. The appropriate official will be the Associate Administrator for Motor Vehicle Programs in the case of the Vehicle Safety Act and Titles I-IV of the Cost Savings Act; the Director of the Office of Automotive Fuel Economy in the case of Title V of the Cost Savings Act; and the Associate Administrator for Traffic Safety Programs in the case of the Highway Safety Act. The official receiving the applications may submit his comments regarding them to the evaluation board. The evaluation board may approve an application only if it makes positive findings on four criteria relating to representation of the applicant's interest and economic need. In brief, the evaluation board must find that (1) representation of the applicant's interest contributes or can be reasonably expected to contribute substantially to a full and fair determination of the issue involved; (2) participation by the applicant is reasonably necessary to represent that interest adequately; (3) the applicant can competently represent the interest it espouses; and (4) absent funding pursuant to this regulation, the applicant does not have available to it sufficient resources to participate effectively.

Where more than one applicant representing the same interest satisfies these criteria, the evaluation board may approve partial or complete funding of two or more applications or approve a single application after a comparison of the applicants' interest, proposals, and past performance in regulatory proceedings. However, the evaluation board may determine with respect to a proceeding under any of the above statutes, that in view of the public interest and the availability of funding for the demonstration program as a whole, no applications for compensation should be considered. Resources for this program are limited, and therefore some proceedings may go entirely unfunded since other more important proceedings may require intensive work by one or more funded participants.

To facilitate determinations by the evaluation board, applicants are to submit a sworn statement describing the work to be funded, the applicant's participation in other administrative proceedings, and the applicant's interest, organization and financial status.

Reimbursement will be limited to reasonable out-of-pocket costs of participation such as attorneys' fees, expert witness fees, and clerical and travel expenses, and will be paid at market rates for the kind and quality of service provided. Reimbursement will not be provided for time expended by any individual on his own behalf or by the staff of any group or organization on its be-

half. Similarly, reimbursement will not be provided for the hiring of outside personnel when staff personnel are available and qualified to do the work. Advance payment of funds by an agency to an applicant in order to ensure the participation of that applicant in a proceeding is impermissible. See, Opinions of the Comptroller General, B-139703, September 22, 1976, and B-139703, December 3, 1976, and 31 U.S.C. § 529.

PART II: ADVANCE NOTICE OF PROPOSED RULEMAKING

The Department of Transportation (DOT) is considering promulgating final regulations providing for financial assistance under appropriate circumstances, to participants in all administrative proceedings of the Department and its operating administrations. The purpose of this notice is to invite the public to comment on whether such financial assistance should be provided and suggest the applicable scope, criteria, and procedures which should govern such a program of assistance.

As discussed in Part I of this notice, announcing the NHTSA demonstration program, the DOT believes that the quality of administrative decisionmaking will be enhanced by broad citizen participation which provides a counterweight to the appeals of narrow, special interest groups. Given the ample financial resources of well-organized industry groups, however, there is a serious question whether effective citizen participation can be achieved in the absence of federal action to lessen the often substantial cost of developing a regulatory presentation.

It is clear that DOT and its operating administrations¹ have authority to provide such financial assistance under appropriate circumstances. Under the Department of Transportation Act, 49 U.S.C. § 1651 et seq. and related statutes,² the Department and its component agencies have broad responsibility for safety regulation, environmental quality and the sound development of the vari-

¹ United States Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Administration, and St. Lawrence Seaway Development Corporation.

