

AbilityOne Regulatory Assistance Guide

nish

Creating Employment
Opportunities For People
With Severe Disabilities

An Introductory Guide
to Meeting Regulatory
Requirements Under the
AbilityOne Program

AbilityOne

PROGRAM



TM



Creating Employment
Opportunities For People
With Severe Disabilities

NISH MISSION

NISH creates employment opportunities for people with severe disabilities.

NISH VALUES

Excellence:

Upholding the highest standards in all that we do.

Innovation:

Seeking continuous improvement by cultivating creativity, embracing change, and seizing opportunities.

Accountability:

Being accountable for achieving measurable results and ensuring stewardship of our resources.

Diversity:

Valuing and respecting the contributions and participation of employees, customers, and other stakeholders from different and various backgrounds.

Collaboration:

Working together with others to achieve the best results.

Integrity:

Being open, honest and forthright in living our values and conducting our business.

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AbilityOne Regulatory Assistance Guide

Purpose

The AbilityOne Regulatory Assistance Guide¹ is a reference tool that is intended to assist Nonprofit Agencies (NPAs) in complying with the regulatory requirements of the Javits Wagner O’Day (JWOD) Act.²

The purpose of this guide is to:

- Serve as an important resource for employees new to the requirements of the AbilityOne Program.
- Provide guidance on accurate documentation for people with severe disabilities performing an AbilityOne and non-AbilityOne work.
- Define direct labor for accurate recordkeeping.
- Offer the “how to” comply with the JWOD Act.
- Prevent common errors that occur within the regulatory guidelines of the JWOD Act.

Additional information about all topics addressed in this AbilityOne Regulatory Assistance Guide is available upon request from the NISH Regulatory Assistance Team. Please send your inquiry to:

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NISH
Regulatory Assistance Team
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Vienna, VA 22182

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¹ AbilityOne Program was formerly the Javits-Wagner-O’Day Program (JWOD), created out of the JWOD Act.

² The JWOD Act and Regulations full text is included at the end of this Guide.

Additional Resources

NISH provides the Regulatory Assistance Introductory Guide to the AbilityOne Program to CRPs to use as a reference tool regarding compliance with the regulatory requirements of the AbilityOne Program. The purpose of the guide is to:

- Serve as an important resource for CRPs who are new to AbilityOne requirements,
- Provide guidance on accurate documentation relating to people with severe disabilities who perform AbilityOne or non-AbilityOne work,
- Define direct labor for accurate recordkeeping,
- Offer the “how to” instead of the “why” in order to comply with the JWOD Act, and
- Help the CRP stay within the guidelines of the Act.

Other resources are available from the Regulatory Assistance Team such as the NISH Regulatory Assistance Resource Manual, the SCA Requirements Assistance Guide (for all Federal Service Contractors), and FLSA Special Minimum Wage Requirements Guide.

For each section of the AbilityOne Regulatory Assistance Guide, additional resources are included to meet specific needs. The following list defines the available resources that can be used as often as necessary to ensure compliance with the Javits-Wagner-O’Day Act and other regulatory requirements for federal contractors. All materials listed are available upon request from the Regulatory Assistance Team.

The NISH Regulatory Assistance Resource Manual

- Regulatory citations from the JWOD Act.
- Descriptive examples about the material contained in this Introductory Guide.
- Interpretive AbilityOne Program regulations, as amended.
- References to additional regulatory sources (i.e., Service Contract Act, Fair Labor Standards Act, Occupational Safety and Health Act).

SCA Regulatory Assistance Guide: A Guide to Compliance for All Federal Service Contractors

- A useful reference for NPA staff new to the regulatory requirements of the Service Contract Act.
- An essential guide for accurate payment of wages to individuals working on a federal service contract.

Applicable Internet Sites

Additional information related to the AbilityOne Program is available through the following Internet sites:

◆ **NISH**

NISH Homepage
<http://www.nish.org>

◆ **AbilityOne Program**

AbilityOne Homepage
<http://www.jwod.gov>

◆ **Special Minimum Wage Certificates**

Wage & Hour: Employment of Workers with Disabilities at Special Minimum Wages

<http://www.dol.gov/esa/regs/compliance/whd/whdfs39.htm>

Special Minimum Wage Poster:

<http://www.dol.gov/esa/regs/compliance/posters/disab.htm>

WH-266-MIS: Application for 14(c) Certificate:

<http://www.dol.gov/esa/regs/compliance/whd/whdfs39a.htm>

◆ **Fair Labor Standards Act (FLSA)**

Handy Reference Guide to FLSA:

<http://www.dol.gov/esa/regs/compliance/whd/hrg.htm>

Minimum Wage Poster:

<http://www.dol.gov/esa/regs/compliance/posters/flsa.htm>

DOL Poster Page:

<http://www.dol.gov/osbp/sbrefa/poster/matrix.htm>

Wage and Hour District Phone Numbers and Locations

<http://www.dol.gov/esa/contacts/whd/america2.htm>

Statutes and Executive Order Administered by WHD (FLSA 1938):

<http://www.dol.gov/esa/regs/statutes/whd/whdstat.htm>

Minimum Wage FAQs: FLSA

<http://www.dol.gov/elaws/faq/esa/flsa/003.htm>

FLSA Advisor-elaws:

<http://www.dol.gov/elaws/flsa.htm>

◆ **Fair Labor Standards Act (FLSA) – (cont.)**

FLSA – Overtime Payment Fact Sheet:

<http://www.dol.gov/esa/regs/compliance/whd/whdfs23.htm>

FLSA – Hours Worked Fact Sheet:

<http://www.dol.gov/esa/regs/compliance/whd/whdfs22.htm>

Exemption for Executive Administrative, Professional, and Sales Employees:

<http://www.dol.gov/esa/regs/compliance/whd/whdfs17.htm>

Recordkeeping Requirements:

<http://www.dol.gov/esa/regs/compliance/whd/whdfs21.htm>

◆ **Service Contract Act (SCA)**

Service Contract Act:

<http://www.dol.gov/compliance/laws/comp-sca.htm>

SCA Directory of Occupations:

<http://www.dol.gov/esa/regs/compliance/whd/wage/main.htm>

◆ **Affirmative Action Plans**

US Census Bureau: To order Equal Opportunity File 2000 for AAP:

<http://www.census.gov/mp/www/census2000/2000EEO.html>

Affirmative Action Fact Sheet:

<http://www.dol.gov/esa/regs/compliance/ofccp/aa.htm>

Section 503 Rehabilitation Act Fact Sheet:

<http://www.dol.gov/esa/regs/compliance/ofccp/fs503.htm>

OFCCP – FAQs:

<http://www.dol.gov/esa/regs/compliance/ofccp/faqs/offaqs.htm>

OFCCP -- Compliance Programs:

<http://www.dol.gov/esa/ofccp/index.htm>

◆ **Family and Medical Leave Act (FMLA)**

FMLA Poster:

<http://www.dol.gov/esa/regs/compliance/posters/fmla.htm>

FMLA Fact Sheet:

<http://www.dol.gov/esa/regs/compliance/whd/whdfs28.htm>

◆ **Family and Medical Leave Act (FMLA) – (cont.)**

FMLA: The Act

<http://www.dol.gov/esa/whd/fmla/>

FMLA: 29CFR825

http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_825/toc.htm

FMLA: Form WH-380 Medical Certificate:

<http://www.dol.gov/esa/regs/compliance/whd/fmla/wh380.pdf>

FMLA: Form WH-381 Request for Leave:

<http://www.dol.gov/esa/forms/whd/WH-381.pdf>

FMLA: Compliance Guide:

<http://www.dol.gov/esa/regs/compliance/whd/1421.htm>

◆ **Worker's Compensation**

State Listing of Worker's Compensation Officials:

<http://www.dol.gov/esa/regs/compliance/owcp/wc.htm>

◆ **Employment Standards Administration (ESA)**

ESA FAQs:

<http://www.dol.gov/esa/faq.htm>

CFR pertaining to ESA:

<http://www.dol.gov/esa/regs/cfr/main.htm>

◆ **Occupational Health & Safety Administration (OSHA)**

CFR Pertaining to OSHA:

<http://www.osha.gov/comp-links.html>

NISH National Office Regulatory Assistance Team

The mission of the Regulatory Assistance Team is to encourage NPA compliance with the JWOD Act and to ensure that agencies have successful and continued participation in the AbilityOne Program. The Regulatory Assistance Team provides guidance, timely information, resources, and technical support to NISH NPA partners regarding regulatory compliance with the JWOD Act, Federal and other related legislation and guidelines, and NISH-specific requirements.

The roles of the Regulatory Assistance Team include:

- Providing regulatory consulting services and technical assistance to NPAs;
- Serving as the liaison among the NPAs, the Federal government procuring agencies and customers, and the Committee for Purchase from People Who Are Blind or Severely Disabled;
- Providing information to NPAs that request assistance in meeting federal wage and hour compliance requirements; and
- Providing regulatory guidance to NPAs that seek assistance with the compliance requirements of Federal contractors.

Compliance Regulations and the Regulatory Assistance Team

The following is a partial list of regulations addressed by the Regulatory Assistance Team:

- JWOD Act and AbilityOne Program
- Office of Federal Contract Compliance Programs
- Fair Labor Standards Act
- Service Contract Act
- Walsh-Healy Act
- Family and Medical Leave Act
- Occupational Health and Safety Act
- Workers' Compensation Act

NISH National Office

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Areas Served

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PRODUCTS

National Products Operations serves all states. Products Project Managers are located in the Regional Offices and report to the Regional Executive Directors. Products and Services Project Managers are the main NISH contacts for NPAs. The Project Managers are responsible for identification, development, and management of projects; which includes providing technical assistance.

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All US states and territories

JWOD Act Definition of “Severe Disability”

Participation in the AbilityOne Program requires that accurate documentation be maintained on all people with severe disabilities employed at a nonprofit agency (NPA). The Committee for Purchase from People Who Are Blind or Severely Disabled (referred to as *the Committee for Purchase* or *the Committee*) defines “severely disabled” in the JWOD Act Regulations (41 CFR, Section 51 - 1.3). Key excerpts from those regulations follow.

Severe Disability

Other severely handicapped and severely handicapped individuals; (hereinafter identified as “persons with severe disabilities”), refers to individuals who have severe physical or mental impairments (residual, limiting condition resulting from an injury, disease, or congenital defect). The severe physical or mental impairments of the person with severe disabilities so limit the individual’s functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is unable to engage in “normal competitive employment” over an extended period of time.

Persons with severe disabilities are evaluated to determine whether they:

- Have the capability for Normal Competitive Employment. The determination shall be based from information developed within an ongoing evaluation program conducted by or for the nonprofit agency; and shall include as a minimum, a preadmission evaluation and a reevaluation at least annually of each individual's capability for normal competitive employment.
- Are able to engage in Normal Competitive Employment. A person identified as having a severe mental or physical impairment who has overcome the impairment or the condition has been substantially corrected, AND who is able to engage in normal competitive employment is then considered no longer to be "other severely handicapped" within the meaning of the JWOD Act definition.

Normal Competitive Employment

The JWOD Act and regulations stipulate that an individual with severe disabilities is not capable of participating in normal competitive employment, but the regulations do not define this term. The Committee for Purchase has historically defined normal competitive employment as the ability of an individual to find, obtain, and maintain a non-AbilityOne job, without support from a nonprofit agency or government service provider. However, the nonprofit can act as a “job recruiter” by finding jobs, and assisting with resume writing and interview skills. The nonprofit **cannot** develop a job, and then select the newly-identified competitive individual to do that job. The employer must select the individual for a competitive position based on his or her application and interview.

Under the AbilityOne Program, persons with severe disabilities may be paid “commensurate wages,” meaning that their compensation may be based on individual productivity as compared to an average person without disabilities performing the same tasks.

The Committee for Purchase considers an individual to be capable of normal competitive employment if the individual is able to perform **all** of the following:

- Is capable of working a full work week (40 hours),
- Can complete an application and participate in an interview independently,
- Receives the same pay and benefits as any other worker performing comparable work,
- Only requires accommodations considered reasonable under American Disabilities Act (ADA),
- Can maintain a job for an extended period of time (months, if not years), and
- Can maintain a job without intervention or supports from outside sources.

NOTE: At this time, some states consider competitive employment to include any job that takes place in the community in an integrated setting; even where job coaches are available for the employees and/or commensurate wages are paid. The Committee for Purchase does not view those jobs as being “competitive,” because they include accommodations that most employers will not provide **OR** they require a third party to ensure a successful job placement.

File Requirements

Under the AbilityOne Program, it is critical that NPA participants maintain accurate documentation on their workforce of people with severe disabilities who perform direct labor tasks; whether on AbilityOne or non-AbilityOne contracts. The JWOD Act regulations specify that NPAs who count people with severe disabilities as part of their disabled direct labor ratios have filed documentation for each individual that clearly states that the individual meets the JWOD Act definition of “severely disabled.”

Each employee’s file must contain the following three (3) documents, as members of the NISH Regulatory Team and the Committee for Purchase compliance staff review the employee files during regulatory site visits. Again, the file requirements are for **ALL** disabled direct labor employees; whether they work on an AbilityOne or a non-AbilityOne contract.