² See, for example, Federal Boat Safety Act, 46 U.S.C. § 1451 et seq., Deepwater Port Act, 33 U.S.C. § 1501 et seq., Federal Aviation Act of 1958, 49 U.S.C. § 1301 et seq., Airport and Airway Development Act of 1970, 49 U.S.C. § 1701 et seq., International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 1159a et seq., Federal-Aid Highway Act, 23 U.S.C. § 101 et seq., Federal Railroad Safety Act of 1970, 45 U.S.C. § 421 et seq., National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1381 et seq., Highway Safety Act of 1966, 23 U.S.C. § 401 et seq., Urban Mass Transportation Act of 1964, 49 U.S.C. § 1601 et seq., Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., National Environmental Policy Act 1969, 42 U.S.C. § 4231 et seq., Noise Control Act of 1972, 42 U.S.C. § 4901, et seq., Clean Air Act, 42 U.S.C. § 1857f-10, Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

ous transportation modes. The appropriation for the Department and its component agencies provides for "necessary expenses." Pub. L. No. 94-387, 90 Stat. 1171 (1976). Hence financial assistance for participants in Department and agency proceedings is legally permissible under the reasoning of recent Opinions of the Comptroller General, as discussed in Part I.

DOT expects to derive substantial guidance regarding the utility and feasibility of a system of reimbursement from the one-year NHTSA demonstration program. In addition, however, DOT welcomes public comment on the overall question of whether, and in what form, regulations governing DOT and all its operating administrations should be permanently established. Specifically, DOT seeks public comment on questions including, but not limited to, the following:

(1) Should DOT or any of its component agencies adopt permanent procedures to provide reimbursement for participation in administrative proceedings?

(a) If funds should be provided for participation in the proceedings of all components of DOT, should reimbursement be administered under a single Department-wide procedure or under separate procedures applicable to each operating administration?

(2) What changes should be made in the regulations governing the NHTSA demonstration program before they are permanently adopted and applied to proceedings by other operating administrations of DOT?

(a) In what types of proceedings (hearings, rulemakings, adjudications, public meetings) should reimbursement be made available?

(b) In addition to the findings specified by the Comptroller General as prerequisite to fundings, what additional criteria and standards should the agency adopt for evaluating the strength of an applicant's interest and its potential contribution to the proceeding?

(c) Where two or more applicants representing the same interest seek funds to participate in the same proceedings, should the agency use to select the applicant? If so, what criteria should the agency use to select the applicant that will receive an award?

(d) With regard to any single proceeding, should the number of applicants that receive funds be limited?

(e) What types of expenses should be recoverable? Should reimbursement be available only for out-of-pocket costs (e.g., legal fees, travel expenses) or also for the value of work performed by an individual-applicant or the staff of organization-applicant in developing its presentation? With regard to the participant's presentation, should DOT fund scientific, technical, demographic or similar research, or should reimbursement be limited to the preparation of oral or written testimony based on existing data?

(f) What agency official(s) should make the funding determination? Should

administrative appeal of this determination be provided? If so, to what agency official(s)?

(g) Should funding decisions be reached before the proceeding (based on the participant's planned presentation and projected costs) or after the proceeding (based on the quality of the participant's presentation and costs actually incurred)?

(h) Should funds be issued before, during or after the proceeding?

All comments received before the close of business on the comment closing date will be considered, and will be available for public inspection or copying from 9 A.M. to 5:30 P.M., Monday through Friday, except Federal Holidays, in Room 10100, DOT Headquarters, 400 Seventh Street, S.W., Washington, D.C. 20590. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The DOT will continue to file relevant material as it becomes available in that docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Issued in Washington, D.C. on January 11, 1977.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

FINANCIAL ASSISTANCE TO PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

SECTION 1. Purpose. This regulation establishes procedures for a demonstration program for compensating individuals, groups, associations, partnerships, or corporations that are financially unable to participate in certain administrative proceedings of the National Highway Traffic Safety Administration.

SEC. 2. Applicability. This regulation applies to any individual, group, association, partnership, or corporation, seeking financial assistance for participation in proceedings of the National Highway Traffic Safety Administration.

SEC. 3. Definitions. As used herein—
"Administration" means the National Highway Traffic Safety Administration.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration or his delegate.

"Applicant" means any individual, or any profit or nonprofit group, association, partnership, or corporation seeking financial assistance under this regulation to participate in proceedings.

"Appropriate Administration official" means—

(a) The Associate Administrator for Motor Vehicle programs in the case of applications submitted for proceedings under the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.) or Titles I-IV of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.).

(b) The Associate Administrator for Traffic Safety Programs in the case of applications submitted for proceedings under the Highway Safety Act of 1966, as amended (23 U.S.C. 401 et seq.).

(c) The Director of the Office of Automotive Fuel Economy in the case of applications submitted for proceedings under Title V of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2001 et seq.).

"Evaluation board" means a board composed of the Assistant Secretary for Environment, Safety, and Consumer Affairs, NHTSA Associate Administrator for Planning and Evaluation, and the NHTSA Chief Counsel, or their respective delegates.

"Proceeding" means any proceeding (a) which is a rulemaking proceeding under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Motor Vehicle Information and Cost Savings Act, as amended, the Highway Safety Act of 1966, as amended, or a proceeding under section 152(a) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, for the presentation of views, data, and arguments following an initial determination of a noncompliance with a Federal motor vehicle safety standard or of a defect related to motor vehicle safety,

(b) which commences prior to the end of the one-year period immediately following the effective date of this regulation,

(c) regarding which the Administrator has determined, in light of the public interest and the availability of funding under this program, that applications for assistance under this regulation should be considered.

SEC. 4. Application period. Applications may be submitted under this regulation during the one-year period immediately following January 13, 1977, the effective date of this regulation.

SEC. 5. Application procedure. Applications for financial assistance for participation in proceedings shall be marked for the attention of the appropriate Administration official and addressed to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Each application shall contain, in a sworn statement, the following information in the order specified:

(a) The applicant's name and address, and in the case of an organization, the names, addresses, and titles of the members of its governing body and a description of the organization's general purposes, structure, and tax status.

(b) An identification of the proceeding for which funds are requested.

(c) A description of the applicant's economic, social and other interests in the outcome of the proceeding for which funds are requested.

(d) A discussion of the reasons why the applicant is an appropriate representative of those interests, including the expertise and experience of the applicant in the matters involved in the proceeding for which funds are requested and in related matters.

(e) An explanation of how the applicant's participation would enhance the quality of the decision making process and serve the public interest by contributing views and data which would not be presented by another participant.

(f) A statement of the total amount of funds requested.

(g) With respect to the proceeding for which funds are requested, an itemized statement of the expenses to be covered by the requested funds and of the expenses to be covered by the applicant's funds.

(h) A description of the evidence, activities, studies or other submissions that will be generated by each of those expenditures.

(i) An explanation of how the applicant's obtaining the requested funds would result in enhancing the quality of the applicant's participation in the proceeding for which funds are requested.

(j) An explanation of why the applicant cannot use funds that it already possesses or expects to receive for the purpose for which funds are requested, including:

(1) A listing of the applicant's anticipated income and expenditures (rounded to the nearest \$100) during the current fiscal year.

(2) A listing of the total assets and liabilities of the applicant as of the date of the application.

(k) An explanation of why the applicant cannot in other ways obtain the funds that are requested, including a description of the applicant's past efforts to obtain those funds in other ways and the feasibility of future attempts to raise funds in other ways.

(l) A list of all proceedings of the Federal government in which the applicant has participated during the past year (including the interest represented and the contribution made) and any amount of financial assistance received from the Federal government in connection with these proceedings.

Sec. 6. Processing of applications. (a) When the Administrator determines that the Administration will receive applications for funding under this regulation for a particular proceeding, an invitation for applications is published in the FEDERAL REGISTER. When practicable, the invitation is included in the notice commencing the proceeding. Each invitation specifies a deadline for submission of applications. Although applications will be received after the deadline, there is not any assurance that they will be considered.

(b) Within five working days after the deadline for receipt of applications, the appropriate Administration official forwards all applications received before the deadline, together with his comments, if any, on those applications to the evaluation board.