Each employee file must contain:

- The disability documentation as defined by the JWOD Act, and
- An Initial Competitive Employment Evaluation and an Annual Competitive Employment Evaluation; **OR**
- The last two (2) Annual Competitive Employment Evaluations.

Disability Documentation

The JWOD regulations require that NPAs maintain disability documentation on all employees who meet the JWOD Act definition of “severely disabled.” Each individual must meet the criteria as a person with severe disabilities, and the NPA must document the disabilities for the prospective worker to qualify for employment under the AbilityOne Program. The disability documentation should reflect the individual’s current status as his/her disability may have changed, i.e., improved or become more severe during the reporting period. An improvement may change the person’s status to be competitively employable.

Disability documentation for some severe disabilities, such as mental retardation and significant mental illness, often include the extent of the disability as part of the diagnosis. However, some disabilities or conditions may be continuous and pervasive, so the severity would be classified on a scale from mild to severe. In either case, the disability documentation must include the degree of impairment as a measure of functional capabilities.

It is recommended that the NPA complete the competitive employability evaluation when the worker is hired (at the initial intake), and at a minimum on an annual basis thereafter.

People with severe disabilities who are *not* referred to an NPA from a referral agency such as a State Vocational Rehabilitation (VR) agency, are classified as self-referred. In that case, the NPA should identify the individual’s source of primary medical care and request that the individual obtain a signed release from his/her doctor or counselor. The request should include the extent of the impairment(s) in relation to the medical diagnosis. In addition, the request should include an explanation of the purpose for requesting the information and how it will be used. Without this explanation, physicians may misunderstand the intent and fear that complete medical disclosure may negatively impact the employment potential of that patient (people with severe disabilities). Therefore, it is very important that the medical professional understand the definition of severe disability as defined by the JWOD Act.

An individual’s file must contain a clear written statement about the condition or combination of conditions that resulted in the determination that he/she is severely disabled. The diagnosis must be documented by a licensed medical or mental health professional capable of making that evaluation. For example:

DIAGNOSIS	LICENSED PROFESSIONAL	REPORT REQUIRED IN FILE
Mental Retardation	Psychologist	Psychological Evaluation
Mental Illness	Psychiatrist	Psychiatric Evaluation
Cerebral Palsy	Medical Physician*	Medical Report

See the Sample Competitive Employment Report on the next page as an example of the written report required for Disability documentation.

Bone and Joint Clinic

Garden City, Mississippi

March 1, 1999

TO: Abilities, Inc

Dear Sir/Madam:

This letter is to inform you that Ed McHale is a 48-year-old male who has experienced bilateral amputations. This patient has been disabled since the initial amputation was performed on June 1, 1978 and has been under my continuous care since that date. Due to complications with his condition, several additional amputations have become necessary, the last of which was performed on September 6, 1989.

Mr. McHale is a determined individual and is an excellent candidate for your vocational rehabilitation program though it is doubtful that he will ever be able to be competitively employed full-time. You should note that his medical condition is extremely dependent upon his medication and his diet.

Please contact me if your agency needs any additional information for acceptance of Mr. McHale into your program.

Sincerely,

John K. Smith, M.D.

Figure 1 - Competitive Employment Report

Initial Competitive Employment Evaluation

Each NPA is required to complete an Initial Competitive Employment Evaluation (also called a preadmission evaluation) for every person with severe disabilities within a maximum of 30 days after the individual has begun work. This initial period allows the NPA to make an appropriate job assignment, observe on-the-job performance, and assess disability-related accommodation needs for the incoming person with severe disabilities. Only with this assessment can the NPA produce an informed determination of a worker's non-competitive employability.

When making an initial determination that an individual can be counted as *severely disabled and not competitively employable*, three (3) questions need to be considered. All questions must be answered "yes" to confirm the determination.

1. Does the individual have a physical or mental impairment or a residual limiting condition that is the result of an injury, disease, or birth defect?

If yes, confirm that the diagnosis is supported by medical documentation that is measurable. The documentation must include: (1) the nature of the disability, (2) the extent, and (3) the degree of functional ability. A signature is required for the medical documentation as submitted by a licensed healthcare professional or for the certification of the disability by a governmental agency.

2. Does the individual have any functional limitations in self-care, self-direction, work skills, work tolerance, communication, or mobility as a direct result of the documented impairment(s)?

If yes, review the entire medical and personnel records relevant to functional impairment or disability, and the work history. If the individual has worked during an evaluative period, interview the supervisor(s) to gather information on functioning, accommodations, and supports that are needed, due to the individual's impairments. Interview the individual, with regard to any functional limitations he or she may have relating to a medical or psychological condition. Also, it may be important to ask about daily living activities and whether the individual's severe disabilities impair his/her ability to perform those activities.

3. Are the individual's current functional limitations significant enough that the person is unable to engage in normal competitive employment over an extended period of time?

To justify a determination of non-competitive employability, the NPA should refer to its answers to the first two (2) questions. The disabilities of the workers should prove sufficiently limiting that the individuals are not capable of finding and maintaining employment on their own. The determination must describe the relationship of the disabilities to the individual's inability to be competitively employed.

See the sample Initial Competitive Evaluation form on Page 40 and the sample Annual Competitive Evaluation form on Page 41.

TIP: Incorporate the evaluation form into documentation compiled during the intake process (the period when the person with disabilities became employed by the NPA).

Annual Competitive Employment Evaluation

Assessments must be done on a yearly basis at a minimum, preferably during the review of the worker's "Individual Service Plan" or annual performance evaluation. Nonprofit agencies should consider their other requirements and processes, and integrate the competitive employment requirement of the Committee for Purchase into the organization's policies where possible.

The NPA should NOT assume that the individual continues to be severely disabled and not competitively employable. Remember: Documentation should reflect an individual's current status as his/her disability may have changed, i.e., become improved or more severe over time. An improvement may change the person's status to be competitively employable.

The same basic process used for the Initial Competitive Employment Evaluation is repeated, along with reviewing the following two (2) considerations:

1. Has the disabling condition changed, so that the limiting impairments change the individual's status, whether positively as an improvement or negatively as a condition has persisted or progressed?
2. Has the worker's skills improved to the point where the original disability is no longer a concern for competitive employability?

The Committee's definition of severe disabilities [41 CFR 51-1.3(2)] includes: *A person with a severe mental or physical impairment, who is able to engage in normal competitive employment, because the impairment has been overcome or the condition has been substantially corrected is not "severely disabled" within the meaning of the definition.*

Many disabilities can improve with time or medical intervention, and to review the current status of the individual's severe disability is a critical first step in the annual assessment. It is also possible that with the training and job skills learned that the individual has received during the past year, he or she may now be capable of competitive employment. It is therefore important that the annual assessment specifies and defines any changes from the previous assessment.

Individuals can move from being competitively employable to being not competitively employable. The JWOD Act and regulations do not state that an individual's status must remain the same throughout his/her employment at the NPA. For instance, an individual may move into a competitive employment position. The person may *then* experience an exacerbation of their medical or mental health symptoms that future limits him/her functionally, to the point that he/she is no longer able to maintain competitive employment. The key is to describe accurately what has changed through an evidence-based assessment process.

Again, the competitive employability assessment must be performed at least once a year.

TIP: Incorporate the competitive employment evaluation into existing written individual evaluation plans or similar annual evaluation tools.

Direct Labor Defined

NPA's participating in the AbilityOne Program are required to report direct labor data to NISH on a quarterly basis and to the Committee annually. The direct labor reporting requirements to the Committee are an integral part of participation within the AbilityOne Program. Accurately defining direct labor will ensure reliable reporting and a more valid measure of the impact the AbilityOne Program has on people with severe disabilities.

Direct Labor: General

1. Direct labor is defined as:
 - all work required for the preparation, processing, and packaging of a commodity; **OR**
 - work directly related to the performance of a service.
2. Direct labor does **NOT** include:
 - Supervision
 - Administration
 - Material Handling
 - Shipping
 - Inspection
3. All employees performing direct labor are included in this definition whether they are full-time or part-time, disabled or non-disabled, and/or if they are paid on an hourly or piece-rate basis.

Direct Labor: Products

1. **PREPARATION:** Tasks involved in reforming raw materials into components of the product or the product itself, including operation of machinery that performs these activities.
2. **PROCESSING:** Tasks involved in forming or finishing components or products, or in assembling components into products.
3. **PACKAGING:** Tasks involved in preparing the finished product for shipment by placing it in one or more containers or wrappings to make it suitable for shipment.

Direct Labor: Services

1. Service direct labor is the performance of those tasks directly required (or specified) in the contract Statement of Work (SOW), such as work performed by custodians and groundskeepers. Services necessary to maintain equipment is indirect labor, even if used in the performance of the contract.
2. All classifications of direct labor positions are referenced in the Department of Labor's Directory of Occupations.
3. The Directory of Occupations provides a common vocabulary for occupations most often included in Service Contract Act Wage Determinations.
4. The Directory provides standard job descriptions for numerous direct labor classifications.
5. The latest edition of the Directory of Occupations can be found on the Internet. Visit:

<http://www.dol.gov/esa/regs/compliance/whd/wage/main.htm>

Direct Labor or Indirect Labor

Examples of direct and/or indirect labor positions are shown in the following table.

JOB TITLE	TASKS	LOCATION	DL	IDL	REASON
Cashier	<ul style="list-style-type: none"> Operates cash register Reconciles money 	Mess Hall on Air Force Base	X		Part of service contract requirement
Supplier	<ul style="list-style-type: none"> Distributes pages to workers Picks up completed booklets and transports booklet to packaging area 	Nonprofit Agency (NPA) Production Area		X	Material Handling
Janitor	<ul style="list-style-type: none"> Cleans dock and warehouse using push broom Sweeps aisle of production area with mechanical Bissell Sweeper Cleans under work stations with shop vacuum 	NPA (Indoor maintenance)		X	Internal overhead cost for NPA
Mess Attendant	<ul style="list-style-type: none"> Serves meals Maintains walkways and entrances 	NPA Cafeteria		X	Internal overhead cost for NPA
Grounds-Keeper	<ul style="list-style-type: none"> Operates mowing and trimming equipment Maintains walkways and entrances 	NPA (outdoor maintenance)		X	NPA cost of doing business
Mail Clerk	<ul style="list-style-type: none"> Prepares letters and packages for mailing Sorts and distributes incoming mail 	Federal Building (SCA Contract)	X		Work is directly related to the performance of the mail service.
Van Driver	<ul style="list-style-type: none"> Drives equipment and crew from location to location 	NPA Mobile Crew	X	X	DL – if this job duty is required in the Statement of Work; IDL – if this duty is <i>not</i> listed on the SOW (there is not direct involvement in the performance of this service)

JOB TITLE	TASKS	LOCATION	DL	IDL	REASON
Vehicle Washer	<ul style="list-style-type: none"> • Washes exteriors of agency vehicles • Cleans out interiors of vehicles • Vacuums floors, wipes dash, seats, and panels • Washes windows and mirrors 	NPA (maintenance of vehicles)		X	NPA cost of doing business
Sorter	<ul style="list-style-type: none"> • Sorts incoming goods for transport to repair department • Sorts trash into barrels 	NPA Thrift Shop	X		Adds value to the sale of merchandise. If sorting does not take place, items will not sell.
Trimmer	<ul style="list-style-type: none"> • Jogs sheets to square • Trims edges to square • Trims edges to size • Places tray on conveyor 	NPA Production	X		Processing of an item for product completion
Janitor	<ul style="list-style-type: none"> • Mops tile floors in restroom and hallways • Vacuums carpeted areas in offices and conference rooms • Empties wastebaskets into trash bags and delivers to dumpster 	Federal Building (SCA Contract)	X		Work is directly related to performance of the service.
Sales Clerk	<ul style="list-style-type: none"> • Assists customers • Sells merchandise • Straightens merchandise 	NPA Thrift Shop		X	Value is not added to the sales of merchandise (may be good business but is not direct labor).
Driver's Helper	<ul style="list-style-type: none"> • Runs small deliveries to offices on delivery routes • Assists drivers • Loads and unloads mailbags • Directs drivers while backing into dock areas 	Postal Service Delivery Contract on Air Force Base	X	X	The first duty related directly to the performance of the service contract. All other duties are not (unless SOW) and are, therefore, considered indirect labor (e.g., material handling).
Forklift/Truck Operator	<ul style="list-style-type: none"> • Loads and unloads trucks • Signs shipping tickets and bills • Handles all materials for incoming/outgoing goods • Maintains forklift/truck in good operating condition • Reports operational problems to production manager 	NPA Loading Dock		X	Supervision, material handling, administration, etc. – All are indirect labor tasks.

Ratio Requirements

The JWOD Act was enacted to provide training and employment opportunities to individuals with severe disabilities. The Committee for Purchase reviews disabled direct labor ratios for all NPAs on an annual basis to verify compliance with the AbilityOne Program.

Agency-wide Disabled Direct Labor Ratio

1. The 75% disabled direct labor ratio is a statutory requirement of the JWOD Act.
2. A minimum of 75% of the agency-wide direct labor hours must be performed by people with severe disabilities.
3. The agency-wide disabled direct labor ratio is measured in labor hours.
4. This ratio must be maintained for the entire time an NPA participates in the AbilityOne Program.