(c) Within five working days after the evaluation board receives the applications from the appropriate Administration official, it approves or denies in whole or in part, each of those applications. The evaluation board may approve an application, in whole, or in part, if it finds that:

(1) The applicant represents an interest whose representation contributes or can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding, taking into consideration the number, complexity, and potential significance of the issues affected by the proceeding, and the novelty, significance and complexity of the ideas advanced by the applicant;

(2) Participation by the applicant is reasonably necessary to represent that interest adequately;

(3) It is reasonably probable that the applicant can competently represent the interests it espouses, when assessed under the criteria of this regulation; and

(4) The applicant does not have available, and cannot reasonably obtain in other ways, sufficient resources to participate effectively in the proceeding in the absence of funding under this program.

In determining whether an applicant would be unable to participate effectively, the evaluation board examines the applicant's proposed expenditures for preparing its presentation in the proceeding, decides whether these projected costs are reasonable and compares them to the applicant's income and expenditures, including anticipated future income and expenditures, for the current fiscal year.

(d) In the event that two or more applications, which satisfy the criteria of paragraph (c) of this section and seek to represent the same or similar interest, contain significant differences in viewpoint, approach, or proposals, the evaluation board may partially or completely grant one or more of those applications.

(e) In selecting among the applications specified in paragraph (d) of this section, the evaluation board considers and compares the skills and experience the applicants possess, and the contents of their proposals. In particular, the evaluation board considers and compares:

(1) The applicants' experience and expertise in the substantive area with the Administration's or Department of Transportation's activities and procedures;

(2) The applicants' prior general performance and competence;

(3) Evidence of the applicants' relation to the interest they seek to protect or represent; and

(4) The specificity, novelty, relevance, and significance of the ideas the applicants propose to develop and present.

(f) The decision of the evaluation board whether to select any of the applicants that satisfy the criteria of paragraph (c) of this section is discretionary. In making its decision, the evaluation board may consider:

(1) Whether an applicant's proposal can be reasonably developed and presented with the time allotted; and

(2) The availability of funding for assistance under the program.

(g) A written decision of the evaluation board, stating why assistance has either been granted or denied in light of the criteria in paragraphs (c) through (f) of this section, is mailed to all applicants.

(h) Upon good cause shown by an applicant, the decision of the evaluation board regarding its application may be reconsidered.

Sec. 7. Recoverable costs. (a) Expenses compensable under this regulation are limited to reasonable attorneys' fees, expert witness fees, the expenses of clerical services, travel, studies, surveys and demonstrations, and other reasonable costs of participation actually incurred. In all cases, compensation is not greater than the prevailing market rates for the kind and quality of service provided.

(b) (1) Compensation is limited to reasonable out-of-pocket costs.

(2) Compensation is not provided for:

(i) Time expended by any individual on his own behalf or by the staff of any group or organization on its own behalf; or

(ii) The hiring of outside personnel when staff personnel are available and qualified to do the work.

Sec. 8. Payments to applicants. Payment of compensable expenses for approved applications is made by the Administration within 90 days after the applicant has submitted a completed claim, including bills, receipts or other proof of costs incurred. For good cause shown, payment to an applicant may be expedited.

[FR Doc.77-1296 Filed 1-12-77;8:45 am]

PROPOSED RULES

**DEPARTMENT OF
TRANSPORTATION**

Office of the Secretary

[49 CFR Subtitle A]

[OST Docket No. 48]

**FINANCIAL ASSISTANCE TO PARTICI-
PANTS IN ADMINISTRATIVE PROCEED-
INGS**

Advanced Notice of Proposed Rulemaking

CROSS REFERENCE: For a document containing an advanced notice of proposed rulemaking concerning financial assistance to participants in administrative proceedings, see FR Doc. 77-1296 appearing in the FEDERAL REGISTER immediately preceding this cross reference.