AbilityOne Disabled Direct Labor Ratio

1. The 75% disabled direct labor ratio is a requirement of the Committee for Purchase.
2. Individual ratios on AbilityOne contracts may still be at a minimum of 60% as long as the cumulative ratio of all AbilityOne contracts is at 75% or above.
3. The AbilityOne disabled direct labor ratio is measured in labor hours.
4. The AbilityOne ratio requirement DOES NOT SUPERCEDE the JWOD Act requirement for a minimum agency-wide 75% ratio.

NOTE: If the NPA has only one AbilityOne contract and no other contract work, it must maintain a 75% disabled direct labor ratio. (Under those circumstances, the AbilityOne ratio is also the agency-wide ratio.)

5. The aggregate direct labor ratio on all Federal contracts must never be below 75%.
6. This ratio must be maintained for the entire time a NPA performs on a Federal contract under the AbilityOne Program.

NOTE: The Committee for Purchase has a policy that provides some flexibility during the start-up of a contract to allow for the special challenges that certain types of Federal contracts can present for the disabled direct labor workforce. **See Section “Start-Up Schedules & Phase-Ins” on Page 28.**

Reporting Requirements

All NPAs verified to produce under the AbilityOne Program are required to report direct labor information to the Committee. The Committee for Purchase reviews the direct labor data during the early stages of adding an item to the Procurement List and on an annual basis thereafter. These requirements are an integral part of ensuring compliance with the legal requirements of the Program.

Initial Certification (Committee Form 402)

1. Prior to award of a contract under the AbilityOne Program, each NPA is required to submit an Initial Certification form to NISH to be processed and submitted to the Committee.
2. This form will certify that a minimum of 75% of the direct labor hours performed at the NPA are performed by people with severe disabilities.
3. If an NPA reports a total agency disabled direct labor ratio below 75%, the NPA must submit a plan that explains what action is being taken or will be taken to achieve 75% during the first fiscal year of participation in the AbilityOne Program:
 - a. A cover letter that introduces the plan and the NPA's procedures for implementing that plan;
 - b. A detailed schedule that projects what the direct labor ratio will be monthly as well as what the cumulative ratio will be at the end of the fiscal year; *and*
 - c. A description of the available resources in that geographical area of individuals who are severely disabled, along with a listing of referral sources that will be used in filling positions to increase the direct labor ratio. Letters from referral sources indicating employee availability should be included.

See the Sample Initial Certification form on Page 37.

NISH Quarterly Employment Report (QER)

1. Each NPA authorized by the Committee to provide a product or service is required to submit quarterly reports to NISH during each fiscal year.

1 st Quarter	October 1 through December 31
2 nd Quarter	January 1 through March 31
3 rd Quarter	April 1 through June 30
4 th Quarter	July 1 through September 30

The QER collects:

- a. The number of direct labor hours performed by people who are severely disabled, by products and services; hours include vacation, holiday or paid sick leave;
- b. The number of direct labor hours performed by people without severe disabilities, by products and services; hours include vacation, holiday or paid sick leave; and
- c. Other information as required by the Committee.

NOTE: All data submitted automatically calculates cumulative totals each quarter and generates Agency and AbilityOne ratios.

3. QERs are due to NISH within 30 days after the end of each quarter.
4. All QERs are submitted electronically through the NISH website. User IDs and passwords are assigned by the Regulatory Data Senior Administrator.
5. All data collected on the QER is for the respective fiscal year ONLY. Information is not carried over from one fiscal year to the next.

Annual Certification (Committee Form 404) - Annual Recertification Requirements

1. Each NPA authorized by the Committee to provide a product or a service is required to submit an Annual Certification (Committee Form 404 submitted yearly).
2. The Annual Certification (Committee Form 404) is the cumulative total of all data submitted throughout the fiscal year on the Quarterly Employment Report.

3. The Annual Certification (Committee Form 404) provides:
 - a. Total number of direct labor hours performed by people who are severely disabled during the fiscal year;
 - b. Total number of direct labor hours performed by people without disabilities during the fiscal year;

NOTE: All data submitted automatically calculates cumulative totals each quarter and generates Agency (NPA) and AbilityOne ratios.

- c. Other information as required by the Committee for Purchase.
4. After all quarterly reports have been submitted and approved, an email notice is sent advising the NPA to print an Annual Certification (Committee Form 404) from the QER Business System. NPAs should verify data, obtain signatures, and fax the two-page form back to NISH.

The Annual Certification (Committee Form 404) is due to NISH by November 1. NISH will review, process and submit the signed Annual Certification (Committee Form 404) to the Committee on behalf of the NPA. All signed Annual Certifications are required to be submitted to The Committee by December 1.

See the Sample Annual Certification (Committee Form 404) on Page 38.

Project Tracking

1. The Committee requires all projects added to the Procurement List or projects transferred from one Nonprofit Agency (NPA) to another during the fiscal year to be tracked for at least one quarter (three months). This is to verify that the NPA is operating at the same ratio that was indicated on the CBSD-1004/CBSD-1004A forms when the project was added or transferred.
2. All projects that start below the required AbilityOne ratio are tracked for the duration of the Start-up or Phase-in Plan to verify that the NPA is on target with its projected ratios. See section on Start-up Schedules & Phase-in Plans.
3. Project Tracking information is submitted on a monthly basis. The information required includes the following: the actual start date of the project; Disabled Direct Labor Hours; number of disabled individuals to support hours reported; Non-disabled Direct Labor Hours; and number of non-disabled individuals to support hours reported.
4. Project Tracking information is submitted electronically through the NISH website. The NISH HelpDesk provides an AbilityOne Project Tracking Link, ID, and Password to enter data upon request from a region or a project tracking administrator. Contact the HelpDesk at 1-866-305-4730.
5. An agency with an unsuccessfully completed schedule has 60 days from completion to develop a “get-well” plan to submit to the Committee for approval. The new approved schedule will be tracked until all months are completed.

Start-up Schedules and Phase-in Plans

The Committee for Purchase allows some flexibility during the start-up of a contract to allow for the special challenges that certain types of Federal contracts can present for disabled direct labor. All NPAs are required to submit a CBSD-1004 or CBSD-1004A Form to the Committee that indicates how many direct labor hours are “projected” to be performed by people with severe disabilities at the start of the contract. If an NPA plans to start the contract below the projected ratio, a start-up schedule or phase-in plan is required.

General Requirements

1. Every NPA is required to submit a form (CBSD-1004 or CBSD-1004A) to the Committee prior to adding a product or service to the Procurement List or setting a product or service aside under the AbilityOne Program.
 - a. Submit a CBSD-1004 Form if the NPA is to produce a product.
 - b. Submit a CBSD-1004A Form if the NPA is to perform a service.
2. The form indicates how many direct labor hours on the contract will be performed by employees with severe disabilities.
3. The CBSD-1004 or CBSD-1004A Form reports a projected disabled direct labor ratio for a contract, in addition to a disabled direct labor ratio expected at the start of a contract.
4. If the ratio at the start of a contract is less than the projected overall ratio for the contract, a start-up schedule or phase-in plan is required.
 - a. If the CBSD-1004 or CBSD-1004A indicates that at least 60% (but less than the projected) of the direct labor hours will be performed by employees with severe disabilities at the start of the contract, a START-UP SCHEDULE is required.
 - b. If the CBSD-1004 or CBSD-1004A indicates that less than 60% of the direct labor hours will be performed by employees with disabilities at the start of the contract, a complete PHASE-IN PLAN is required.

See Sample CBSD-1004 Form on Page 42 and CBSD-1004A Form on Page 43.

Start-Up Schedules

1. If the NPA plans to start a Federal contract below the projected disabled direct labor ratio for the contract (but more than 60%), a start-up schedule must be submitted.
2. A start-up schedule indicates what percentage of direct labor work hours will be performed by employees with severe disabilities over a specified period of time to meet the projected disabled direct labor ratio (as reported on the CBSD-1004 or CBSD-1004A).
3. Start-up schedules generally do not extend beyond 18 months to meet the projected disabled direct labor ratio.
4. The CBSD-1004 or CBSD-1004A with the start-up schedule is submitted to the Committee for review and consideration prior to adding an item to the Procurement List. These forms will be completed with the assistance of the appropriate NISH Regional Office team members.
5. The NISH Regulatory Assistance Team tracks all start-up schedules on a monthly basis. **See Project Tracking Information, page 27.**

See Sample CBSD-1004 Form on Page 42 and CBSD-1004A Form on Page 43.

Phase-in Plans

1. If the NPA plans to start a Federal Contract with less than 60% disabled direct labor as projected for the contract, a complete phase-in plan must be submitted.
2. A phase-in plan includes a start-up schedule as described above and additional supporting documentation to ensure the NPA's ability and commitment to reach the projected number of hours to be performed by individuals with severe disabilities.
3. A phase-in plan includes:
 - a. An explanation as to why the NPA cannot start the project with at least 60% disabled direct labor.
 - b. A narrative describing how the NPA plans to replace non-disabled employees with employees with severe disabilities so that the projected direct labor ratio is reached. This should break down the process on a month-by-month basis and indicate how individuals with severe disabilities will be trained for the job and how many will be placed on the contract each month.

See the Sample Narrative, page 33.

- c. A description of the source of referrals for individuals with disabilities if the NPA does not currently serve enough individuals to fill the contract's position.
- d. A letter from referral sources indicating the availability of trainable individuals with severe disabilities.

See Sample Referral Letter on Page 34.

- e. A description of the general scope and expected duration of the training program to be conducted by the NPA, including a description of any on-the-job training.
- f. A projection, by month, of the number of individuals with severe disabilities who will complete the training program successfully and will replace the non-disabled employees. This projection should take into account the number of referrals who may not be suitable for employment on the AbilityOne contract and the number of individuals who will drop out of employment with the NPA for whatever reason.
- g. A table including projections, by month, of the following:
 - The number of individuals with severe disabilities performing direct labor;
 - The number of non-disabled individuals performing direct labor;
 - The total number of direct labor workers;
 - The number of direct labor hours performed by individuals with severe disabilities;
 - The cumulative total of direct labor hours performed by individuals with severe disabilities;
 - The number of direct labor hours performed by non-disabled workers;
 - The monthly percentage of direct labor performed by individuals with severe disabilities; and
 - The cumulative percentage of direct labor performed by individuals with severe disabilities.

See sample Start-Up Schedules, Phase-In Documents, and Sample Table on Pages 28 - 35.

4. Submit the Phase-in plan with the CBSD-1004 or CBSD-1004A to the Committee for review and consideration prior to adding an item to the Procurement List.
5. The NISH Regulatory Assistance Team tracks all phase-ins on a monthly basis. **See Project Tracking, Page 27.**

Other Compliance Programs

NPAs have other Federal compliance requirements in addition to the JWOD Act. The policies of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) affect AbilityOne-producing NPAs as Federal contractors under the AbilityOne Program. The OFCCP is responsible for conducting compliance reviews to ensure that each Federal contractor maintains anti-discriminatory hiring and employment practices.

These policies include:

- Employee Information Act -- Form EEO-1
- Veterans Form -- VETS 100
- General Requirements under the Affirmative Action Compliance Programs
- Affirmative Action Plan with the Rehabilitation Act of 1973 as amended and with the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (which now includes several other military actions in addition to Vietnam).
- Section 503 of the Rehabilitation Act

Other applicable federal regulations relate to compensation, employment, immigration, and occupational health and safety. They are:

- Drug-Free Workplace Act
- Fair Labor Standards Act
- Service Contract Act
- Walsh-Healy Act
- Family and Medical Leave Act
- Occupational Health and Safety Act (OSHA)
- Workers' Compensation Act
- National Labor Relations Act
- Immigration Reform and Control Act

NIB, NISH, and the Committee for Purchase staff offer assistance to NPAs on these Federal compliance requirements along with those of the JWOD Act and Regulations.

Sample Narrative

Industrial Services, Inc. is a Nonprofit Agency (NPA) established to provide vocational services and meaningful employment for persons with severe disabilities who have not been successful in finding competitive employment. We work closely with our state Department of Human Resources (DHS) to provide work adjustment for individuals referred through them to us.

The skills, abilities, and experience necessary to perform the Javits-Wagner-O'Day contract under consideration for addition to the Procurement List are beyond those of the majority of our current work force. We do have several candidates currently being trained to work on the AbilityOne project, although we do not have enough qualified workers with severe disabilities to comprise at least half of the required direct labor hours at its inception. Consequently, we are requesting a special exception by the Committee for Purchase from People Who are Blind or Severely Disabled (the Committee) to begin the contract with less than 60% of the direct labor hours worked by persons with severe disabilities. We are confident that, over a period of ten months, we can obtain the necessary workers through DHS and that we can maintain a ratio of disabled to non-disabled direct labor that is acceptable to the Committee after the initial phase-in period is complete. Attached is a letter from DHS explaining their commitment to our Program and to the AbilityOne contract.

As is evident on the accompanying table, the NPA expects to start the contract with seven persons with disabilities and 18 non-disabled direct labor workers. During the first four months, the agency will add one worker with a disability per month. These individuals will be trained at the facility for two weeks prior to assigning them to the job. After on the job, training will continue for 180 days during which monthly performance evaluations will be conducted. During the fifth through the tenth month, there should be a sufficient number of trainees to add approximately two workers with severe disabilities to the contract each month. The persons with disabilities will not, in all cases, work full time, and this will not replace the non-disabled work force on a one-to-one basis.

By the end of the phase-in period, approximately 70% of the work will be performed by persons with severe disabilities. Additional workers with disabilities will be added whenever possible to provide maximum employment benefits to the community being served.

Sincerely,

Chief Executive Officer

Sample Referral Letter

AGENCY NAME

DATE

Chief Executive Officer
Industrial Services, Inc.

Dear Sir:

This is to confirm our agency's commitment to providing referrals of persons with severe disabilities to your agency for vocational training. We agree that the recent contract your agency has obtained through the Javits-Wagner-O'Day Program provides an excellent opportunity for the people we serve to obtain quality training and employment. At our present intake pace, we expect to be able to refer two or three qualified applicants to your program per month. We promise to work with you to ensure that the contract is successful.

Sincerely,

Director
Referral Agency

Sample Table

INDUSTRIAL SERVICES, INCORPORATED										
PHASE-IN PLAN										
Pay Period	Workers with Sev. Dis.	Non-Dis. Workers	Total Workers	Sev. Dis. Hrs.	Cum Total Sev. Dis. Worked	Non-Dis. Hrs. Worked	Total Hrs Worked	Cum Total Hrs. Worked	Monthly % SD DL Hrs.	Cum % DL Hrs.
Dec 1 - 31	7	18	25	420	420	1,584	2,004	2,004	20.96%	20.96%
Jan 1 - 30	8	18	26	480	900	1,584	2,064	4,086	23.26%	22.12%
Feb 1 - 28	9	17	26	540	1,440	1,496	2,036	6,104	26.52%	23.59%
Mar 1 - 31	10	17	27	600	2,040	14,965	2,096	8,200	28.63%	24.88%
Apr 1 - 30	12	16	28	720	2,760	1,408	2,128	10,328	33.83%	26.72%
May 1 - 31	13	13	26	780	3,540	1,144	924	12,252	40.54%	28.89%
Jun 1 - 30	16	11	27	960	4,500	968	1,928	14,180	49.79%	31.73%
Jul 1 - 31	18	9	27	1,080	5,580	792	1,872	16,052	57.69%	34.76%
Aug 1 - 31	20	7	27	1,200	6,780	616	1,816	17,868	66.08%	37.94%
Sept 1 - 30	21	6	27	1,260	8,040	528	1,788	19,656	70.47%	40.90%

SAMPLE FORMS

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INITIAL CERTIFICATION – QUALIFIED NONPROFIT AGENCY SERVING PEOPLE WITH SEVERE DISABILITIES		APPROVED OMB NO. 3037-0003 EXPIRES 10/31/2008	
TO: COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED			
1. NAME OF AGENCY:			
2. ADDRESS:		3. PHONE:	4. DATES: (covered by this report) _____ TO _____
5. REPORT ALL DIRECT LABOR HOURS FOR THE TOTAL AGENCY:			
		HOURS	PERCENT
A. DIRECT LABOR HOURS PAID TO PEOPLE WITH SEVERE DISABILITIES			
B. DIRECT LABOR HOURS PAID TO PEOPLE WITHOUT SEVERE DISABILITES			
C. TOTAL DIRECT LABOR HOURS (A + B)			
6. WE CERTIFY THAT:			
<p>A. Data in item 5A are the direct labor hours paid to employees of the agency who are blind or have other severe disabilities, as defined in 41 CFR 51-1.3 of the Committee regulations. Data in item 5B are the direct labor of people who do not meet the Committee’s definition of blind or otherwise severely disabled. Both 5A and 5B include vacation, holiday and paid sick leave. Any direct labor performed by temporary employees or agencies is included. (If direct labor hours were performed at addresses other than that in item 2, list all additional locations(s) on a separate page.)</p> <p>B. There is a file containing adequate evidence of the disability on each direct labor employee who is blind or has other severe disabilities, including both AbilityOne and non-AbilityOne, verifying that the individual meets the Committee’s criteria per 41 CFR 51-4.3. (If any of these files are located at an address(es) other than that in item 2, list additional location(s) on a separate page.)</p> <p>C. An ongoing placement program as required by 41 CFR 51-4.3 is operated by or for the agency.</p> <p>D. The agency is in compliance with applicable Occupational Safety and Health Act (OSHA) standards as prescribed by the Secretary of Labor. The agency has, at a minimum, a hazard safety plan. (If the agency was inspected and citations were received, attach the inspector’s report.)</p> <p>THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE18 USC 1001.</p>			
SIGNATURE – OFFICER OF THE BOARD		DATE:	SIGNATURE – AGENCY EXECUTIVE
(SIGN)			(SIGN)
NAME: (PRINT)		NAME: (PRINT)	
TITLE: (PRINT)		TITLE: (PRINT)	
NISH REVIEW			
SIGNATURE – NISH OFFICER		DATE:	
(SIGN)			
NAME: (PRINT) Dennis A. Fields			
TITLE: (PRINT) Chief Operating Officer			

COMMITTEE FORM 402 (Rev. 1-99)

ANNUAL CERTIFICATION – QUALIFIED NONPROFIT AGENCY SERVING PEOPLE WITH SEVERE DISABILITIES	APPROVED OMB NO. 3037-0002 EXPIRES 03/31/2009
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TO: COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED
--

1. NAME OF AGENCY:

2. ADDRESS:	3. PHONE:	4. FISCAL YEAR ENDING: September 30, 200X
--------------------	------------------	---

5. WE CERTIFY THAT:

A. Data in Items 6A and 7A are the direct labor hours paid to employees of the agency who are blind or have severe disabilities as defined in 41 CFR 51-1.3 of the Committee regulations. Data in items 6B and 7B are the direct labor of people who do not meet the Committee's definition of blind or otherwise severely disabled. Both sets of hours include vacation, holiday and paid sick leave. Any direct labor performed by temporary employees or agencies is included. (If direct labor hours were performed at addresses other than that in item 2, list all additional location(s) on a separate page.)

B. There is a file containing adequate evidence of disability and an annual review for competitive employability on each direct labor employee who is blind or has other severe disabilities, including both AbilityOne and non-AbilityOne, verifying that the individual meets the Committee's criteria per 41 CFR 51-4.3. (If any of these files are located at an address(es) other than that in item 2, list additional location(s) on a separate page.)

C. An ongoing placement program as required by 41 CFR 51-4.3 is operated by or for the agency.

D. The agency is in compliance with applicable Occupational Safety and Health Act (OSHA) standards as prescribed by the Secretary of Labor. The agency has, at a minimum, a hazard safety plan. (If the agency was inspected and citations were received, attached the inspector's report.)

E. Have there been any changes to your corporate Articles/State Statutes or Bylaws/Implementing Regs. During the most recent fiscal year? Yes ___ No ___
If yes, 1) Dates(s) of change: Articles/State Statutes _____ Bylaws/Implementing Regs. _____; and 2) Copies of changes are attached ___OR changes were submitted to the Committee on _____.

F. The data on the reverse side reflect agency operations for the fiscal year indicated in item 4.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18 USC 1001.

SIGNATURE – OFFICER OF BOARD (SIGN)	DATE	SIGNATURE – AGENCY EXECUTIVE (SIGN)	DATE
NAME: (PRINT)		NAME: (PRINT)	
TITLE: (PRINT)		TITLE: (PRINT)	
		EMAIL ADDRESS:	

NISH REVIEW

SIGNATURE – NISH OFFICER (SIGN)	DATE
------------------------------------	------

NAME: (PRINT) Dennis A. Fields
TITLE: (PRINT) Chief Operating Officer

COMMITTEE FORM 404 (REV. 03/31/2009)

INCLUDE IN THIS SECTION DATA FOR TOTAL AGENCY	HOURS	PERCENT
A. Direct labor hours paid to people with severe disabilities	_____	_____
B. Direct labor hours paid to people without severe disabilities	_____	_____
C. Total direct labor hours (A + B)	_____	_____
	<u>Blind</u>	<u>Total</u>
D. Total number of severely disabled direct labor employees (Regardless of hours worked)	_____	_____

7. INCLUDE IN THIS SECTION DATA FOR WORK PERFORMED UNDER JAVITS-WAGNER-O'DAY (JWOD) ACT ONLY	PRODUCTS	SERVICES	TOTAL
A. Direct labor hours paid to people with severe disabilities	_____	_____	_____
B. Direct labor hours paid to people without severe disabilities	_____	_____	_____
C. Total direct labor hours (A + B)	_____	_____	_____
D. Percentage of direct labor by people with severe disabilities (A/C)	_____	_____	_____
E. Number of people who are blind working in:	_____	_____	_____
F. Total number of people with severe disabilities: (Regardless of hours worked and including those in 7E)	_____	_____	_____
G. AbilityOne direct labor wages paid to people with severe disabilities: (Include Health and Welfare [cash payments only], vacation, holiday and sick leave pay.)	_____	_____	_____

8. INCLUDE IN THIS SECTION INFORMATION ON AGENCY AND AbilityOne PLACEMENT AND PROMOTION OF PEOPLE WITH SEVERE DISABILITIES	AbilityOne	NON-AbilityOne	DIRECT PLACEMENT	TOTAL
A. Placed into competitive employment from:	_____	_____	_____	_____
B. Placed into supported employment from:	_____	_____	_____	_____
C. Promoted into a new job, other than supervisory or management positions, that included increased wages and/or benefits, not cost of living raises or productivity increases	_____	_____	_____	_____
D. Promoted into a new job requiring supervisory, management or technical skills, that included increased wages and/or benefits, not cost of living raises or productivity increases	_____	_____	_____	_____

9. AGENCY AND AbilityOne SALES DATA	
A. Sales of Procurement List items	_____
1. Military Re-sale (Direct)	_____
2. Sales from AbilityOne Products	_____
3. Sales from AbilityOne Services	_____
4. Total AbilityOne sales	_____
B. Base Supply Centers	_____
C. Other Federal Sales	_____
D. Other Sales and Subcontracting (Includes State Use Sales)	_____
E. Total Agency Sales	_____

COMPETITIVE EMPLOYMENT EVALUATION

Type of review: **Initial**

Based upon my understanding of “normal competitive employment” as defined by the JWOD Act, it is my determination that _____ is not capable of independently obtaining and maintaining a job in a competitive environment at this time. Below are the reasons to support this conclusion:

This individual has the following limitations in self-care, self-direction, work skills, work tolerance, communication, and or mobility as a direct result of the documented impairment:

This individual needs the following supports not normally provided in typical community employment:

Name

Date

Title

Signature

COMPETITIVE EMPLOYMENT EVALUATION

Type of review: **Annual**

Based upon my understanding of “normal competitive employment” as defined by the JWOD Act, it is my determination that _____ is not capable of independently obtaining and maintaining a job in a competitive environment at this time. Below are the reasons to support this conclusion:

The following changes to this individual’s disability have been noted:

This individual has the following limitations in self-care, self-direction, work skills, work tolerance, communication, and or mobility as a direct result of the documented impairment:

This individual needs the following supports not normally provided in typical community employment:

Name

Date

Title

Signature

ESTIMATED DIRECT LABOR HOURS	PL No.
	Project No.
TO: Committee for Purchase From People Who Are Blind or Severely Disabled	Date: CNA:
1 Product/Service Name:	
2 Nonprofit Agency: Address:	NPA No:
3 Total Blind/Disabled Direct Labor Hours:	
4 Total Non-Disabled Direct Labor Hours:	
5 Total Direct Labor Hours Worked: (Add Line 3 plus Line 4)	
6 Percent of Blind/Disabled Direct Labor: (Divide Line 3 by 5 times 100) 6A If final project ratio (Line 6) is below 75 percent: (1) Will the addition of this project below the statutory 75 percent cause the Nonprofit Agency's ratio to drop below 75 percent? Yes* <input type="checkbox"/> No <input type="checkbox"/> *If yes, explanation must be attached. (2) Will the addition of this project at a ratio lower than 75 percent cause the Nonprofit Agency's ratio on all AbilityOne projects to drop below 75 percent? Yes* <input type="checkbox"/> No <input type="checkbox"/> *If yes, explanation must be attached.	
7 Blind/Disabled Work Years: (Divide Line 3 by 2,000)	
8 Percentage of Blind/Disabled Direct Labor utilized upon project start:	
9 Number of months required to meet Percent of Blind/Disabled Direct Labor (Item 6): If more than one month, complete and attach CBSD 1004A (Phase-In Request).	
10 Anticipated AbilityOne Start Date:	
I certify that this agency has or expects to have the number of trained blind or severely disabled persons required to meet or exceed the Percentage of Blind/Disabled Labor shown at Item 8 upon start of this project and will achieve the Percentage of Blind/Disabled Direct Labor shown at Item 6 within the time frame required by Item 9. I also agree to report quarterly, through the appropriate Central Nonprofit Agency (CNA), the percentage of Blind/Disabled Direct Labor on this project until the Percentage of Bind/Disabled Labor stated in Item 6 is achieved. THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18 USC 1001.	
Nonprofit Agency Executive Director	_____
Signature	Date
CNA Concurrence	_____
Signature	Date

PHASE-IN REQUEST -- CBSD 1004A	PL No.
Phase-ins are generally reserved for projects that are unusual, highly complex, large (more than 10 people) or where unique circumstances exist.	Project No.
TO: Committee for Purchase From People Who Are Blind or Severely Disabled	Date: CNA:
1 Product/Service Name:	
2 Nonprofit Agency:	NPA No:
3 Total Blind/Disabled Direct Labor Hours:	
4 Total Non-Disabled Direct Labor Hours:	
5 Total Direct Labor Hours Worked: (Add Line 3 plus Line 4)	
6 Percent of Blind/Disabled Direct Labor: (Divide Line 3 by 5 times 100) 6A If final project ratio (Line 6) is below 75 percent: (1) Will the addition of this project below the statutory 75 percent cause the Nonprofit Agency's ratio to drop below 75 percent? Yes* <input type="checkbox"/> No <input type="checkbox"/> *If yes, explanation must be attached. (2) Will the addition of this project at a ratio lower than 75 percent cause the Nonprofit Agency's ratio on all AbilityOne projects to drop below 75 percent? Yes* <input type="checkbox"/> No <input type="checkbox"/> *If yes, explanation must be attached.	
7 Blind/Disabled Work Years: (Divide Line 3 by 2,000)	
8 Percentage of Blind/Disabled Direct Labor utilized upon service start:	
9 Number of months required to meet Percent of Blind/Disabled Direct Labor (Item 6): If more than one month, complete and attach CBSD 1004A (Phase-In Request).	
10 Anticipated AbilityOne Start Date:	
<p>I certify that this agency has or expects to have the number of trained blind or severely disabled persons required to meet or exceed the Percentage of Blind/Disabled Labor shown at Item 8 upon start of this project and will achieve the Percentage of Blind/Disabled Direct Labor shown at Item 6 within the time frame required by Item 9.</p> <p>I also agree to report quarterly, through the appropriate Central Nonprofit Agency (CNA), the percentage of Blind/Disabled Direct Labor on this project until the Percentage of Bind/Disabled Labor stated in Item 6 is achieved.</p> <p>THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18 USC 1001.</p>	
Nonprofit Agency Executive Director	_____
	Signature

	Date
CNA Concurrence	_____
	Signature

	Date

JAVITS WAGNER O'DAY ACT

(41 U.S.C. 46-48c)

Javits-Wagner-O'Day Act (41 U.S.C. 46-48c)

The Javits-Wagner-O'Day (JWOD) Act appears in Title 41 of the United States Code, Sections 46 through 48c. This document gives the current legislative language of the JWOD Act with references to the applicable U.S.C. sections. Footnotes provide the citation for Public Laws related to the AbilityOne Program from its start in 1938 through to the last amendment in 1994.

Javits-Wagner-O'Day Act, Section 1 (41 U.S.C. § 46)

§ 1. Committee for Purchase from People Who Are Blind or Severely Disabled

(a) Establishment

There is established a committee to be known as the Committee for Purchase From People Who Are Blind or Severely Disabled (hereafter in this Act referred to as the "Committee"). The Committee shall be composed of fifteen members appointed as follows:

(1) The President shall appoint as a member one officer or employee from each of the following: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Education, the Department of Commerce, the Department of Veterans Affairs, the Department of Justice, the Department of Labor, and the General Services Administration. The head of each such department and agency shall nominate one officer or employee in his department or agency for appointment under this paragraph.

(2)(A) The President shall appoint one member from persons who are not officers or employees of the Government and who are conversant with the problems incident to the employment of the blind.

(B) The President shall appoint one member from persons who are not officers or employees of the Government and who are conversant with the problems incident to the employment of other severely handicapped individuals.

(C) The President shall appoint one member of persons who are not officers or employees of the Government and who represent blind individuals employed in qualified nonprofit agencies for the blind.

(D) The President shall appoint one member from persons who are not officers or employees of the Government and who represent severely handicapped individuals (other than blind individuals) employed in qualified nonprofit agencies for other severely handicapped individuals.

(b) Vacancy

A vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made.

(c) Chairman

The members of the Committee shall elect one of their numbers to be Chairman.

(d) Terms

(1) Except as provided in paragraphs (2), (3), and (4), members appointed under paragraph (2) of subsection (a) of this section shall be appointed for terms of five years. Any member appointed to the Committee under such paragraph may be reappointed to the Committee if he meets the qualifications prescribed by that paragraph.

(2) Of the members first appointed under paragraph (2) of subsection (a) of this section:

(A) one shall be appointed for a term of three years,

(B) one shall be appointed for a term of four years, and

(C) one shall be appointed for a term of five years, as designated by the President at the time of appointment.

(3) Any member appointed under paragraph (2) of subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member appointed under such paragraph may serve after the expiration of his term until his successor has taken office.

(4) The member first appointed under paragraph (2)(B) of subsection (a) of this section shall be appointed for a term of three years.

(e) Pay and travel expenses

(1) Except as provided in paragraph (2), members of the Committee shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of services for the Committee.

(2) Members of the Committee who are officers or employees of the Government shall receive no additional pay on account of their service on the Committee.

(3) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of Title 5, United States Code.

(f) Staff

(1) Subject to such rules as may be adopted by the Committee, the Chairman may appoint and fix the pay of such personnel as the Committee determines are necessary to assist it in carrying out its duties and powers under this Act.

(2) Upon request of the Committee, the head of any entity of the Government is authorized to detail, on a reimbursable basis, any of the personnel of such entity to the Committee to assist it in carrying out its duties and powers under this Act.

(3) The staff of the Committee appointed under paragraph (1) shall be appointed subject to the provisions of Title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such Title 5 relating to classification and General Schedule pay rates.

(g) Obtaining official data

The Committee may secure directly from any entity of the Government information necessary to enable it to carry out this Act. Upon request of the Chairman of the Committee, the head of such Government entity shall furnish such information to the Committee.

(h) Administrative support services

The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(i) Annual report

The Committee shall, not later than December 31 of each year, transmit to the President and to the Congress a report which shall include the names of the Committee members serving in the preceding fiscal year, the dates of Committee meetings in that year, a description of its activities under this Act in that year, and any recommendations for changes in this Act which it determines are necessary.

(June 25, 1938, c. 697, § 1, 52 Stat. 1196; June 23, 1971, Pub.L. 92-28, § 1, 85 Stat. 77; July 25, 1974, Pub.L. 93-358, § 1(1), (2), 88 Stat. 392, 393; Apr. 21, 1976, Pub.L. 94-273, § 8(2), 90 Stat. 378; Oct. 17, 1979, Pub.L. 96-88, Title V, § 509(b), 93 Stat. 695; June 13, 1991, Pub.L. 102-54, § 13(p), 105 Stat. 278; Oct 29, 1992, Pub.L. 102-569, Title IX, § 911(a), 106 Stat. 4486; Aug. 11, 1993, Pub.L. 103-73, Title III, § 301, 107 Stat. 736.)

Javits-Wagner-O'Day Act, Section 2 (41 U.S.C. § 47)

§ 2. Duties and powers of the Committee

(a) Procurement list: publication in Federal Register; additions and removals

(1) The Committee shall establish and publish in the Federal Register a list (hereafter in this Act referred to as the "procurement list") of:

(A) the commodities produced by any qualified nonprofit agency for the blind or by any qualified nonprofit agency for other severely handicapped, and

(B) the services provided by any such agency,

which the Committee determines are suitable for procurement by the Government pursuant to this Act. Such list shall be established and published in the Federal Register before the expiration of the thirty-day period beginning on Aug. 1, 1971, and shall initially consist of the commodities contained, on such date, in the schedule of blind-made products issued by the former Committee on Purchases of Blind-Made Products under its regulations.

(2) The Committee may, by rule made in accordance with the requirements of subsection (b), (c), (d), and (e) of section 553 of Title 5, United States Code, add to and remove from the procurement list commodities so produced and services so provided.

(b) Fair market price; price revisions

The Committee shall determine the fair market price of commodities and services which are contained on the procurement list and which are offered for sale to the Government by any qualified nonprofit agency for the blind or any such agency for other severely handicapped. The Committee shall also revise from time to time in accordance with changing market conditions its price determinations with respect to such commodities and services.

(c) Central nonprofit agency; designation

The Committee shall designate a central nonprofit agency or agencies to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities and services on the procurement list among qualified nonprofit agencies for the blind or such agencies for other severely handicapped.

(d) Rules and regulations; blind-made products, priority

(1) The Committee may make rules and regulations regarding (A) specifications for commodities and services on the procurement list, (B) the time of their delivery, and (C) such other matters as may be necessary to carry out the purposes of this Act.

(2) The Committee shall prescribe regulations providing that:

(A) in the purchase by the Government of commodities produced and offered for sale by qualified nonprofit agencies for the blind or such agencies for other severely handicapped, priority shall be accorded to commodities produced and offered for sale by qualified nonprofit agencies for the blind, and

(B) in the purchase by the Government of services offered by nonprofit agencies for the blind or such agencies for other severely handicapped, priority shall, until the end of the calendar year ending December 31, 1976, be accorded to services offered for sale by qualified nonprofit agencies for the blind.

(e) Problems and production methods; study and evaluation

The Committee shall make a continuing study and evaluation of its activities under this Act for the purpose of assuring effective and efficient administration of this Act. The Committee may study (on its own or in cooperation with other public or nonprofit private agencies) (1) problems related to the employment of the blind and of other severely handicapped individuals, and (2) the development and adaptation of production methods which would enable a greater utilization of the blind and other severely handicapped individuals.

(June 25, 1938, c. 697, § 2, 52 Stat. 1196; June 23, 1971, Pub.L. 92-28, § 1, 85 Stat. 79.)

Javits-Wagner-O'Day Act, Section 3 (41 U.S.C. § 48)

§ 3. Procurement requirements for Government; non-application to prison made products

If any entity of the Government intends to procure any commodity or service on the procurement list, that entity shall, in accordance with rules and regulations of the Committee, procure such commodity or service, at the price established by the Committee, from a qualified nonprofit agency for the blind or such an agency for other severely handicapped if the commodity or service is available within the period required by that Government entity; except that this section shall not apply with respect to the procurement of any commodity which is available for procurement from an industry established under chapter 307 of Title 18, United States Code, and which, under section 4124 of such Title 18, is required to be procured from such industry.

(June 25, 1938, c. 697, § 3, 52 Stat. 1196; June 23, 1971, Pub.L. 92-28, § 1, 85 Stat. 80.)

Javits-Wagner-O'Day Act, Section 4 (41 U.S.C. § 48a)

§ 4. Audit

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and other records of the Committee and of each agency designated by the Committee under section 2(c) of this Act. This section shall also apply to any qualified nonprofit agency for the blind and any such agency for other severely handicapped which have sold commodities or services under this Act but only with respect to the books, documents, papers, and other records of such agency which relate to its activities in a fiscal year in which a sale was made under this Act.

(June 25, 1938, c. 697, § 4, as added June 23, 1971, Pub.L. 92-28, § 1, 85 Stat. 81.)

§ 5. Definitions

For purposes of this Act:

(1) The term "blind" refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(2) The terms "other severely handicapped" and "severely handicapped individuals" mean an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Government and taking into account the views of non-Government entities representing the handicapped) constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from currently engaging in normal competitive employment.

(3) The term "qualified nonprofit agency for the blind" means an agency:

(A) organized under the laws of the United States or of any State, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(B) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) which in the production of commodities and in the provision of services (whether or not the commodities or services are procured under this Act) during the fiscal year employs blind individuals for not less than 75 per centum of the man-hours of direct labor required for the production or provision of the commodities or services.

(4) The term "qualified nonprofit agency for other severely handicapped" means an agency:

(A) organized under the laws of the United States or of any State, operated in the interest of severely handicapped individuals who are not blind, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(B) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) which in the production of commodities and in the provision of services (whether or not the commodities or services are procured under this Act) during the fiscal year employs blind or other severely handicapped individuals for not less than 75 per centum of the man-hours of direct labor required for the production or provision of the commodities or services.

(5) The term "direct labor" includes all work required for preparation, processing, and packing of a commodity, or work directly relating to the performance of a service, but not supervision, administration, inspection, or shipping.

(6) The term "fiscal year" means the twelve-month period beginning October 1 of each year.

(7) The term "Government" and "entity of the Government" include any entity of the legislative branch or the judicial branch, any executive agency or military department (as such agency and department are respectively defined by sections 102 and 105 of Title 5, United States Code), the United States Postal Service, and any non-appropriated fund instrumentality under the jurisdiction of the Armed Forces.

(8) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(June 25, 1938, c. 697, § 5, as added June 23, 1971, Pub.L. 92-28, § 1, 85 Stat. 81, and amended July 25, 1974, Pub.L. 93-358, § 1(3), 88 Stat. 393; Apr. 21, 1976, Pub.L. 94-273, § 3(22), 90 Stat. 377.)

Javits-Wagner-O'Day Act, Section 6 (41 U.S.C. § 48c)

§ 6. Authorization of appropriations

There are authorized to be appropriated to the Committee to carry out this Act \$240,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary for the succeeding fiscal years.

(June 25, 1938, c. 697, § 6, as added June 23, 1971, Pub.L. 92-28, § 1, 85 Stat. 82, and amended July 30, 1973, Pub.L. 93-76, 87 Stat. 176; July 25, 1974, Pub.L. 93-358, § 1(4), 88 Stat. 393.)

Javits-Wagner-O'Day Act, Section 7 (41 U.S.C. § 46 nt.)

§ 7. Short title

This Act may be cited as the "Javits-Wagner-O'Day Act."

(June 25, 1938, c. 697, § 7, as added Oct. 13, 1994, Pub.L. 103-355, Title X, § 10005(f)(6), 108 Stat. 3409.)

You may also visit JWOD.gov using the following URL address to view the JWOD Act:

http://www.jwod.gov/jwod/library/JWOD_Act.html

CODE OF REGULATIONS
TITLE 41 – PUBLIC CONTRACTS AND
PROPERTY MANAGEMENT

Revised as of October 14, 2003

CHAPTER 51 – COMMITTEE FOR PURCHASE
FROM PEOPLE WHO ARE BLIND OR
SEVERELY DISABLED

CFR Part 51-1

PART 51-1—GENERAL

§ 51-1.1 Policy.

(a) It is the policy of the Government to increase employment and training opportunities for persons who are blind or have other severe disabilities through the purchase of commodities and services from qualified nonprofit agencies employing persons who are blind or have other severe disabilities. The Committee for Purchase From People Who Are Blind or Severely Disabled (hereinafter the Committee) was established by the Javits-Wagner-O'Day Act, Public Law 92-28, 85 Stat. 77 (1971), as amended, 41 U.S.C. 46-48c (hereinafter the JWOD Act). The Committee is responsible for implementation of a comprehensive program designed to enforce this policy.

(b) It is the policy of the Committee to encourage all Federal entities and employees to provide the necessary support to ensure that the JWOD Act is implemented in an effective manner. This support includes purchase of products and services published on the Committee's Procurement List through appropriate channels from nonprofit agencies employing persons who are blind or have other severe disabilities designated by the Committee; recommendations to the Committee of new commodities and services suitable for addition to the Procurement List; and cooperation with the Committee and the central nonprofit agencies in the provision of such data as the Committee may decide is necessary to determine suitability for addition to the Procurement List.

§ 51-1.2 Mandatory source priorities.

(a) The JWOD Act mandates that commodities or services on the Procurement List required by Government entities be procured, as prescribed in this regulation, from a nonprofit agency employing persons who are blind or have other severe disabilities, at a price established by the Committee, if that commodity or service is available within the normal period required by that Government entity. Except as provided in paragraph (b) of this section, the JWOD Act has priority, under the provisions of 41 U.S.C. 48, over any other supplier of the Government's requirements for commodities and services on the Committee's Procurement List.

(b) Federal Prison Industries, Inc. has priority, under the provisions of 18 U.S.C. 4124, over nonprofit agencies employing persons who are blind or have other severe disabilities in furnishing commodities for sale to the Government. All or a portion of the Government's requirement for a commodity for which Federal Prison Industries, Inc. has exercised its priority may be added to the Procurement List. However, such addition is made with the understanding that procurement under the JWOD Act shall be limited to that portion of the Government's requirement for the commodity which is not available or not required to be procured from Federal Prison Industries, Inc.

(c) The JWOD Act requires the Committee to prescribe regulations providing that, in the purchase by the Government of commodities produced and offered for sale by qualified nonprofit agencies employing persons who are blind and nonprofit agencies employing persons who have other severe disabilities, priority shall be accorded to commodities produced and offered for sale by qualified nonprofit agencies for the blind. In approving the addition of commodities, to the Procurement List, the Committee accords priority to nonprofit agencies for the blind. Nonprofit agencies for the blind and nonprofit agencies employing persons with severe disabilities have equal priority for services.

§ 51-1.3 Definitions.

As used in this chapter:

Agency and *Federal agency* mean *Entity of the Government*, as defined herein.

Blind means an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle no greater than 20 degrees.

Central nonprofit agency means an agency organized under the laws of the United States or of any State, operated in the interest of the blind or persons with other severe disabilities, the net income of which does not incur in whole or in part to the benefit of

any shareholder or other individual, and designated by the Committee to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities and services on the Procurement List among nonprofit agencies employing persons who are blind or have other severe disabilities, to provide information required by the Committee to implement the JWOD Program, and to otherwise assist the Committee in administering these regulations as set forth herein by the Committee.

Committee means the Committee for Purchase From People Who Are Blind or Severely Disabled.

Contracting activity means any element of an entity of the Government that has responsibility for identifying and/or procuring Government requirements for commodities or services. Components of a contracting activity, such as a contracting office and an ordering office, are incorporated in this definition, which includes all offices within the definitions of "contracting activity," "contracting office," and "contract administration office" contained in the Federal Acquisition Regulation, 48 CFR 2.101.

Direct labor means all work required for preparation, processing, and packing of a commodity or work directly related to the performance of a service, but not supervision, administration, inspection or shipping.

Fiscal year means the 12-month period beginning on October 1 of each year.

Government and *Entity of the Government* mean any entity of the legislative branch or the judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, and any nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

Interested person means an individual or legal entity affected by a proposed addition of a commodity or service to the Procurement List or a deletion from it.

JWOD Program means the program authorized by the JWOD Act to increase employment and training opportunities for persons who are blind or have other severe disabilities through Government purchasing of commodities and services from nonprofit agencies employing these persons.

Military resale commodities means commodities on the Procurement List sold for the private, individual use of authorized patrons of Armed Forces commissaries and exchanges, or like activities of other Government departments and agencies.

Nonprofit agency (formerly workshop) means a nonprofit agency for the blind or a nonprofit agency employing persons with severe disabilities, as appropriate.

Other severely handicapped and *severely handicapped individuals* (hereinafter persons with severe disabilities) mean a person other than a blind person who has a severe physical or mental impairment (a residual, limiting condition resulting from an injury, disease, or congenital defect) which so limits the person's functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is unable to engage in normal competitive employment over an extended period of time.

(1) Capability for normal competitive employment shall be determined from information developed by an ongoing evaluation program conducted by or for the nonprofit agency and shall include as a minimum, a preadmission evaluation and a reevaluation at least annually of each individual's capability for normal competitive employment.

(2) A person with a severe mental or physical impairment who is able to engage in normal competitive employment because the impairment has been overcome or the condition has been substantially corrected is not "other severely handicapped" within the meaning of the definition.

Participating nonprofit agency (formerly participating workshop) means any nonprofit agency which has been authorized by the Committee to furnish a commodity or service to the Government under the JWOD Act.

Procurement List means a list of commodities (including military resale commodities) and services which the Committee has determined to be suitable to be furnished to the Government by nonprofit agencies for the blind or nonprofit agencies employing persons with severe disabilities pursuant to the JWOD Act and these regulations.

Qualified nonprofit agency for other severely handicapped (hereinafter nonprofit agency employing persons with severe disabilities) (formerly workshop for other severely handicapped) means an agency organized under the laws of the United States or any State, operated in the interests of persons with severe disabilities who are not blind, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs persons with severe disabilities (including blind) for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.

Qualified nonprofit agency for the blind (hereinafter nonprofit agency for the blind) (formerly workshop for the blind) means an agency organized under the laws of the United States or of any State, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs blind individuals for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.

State means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory remaining under the jurisdiction of the Trust Territory of the Pacific Islands.

PART 51-2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

§ 51-2.1 Membership.

Under the JWOD Act, the Committee is composed of 15 members appointed by the President. There is one representative from each of the following departments or agencies of the Government: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Education, the Department of Commerce, the Department of Justice, the Department of Labor, the Department of Veterans Affairs, and the General Services Administration. Four members are private citizens: One who is conversant with the problems incident to the employment of blind individuals; one who is conversant with the problems incident to the employment of persons with other severe disabilities; one who represents blind individuals employed in qualified nonprofit agencies for the blind; and one who represents persons with severe disabilities (other than blindness) employed in qualified nonprofit agencies employing persons with severe disabilities.

§ 51-2.2 Powers and responsibilities.

The Committee is responsible for carrying out the following functions in support of its mission of providing employment and training opportunities for persons who are blind or have other severe disabilities and, whenever possible, preparing those individuals to engage in competitive employment:

- (a) Establish rules, regulations, and policies to assure effective implementation of the JWOD Act.
- (b) Determine which commodities and services procured by the Federal Government are suitable to be furnished by qualified nonprofit agencies employing persons who are blind or have other severe disabilities and add those items to the Committee's Procurement List. Publish notices of addition to the Procurement List in the Federal Register. Disseminate information on Procurement List items to Federal agencies. Delete items no longer suitable to be furnished by nonprofit agencies. Authorize and deauthorize central nonprofit agencies and nonprofit agencies to accept orders from contracting activities for the furnishing of specific commodities and services on the Procurement List.
- (c) Determine fair market prices for items added to the Procurement List and revise those prices in accordance with changing market conditions to assure that the prices established are reflective of the market.
- (d) Monitor nonprofit agency compliance with Committee regulations and procedures.
- (e) Inform Federal agencies about the JWOD Program and the statutory mandate that items on the Procurement List be purchased from qualified nonprofit agencies, and encourage and assist entities of the Federal Government to identify additional commodities

and services that can be purchased from qualified nonprofit agencies. To the extent possible, monitor Federal agencies' compliance with JWOD requirements.

(f) Designate, set appropriate ceilings on fee paid to these central nonprofit agencies by nonprofit agencies selling items under the JWOD Program, and provide guidance to central nonprofit agencies engaged in facilitating the distribution of Government orders and helping State and private nonprofit agencies participate in the JWOD Program.

(g) Conduct a continuing study and evaluation of its activities under the JWOD Act for the purpose of assuring effective and efficient administration of the JWOD Act. The Committee may study, independently, or in cooperation with other public or nonprofit private agencies, problems relating to:

(1) The employment of the blind or individuals with other severe disabilities.

(2) The development and adaptation of production methods which would enable a greater utilization of these individuals.

(h) Provide technical assistance to the central nonprofit agencies and the nonprofit agencies to contribute to the successful implementation of the JWOD Act.

(i) Assure that nonprofit agencies employing persons who are blind will have priority over nonprofit agencies employing persons with severe disabilities in furnishing commodities.

CFR Part 51-2

PART 51-2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

§ 51-2.1 Membership.

Under the JWOD Act, the Committee is composed of 15 members appointed by the President. There is one representative from each of the following departments or agencies of the Government: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Education, the Department of Commerce, the Department of Justice, the Department of Labor, the Department of Veterans Affairs, and the General Services Administration. Four members are private citizens: One who is conversant with the problems incident to the employment of blind individuals; one who is conversant with the problems incident to the employment of persons with other severe disabilities; one who represents blind individuals employed in qualified nonprofit agencies for the blind; and one who represents persons with severe disabilities (other than blindness) employed in qualified nonprofit agencies employing persons with severe disabilities.

§ 51-2.2 Powers and responsibilities.

The Committee is responsible for carrying out the following functions in support of its mission of providing employment and training opportunities for persons who are blind or have other severe disabilities and, whenever possible, preparing those individuals to engage in competitive employment:

(a) Establish rules, regulations, and policies to assure effective implementation of the JWOD Act.

(b) Determine which commodities and services procured by the Federal Government are suitable to be furnished by qualified nonprofit agencies employing persons who are blind or have other severe disabilities and add those items to the Committee's Procurement List. Publish notices of addition to the Procurement List in the Federal Register. Disseminate information on Procurement List items to Federal agencies. Delete items no longer suitable to be furnished by nonprofit agencies. Authorize and deauthorize central nonprofit agencies and nonprofit agencies to accept orders from contracting activities for the furnishing of specific commodities and services on the Procurement List.

(c) Determine fair market prices for items added to the Procurement List and revise those prices in accordance with changing market conditions to assure that the prices established are reflective of the market.

(d) Monitor nonprofit agency compliance with Committee regulations and procedures.

(e) Inform Federal agencies about the JWOD Program and the statutory mandate that items on the Procurement List be purchased from qualified nonprofit agencies, and encourage and assist entities of the Federal Government to identify additional commodities and services that can be purchased from qualified nonprofit agencies. To the extent possible, monitor Federal agencies' compliance with JWOD requirements.

(f) Designate, set appropriate ceilings on fee paid to these central nonprofit agencies by nonprofit agencies selling items under the JWOD Program, and provide guidance to central nonprofit agencies engaged in facilitating the distribution of Government orders and helping State and private nonprofit agencies participate in the JWOD Program.

(g) Conduct a continuing study and evaluation of its activities under the JWOD Act for the purpose of assuring effective and efficient administration of the JWOD Act. The Committee may study, independently, or in cooperation with other public or nonprofit private agencies, problems relating to:

(1) The employment of the blind or individuals with other severe disabilities.

(2) The development and adaptation of production methods which would enable a greater utilization of these individuals.

(h) Provide technical assistance to the central nonprofit agencies and the nonprofit agencies to contribute to the successful implementation of the JWOD Act.

(i) Assure that nonprofit agencies employing persons who are blind will have priority over nonprofit agencies employing persons with severe disabilities in furnishing commodities.

§ 51-2.3 Notice of proposed addition or deletion.

At least 30 days prior to the Committee's consideration of the addition or deletion of a commodity or service to or from the Procurement List, the Committee publishes a notice in the Federal Register announcing the proposed addition or deletion and providing interested persons an opportunity to submit written data or comments on the proposal. Interested persons submitting comments in bound form should also submit an unbound copy that is capable of being legibly photocopied.

§ 51-2.4 Determination of suitability.

(a) For a commodity or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied:
(1) *Employment potential.* The proposed addition must demonstrate a potential to generate employment for persons who are blind or have other severe disabilities.

(2) *Nonprofit agency qualifications.* The nonprofit agency (or agencies) proposing to furnish the item must qualify as a nonprofit agency serving persons who are blind or have other severe disabilities, as set forth in part 51-4 of this chapter.

(3) *Capability.* The nonprofit agency (or agencies) desiring to furnish a commodity or service under the JWOD Program must satisfy the Committee as to the extent of the labor operations to be performed and that it will have the capability to meet Government quality standards and delivery schedules by the time it assumes responsibility for supplying the Government.

(4) *Level of impact on the current contractor for the commodity or service.* (i) In deciding whether or not a proposed addition to the Procurement List is likely to have a severe adverse impact on the current contractor for the specific commodity or service, the Committee gives particular attention to:

(A) The possible impact on the contractor's total sales, including the sales of affiliated companies and parent corporations. In addition, the Committee considers the effects of previous Committee actions.

(B) Whether that contractor has been a continuous supplier to the Government of the specific commodity or service proposed for addition and is, therefore, more dependent on the income from such sales to the Government.

(ii) If there is not a current contract for the commodity or service being proposed for addition to the Procurement List, the Committee may consider the most recent contractor to furnish the item to the Government as the current contractor for the purpose of determining the level of impact.

(b) In determining the suitability of a commodity or service for addition to the Procurement List, the Committee also considers other information it deems pertinent, including comments on a proposal published in the Federal Register to add the commodity or service to the Procurement List and information submitted by Government personnel and interested persons. Because the Committee's authority to establish fair market prices is separate from its authority to determine the suitability of a commodity or service for addition to the Procurement List, the Committee does not consider comments on proposed fair market prices for commodities and services proposed for addition to the Procurement List to be pertinent to a suitability determination.

§ 51-2.5 Committee decision.

The Committee considers the particular facts and circumstances in each case in determining if a commodity or service is suitable for addition to the Procurement List. When the Committee determines that a proposed addition is likely to have a severe adverse impact on a current contractor, it takes this fact into consideration in deciding not to add the commodity or service to the Procurement List, or to add only a portion of the Government requirement for the item. If the Committee decides to add a commodity or service in whole or in part to the Procurement List, that decision is announced in the Federal Register with a notice that includes information on the effective date of the addition.

§ 51-2.6 Reconsideration of Committee decision.

(a) The Committee may reconsider its decision to add items to the Procurement List if it receives pertinent information which was not before it when it initially made the decision. Unless otherwise provided by the Committee, requests for reconsideration from interested persons must be received by the Committee within 60 days following the effective date of the addition in question. A request for reconsideration must include the specific facts believed by the interested person to justify a decision by the Committee to modify or reverse its earlier action.

(b) In reconsidering its decision, the Committee will balance the harm to the party requesting reconsideration if the item remains on the Procurement List against the harm which the nonprofit agency or its employees who are blind or have other severe disabilities would suffer if the item were deleted from the Procurement List. The Committee may also consider information bringing into question its conclusions on the suitability criteria on which it based its original decision as factors weighing toward a decision to delete the item, and information concerning possible harm to the Government and the JWOD Program as factors weighing toward confirmation of the original decision.

§ 51-2.7 Fair market price.

(a) The Committee is responsible for determining fair market prices, and changes thereto, for commodities and services on the Procurement List. The Committee establishes an initial fair market price at the time a commodity or service is added to the Procurement List. This initial price is based on Committee procedures, which permit negotiations between the contracting activity and the nonprofit agency which will produce or provide the commodity or service to the Government, assisted by the appropriate central nonprofit agency. If agreed to by the negotiating parties, the initial price may be developed using other methodologies specified in Committee pricing procedures.

(b) Prices are revised in accordance with changing market conditions under Committee procedures, which include negotiations between contracting activities and producing nonprofit agencies, assisted by central nonprofit agencies, or the use of economic indices, changes in nonprofit agency costs, or other methodologies permitted under these procedures.

(c) Recommendations for initial fair market prices, or changes thereto, shall be submitted jointly by the contracting activities and nonprofit agencies concerned to the appropriate central nonprofit agency. After review and analysis, the central nonprofit agency shall submit the recommended prices and methods by which prices shall be changed to the Committee, along with the information required by Committee pricing procedures to support each recommendation. The Committee will review the recommendations, revise the recommended prices where appropriate, and establish a fair market price, or change thereto, for each commodity or service which is the subject of a recommendation

§ 51-2.8 Procurement list.

(a) The Committee maintains a Procurement List which includes the commodities and services which shall be procured by Government departments and agencies under the JWOD Act from the nonprofit agency(ies) designated by the Committee. Copies of the Procurement List, together with information on procurement requirements and procedures, are available to contracting activities upon request.

(b) For commodities, including military resale commodities, the Procurement List identifies the name and national stock number or item designation for each commodity, and where appropriate, any limitation on the portion of the commodity which must be procured under the JWOD Act.

(c) For services, the Procurement List identifies the type of service to be furnished, the Government department or agency responsible for procuring the service, and, where appropriate, the activity or item to be serviced.

(d) Additions to and deletions from the Procurement List are published in the Federal Register as they are approved by the Committee.

§ 51-2.9 Oral presentations by interested persons at Committee meetings.

(a) Upon written request from an interested person, that person may, at the discretion of the Committee Chair, be permitted to appear before the Committee to present views orally. Generally, only those persons who have raised significant issues which, if valid, could influence the Committee's decision in the matter under consideration will be permitted to appear.

(b) When the Chair has approved the appearance before the Committee of an interested person who has made a written request:

(1) The name of the spokesperson and the names of any other persons planning to appear shall be provided to the Committee staff by telephone at least three working days before the meeting.

(2) In the absence of prior authorization by the Chair, only one person representing a particular agency or organization will be permitted to speak.

(3) Oral statements to the Committee and written material provided in conjunction with the oral statements shall be limited to issues addressed in written comments which have previously been submitted to the Committee as the result of notice of proposed rulemaking in the Federal Register.

(4) Written material to be provided in conjunction with the oral presentation and an outline of the presentation shall be submitted to the Committee staff at least three working days before the meeting.

(c) The Committee may also invite other interested persons to make oral presentations at Committee meetings when it determines that these persons can provide information which will assist the Committee in making a decision on a proposed addition to the Procurement List. Terms of appearance of such persons shall be determined by the Chair.

§ 51-3.1 General.

Under the provisions of section 2(c) of the JWOD Act, the following are currently designated central nonprofit agencies:

(a) To represent nonprofit agencies for the blind: National Industries for the Blind.

(b) To represent nonprofit agencies employing persons with other severe disabilities: NISH.

§ 51-3.2 Responsibilities under the JWOD Program.

Each central nonprofit agency shall:

(a) Represent its participating nonprofit agencies in dealing with the Committee under the JWOD Act.

(b) Evaluate the qualifications and capabilities of its nonprofit agencies and provide the Committee with pertinent data concerning its nonprofit agencies, their status as qualified nonprofit agencies, their manufacturing or service capabilities, and other information concerning them required by the Committee.

(c) Obtain from Federal contracting activities such procurement information as is required by the Committee to:

(1) Determine the suitability of a commodity or service being recommended to the Committee for addition to the Procurement List; or

(2) Establish an initial fair market price for a commodity or service or make changes in the fair market price.

(d) Recommend to the Committee, with the supporting information required by Committee procedures, suitable commodities or services for procurement from its nonprofit agencies.

- (e) Recommend to the Committee, with the supporting information required by Committee procedures, initial fair market prices for commodities or services proposed for addition to the Procurement List.
- (f) Distribute within the policy guidelines of the Committee (by direct allocation, subcontract, or any other means) orders from Government activities among its nonprofit agencies.
- (g) Maintain the necessary records and data on its nonprofit agencies to enable it to allocate orders equitably.
- (h) Oversee and assist its nonprofit agencies to insure contract compliance in furnishing a commodity or a service.
- (i) As market conditions change, recommend price changes with appropriate justification for assigned commodities or services on the Procurement List.
- (j) Monitor and inspect the activities of its nonprofit agencies to ensure compliance with the JWOD Act and appropriate regulations.
- (k) When authorized by the Committee, enter into contracts with Federal contracting activities for the furnishing of commodities or services provided by its nonprofit agencies.
- (l) At the time designated by the Committee, submit a completed, original copy of the appropriate Initial Certification (Committee Form 401 or 402) for the nonprofit agency concerned. This requirement does not apply to a nonprofit agency that is already authorized to furnish a commodity or service under the JWOD Act.
- (m) Review and forward to the Committee by December 1 of each year a completed, original copy of the appropriate Annual Certification (Committee Form 403 or 404) for each of its participating nonprofit agencies covering the fiscal year ending the preceding September 30.
- (n) Perform other JWOD administrative functions, including activities to increase Government and public awareness of the JWOD Act subject to the oversight of the Committee.

§ 51-3.3 Assignment of commodity or service.

- (a) The central nonprofit agencies shall determine by mutual agreement the assignment to one of them of a commodity or service for the purpose of evaluating its potential for possible future addition to the Procurement List, except that the Committee shall initially assign a commodity to National Industries for the Blind when NISH has expressed an interest in the commodity and National Industries for the Blind has exercised the blind priority.
- (b) NISH shall provide National Industries for the Blind with procurement information necessary for a decision to exercise or waive the blind priority when it requests a decision. National Industries for the Blind shall normally notify NISH of its decision within 30 days, but not later than 60 days after receipt of the procurement information, unless the two central nonprofit agencies agree to an extension of time for the decision. Disagreements on extensions shall be referred to the Committee for resolution.
- (c) If National Industries for the Blind exercises the blind priority for a commodity, it shall immediately notify the Committee and NISH and shall submit to the Committee a proposal to add the commodity to the Procurement List within nine months of the notification, unless the Committee extends the assignment period because of delays beyond the control of National Industries for the Blind. Upon expiration of the assignment period, the Committee shall reassign the commodity to NISH.
- (d) The central nonprofit agency assigned a commodity shall obtain a decision from Federal Prison Industries on the exercise or waiver of its priority and shall submit the procurement information required by Federal Prison Industries when it requests the decision. Federal Prison Industries shall normally notify the central nonprofit agency of its decision within 30 days, but not later than 60 days after receipt of the procurement information, unless it agrees with the central nonprofit agency on an extension of time for the decision. The central nonprofit agency shall refer a disagreement over an extension to the Committee for resolution with Federal Prison Industries.

(e) The central nonprofit agency shall provide the Committee the decision of Federal Prison Industries on the waiver or exercise of its priority when it requests the addition of the commodity to the Procurement List. NISH shall also provide the decision of National Industries for the Blind waiving its priority.

§ 51-3.4 Distribution of orders.

Central nonprofit agencies shall distribute orders from the Government only to nonprofit agencies which the Committee has approved to furnish the specific commodity or service. When the Committee has approved two or more nonprofit agencies to furnish a specific commodity or service, the central nonprofit agency shall distribute orders among those nonprofit agencies in a fair and equitable manner.

§ 51-3.5 Fees.

A central nonprofit agency may charge fees to nonprofit agencies for facilitating their participation in the JWOD Program. Fees shall be calculated based on nonprofit agency sales to the Government under the JWOD Program. Fees shall not exceed the fee limit approved by the Committee.

§ 51-3.6 Reports to central nonprofit agencies.

Any information, other than that contained in the Annual Certification required by § 51-4.3(a) of this chapter, which a central nonprofit agency requires its nonprofit agencies to submit on an annual basis, shall be requested separately from the Annual Certification. If the information is being sought in response to a request by the Committee, nonprofit agencies shall be advised of that fact and the central nonprofit agency shall, prior to distribution, provide to the Committee a copy of each form which it plans to use to obtain such information from its nonprofit agencies.

CFR Part 51-4

PART 51-4—NONPROFIT AGENCIES

§ 51-4.1 General.

To participate in the JWOD Program, a nonprofit agency shall be represented by the central nonprofit agency assigned by the Committee on the basis of the nonprofit agency's articles of incorporation and bylaws.

§ 51-4.2 Initial qualification.

(a) To qualify for participation in the JWOD Program:

(1) A privately incorporated nonprofit agency shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the corporation or chief executive:

(i) A legible copy (preferably a photocopy) of the articles of incorporation showing the date of filing and the signature of an appropriate State official.

(ii) A copy of the bylaws certified by an officer of the corporation.

(iii) If the articles of incorporation or bylaws do not include a statement to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual, one of the following shall be submitted:

(A) A certified true copy of the State statute under which the nonprofit agency was incorporated which includes wording to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual.

(B) A copy of a resolution approved by the governing body of the corporation, certified by an officer of the corporation, to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual.

(2) A State-owned or State-operated nonprofit agency, or a nonprofit agency established or authorized by a State statute other than the State corporation laws and not privately incorporated, shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the wholly-owned State corporation or an official of the agency that directs the operations of the nonprofit agency, as applicable:

(i) A certified true copy of the State statute establishing or authorizing the establishment of nonprofit agency(ies) for persons who are blind or have other severe disabilities.

(ii) In the case of a wholly-owned State corporation, a certified true copy of the corporation bylaws; and, in the case of a State or local government agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the nonprofit agency, or other similar documents.

(b) The Committee shall review the documents submitted and, if they are acceptable, notify the nonprofit agency by letter, with a copy to its central nonprofit agency, that the Committee has verified its nonprofit status under the JWOD Act.

(c) A nonprofit agency shall submit two completed copies of the appropriate Initial Certification (Committee Form 401 or 402) to its central nonprofit agency at the time designated by the Committee. This requirement does not apply if a nonprofit agency is already authorized to furnish a commodity or service under the JWOD Act.

§ 51-4.3 Maintaining qualification.

(a) To maintain its qualification under the JWOD Act, each nonprofit agency authorized to furnish a commodity or a service shall continue to comply with the requirements of a "nonprofit agency for other severely handicapped" or a "nonprofit agency for the blind" as defined in § 51-1.3 of this chapter. In addition, each such nonprofit agency must submit to its central nonprofit agency by November 1 of each year, two completed copies of the appropriate Annual Certification covering the fiscal year ending the preceding September 30.

(b) In addition to paragraph (a) of this section, each nonprofit agency participating in the JWOD Program shall:

(1) Furnish commodities or services in strict accordance with Government orders.

(2) Comply with the applicable compensation, employment, and occupational health and safety standards prescribed by the Secretary of Labor, including procedures to encourage filling of vacancies within the nonprofit agency by promotion of qualified employees who are blind or have other severe disabilities.

(3) Comply with directives or requests issued by the Committee in furtherance of the objectives of the JWOD Act or its implementing regulations.

(4) Make its records available for inspection at any reasonable time to representatives of the Committee or the central nonprofit agency representing the nonprofit agency.

(5) Maintain records of direct labor hours performed in the nonprofit agency by each worker.

(6) Maintain a file for each blind individual performing direct labor which contains a written report reflecting visual acuity and field of vision of each eye, with best correction, signed by a person licensed to make such an evaluation, or a certification of blindness by a State or local governmental entity.

(7) Maintain in the file for each blind individual performing direct labor annual reviews of ability to engage in normal competitive employment. These reviews must be signed by an individual qualified by training and/or experience to make this determination.

(8) Maintain an ongoing placement program operated by or for the nonprofit agency to include liaison with appropriate community services such as the State employment service, employer groups and others. Those individuals determined capable and desirous of normal competitive employment shall be assisted in obtaining such employment.

(9) Upon receipt of payment by the Government for commodities or services furnished under the JWOD Program, pay to the central nonprofit agency a fee which meets the requirements of § 51-3.5 of this chapter.

(c) Each nonprofit agency employing persons with severe disabilities participating in the JWOD Program shall, in addition to the requirements of paragraphs (a) and (b) of this section, maintain in each individual with a severe disability's file:

(1) A written report signed by a licensed physician, psychiatrist, or qualified psychologist, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as a person with a severe disability, or a certification of the disability or disabilities by a State or local governmental entity.

(2) Reports which state whether that individual is capable of engaging in normal competitive employment. These reports shall be signed by a person or persons qualified by training and experience to evaluate the work potential, interests, aptitudes, and abilities of persons with disabilities and shall normally consist of preadmission evaluations and reevaluations prepared at least annually. The file on individuals who have been in the nonprofit agency for less than two years shall contain the preadmission report and, where appropriate, the next annual reevaluation. The file on individuals who have been in the nonprofit agency for two or more years shall contain, as a minimum, the reports of the two most recent annual reevaluations.

(d) The information collection requirements of § 51-4.2 and § 51-4.3 and the recordkeeping requirements of § 51-4.3 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96-511). The information collection requirements have been assigned the following OMB control numbers:

Committee form	OMB control No.
Committee form 401	3037-0004
Committee form 402	3037-0003
Committee form 403	3037-0001
Committee form 404	3037-0002

The recordkeeping requirements have been assigned OMB control number 3037-0005.

§ 51-4.4 Subcontracting.

(a) Nonprofit agencies shall seek broad competition in the purchase of materials and components used in the commodities and services furnished to the Government under the JWOD Act. Nonprofit agencies shall inform the Committee, through their central nonprofit agency, before entering into multiyear contracts for materials or components used in the commodities and services furnished to the Government under the JWOD Act.

(b) Each nonprofit agency shall accomplish the maximum amount of subcontracting with other nonprofit agencies and small business concerns that the nonprofit agency finds to be consistent both with efficient performance in furnishing commodities or services under the JWOD Act and maximizing employment for persons who are blind or have other severe disabilities.

(c) Nonprofit agencies may subcontract a portion of the process for producing a commodity or providing a service on the Procurement List provided that the portion of the process retained by the prime nonprofit agency generates employment for persons who are blind or have other severe disabilities. Subcontracting intended to be a routine part of the production of a commodity or provision of a service shall be identified to the Committee at the time the commodity or service is proposed for addition to the Procurement List and any significant changes in the extent of subcontracting must be approved in advance by the Committee.

(d) A nonprofit agency may not subcontract the entire production process for all or a portion of an order without the Committee's prior approval.

§ 51-4.5 Violations by nonprofit agencies.

(a) Any alleged violations of these regulations by a nonprofit agency shall be investigated by the appropriate central nonprofit agency which shall notify the nonprofit agency concerned and afford it an opportunity to submit a statement of facts and evidence. The central nonprofit agency shall report its findings to the Committee, together with its recommendation. In reviewing the case, the Committee may request the submission of additional evidence or may conduct its own investigation of the matter. Pending a decision by the Committee, the central nonprofit agency concerned may be directed by the Committee to temporarily suspend allocations to the nonprofit agency.

(b) If a nonprofit agency fails to correct its violations of these regulations, the Committee, after affording the nonprofit agency an opportunity to address the Committee on the matter, may terminate the nonprofit agency's eligibility to participate in the JWOD Program.

PART 51-5—CONTRACTING REQUIREMENTS

§ 51-5.1 General.

(a) Contracting activities are encouraged to assist the Committee and the central nonprofit agencies in identifying suitable commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities

so that the Committee can attain its objective of increasing employment and training opportunities for individuals who are blind or have other severe disabilities. For items which appear to be suitable to be furnished by nonprofit agencies, the contracting activity should refer the candidate commodities and services to the Committee or a central nonprofit agency. If a contracting activity decides to procure one or more commodities which are similar to a commodity or commodities on the Procurement List, the contracting activity should refer the commodities it intends to procure to the Committee or a central nonprofit agency.

(b) Contracting activities shall provide the Committee and designated central nonprofit agencies with information needed to enable the Committee to determine whether a commodity or service is suitable to be furnished by a nonprofit agency. For commodities, information such as the latest solicitation and amendments, bid abstracts, procurement history, estimated annual usage quantities, and anticipated date of next solicitation issuance and opening may be needed. For services, similar information including the statement of work and applicable wage determination may be required. In order to assist in evaluating the suitability of an Office of Management and Budget Circular No. A-76 conversion, contracting activities should provide a copy of the draft statement of work and applicable wage determination to the central nonprofit agency upon its request.

§ 51-5.2 Mandatory source requirement.

(a) Nonprofit agencies designated by the Committee are mandatory sources of supply for all entities of the Government for commodities and services included on the Procurement List, as provided in § 51-1.2 of this chapter.

(b) Purchases of commodities on the Procurement List by entities of the Government shall be made from sources authorized by the Committee. These sources may include nonprofit agencies, central nonprofit agencies, Government central supply agencies such as the Defense Logistics Agency and the General Services Administration, and certain commercial distributors. Identification of the authorized sources for a particular commodity may be obtained from the central nonprofit agencies at the addresses noted in § 51-6.2 of this chapter.

(c) Contracting activities shall require other persons providing commodities which are on the Procurement List to entities of the Government by contract to order these commodities from the sources authorized by the Committee.

(d) Procedures for obtaining military resale commodities are contained in § 51-6.4 of this chapter.

(e) Contracting activities procuring services which have included within them services on the Procurement List shall require their contractors for the larger service requirement to procure the included Procurement List services from nonprofit agencies designated by the Committee.

§ 51-5.3 Scope of requirement.

(a) When a commodity is included on the Procurement List, the mandatory source requirement covers the National Stock Number or item designation listed and commodities that are essentially the same as the listed item. In some instances, only a portion of the Government requirement for a National Stock Number or item designation is specified by the Procurement List. Where geographic areas, quantities, percentages or specific supply locations for a commodity are listed, the mandatory provisions of the JWOD Act apply only to the portion or portions of the commodity indicated by the Procurement List.

(b) For services, where an agency and location or geographic area are listed on the Procurement List, only the service for the location or geographic area listed must be procured from the nonprofit agency, except as provided in § 51-6.14 of this chapter. Where no location or geographic area is indicated by the Procurement List, it is mandatory that the total Government requirement for that service be procured from a nonprofit agency.

(c) When a commodity or service is added to the Procurement List, the addition does not affect contracts for the commodity or service awarded prior to the effective date of the Procurement List addition or options exercised under those contracts.

§ 51-5.4 Purchase exceptions.

(a) A central nonprofit agency will normally grant a purchase exception for a contracting activity to procure from commercial sources commodities or services on the Procurement List when both of the following conditions are met:

(1) The central nonprofit agency or its nonprofit agency(ies) cannot furnish a commodity or service within the period specified, and

(2) The commodity or service is available from commercial sources in the quantities needed and significantly sooner than it will be available from the nonprofit agency(ies).

(b) The central nonprofit agency may grant a purchase exception when the quantity involved is not sufficient to be furnished economically by the nonprofit agency(ies).

(c) The Committee may also grant a purchase exception for the reasons set forth in paragraphs (a) and (b) of this section.

(d) The central nonprofit agency shall obtain the approval of the Committee before granting a purchase exception when the value of the procurement exceeds the simplified acquisition threshold set forth in the Federal Acquisition Streamlining Act of 1994 or any subsequent amendments thereto.

(e) When the central nonprofit agency grants a purchase exception under the above conditions, it shall do so promptly and shall specify the quantities and delivery period covered by the exception.

(f) When a purchase exception is granted under paragraph (a) of this section:

(1) Contracting activities shall initiate purchase actions within 15 days following the date of the purchase exception. The deadline may be extended by the central nonprofit agency with, in cases of procurements exceeding the simplified acquisition threshold, the concurrence of the Committee.

(2) Contracting activities shall furnish a copy to the solicitation to the appropriate central nonprofit agency at the time it is issued, and a copy of the annotated bid abstract upon awarding of the commercial contract.

(g) Any decision by a central nonprofit agency regarding a purchase exception may be appealed to the Committee by the contracting activity.

§ 51-5.5 Prices.

(a) The prices for items on the Procurement List are fair market prices established by the Committee under authority of the Javits-Wagner-O'Day Act (41 U.S.C. 47(b)).

(b) Prices for commodities include applicable packaging, packing, and marking. Prices include transportation to point of delivery as specified in § 51-5.6.

(c) Price changes for commodities and services shall usually apply to orders received by the nonprofit agency on or after the effective date of the change. In special cases, after considering the views of the contracting activity, the Committee may make price changes applicable to orders received by the nonprofit agency prior to the effective date of the change.

(d) To assist the Committee in revising the fair market prices for services on the Procurement List, upon request from the central nonprofit agency, the contracting activity should take the following actions:

(1) Submit to the Department of Labor in a timely fashion a request for wage determination rate.

(2) Provide a copy of the new wage determination rate or the Department of Labor document stating that the wage determination rate is unchanged to the central nonprofit agency at least 60 days before the beginning of the new service period.

(3) Provide to the central nonprofit agency at least 90 days before the beginning of the new service period a copy of the statement of work applicable to the new service period.

(e) If a contracting activity desires packing, packaging, or marking of products other than the standard pack or as provided in the Procurement List, any difference in cost shall be negotiated with the nonprofit agency.

§ 51-5.6 Shipping.

(a) Except as provided in paragraph (b) of this section, commodities are sold to the Government on an "F.O.B. destination" basis, with delivery being accomplished when the shipment reaches the facility designated by the contracting activity. Time of delivery is when the shipment is released by the carrier and accepted by the contracting activity or its agent. In this delivery method, the

nonprofit agency will normally use commercial bills of lading and will be responsible for any loss or damage to the goods occurring before the commodities reach the designated delivery point. The nonprofit agency will prepare and distribute commercial bills of lading, furnish delivery schedules, designate the carriers, and pay all shipping charges to specified delivery points.

(b) The Committee may determine that certain commodities are to be sold to the Government on an "F.O.B. origin" basis, with delivery being accomplished when a shipment is placed aboard the vehicle of the initial carrier. Time of delivery is when the shipment is released to and accepted by the initial carrier. In this delivery method, the nonprofit agency will normally use Government bills of lading, and responsibility for loss or damage to the goods while in transit passes to the Government at the time the initial carrier accepts a shipment. If the contracting activity fails to furnish a Government bill of lading promptly, such failure shall be considered an excusable delay in delivery.

§ 51-5.7 Payments.

Payments for products or services of persons who are blind or have other severe disabilities shall be made within 30 days after shipment or receipt of a proper invoice or voucher.

§ 51-5.8 Violations by entities of the Government.

Any alleged violations of the JWOD Act or these regulations by entities of the Government shall be investigated by the Committee, which shall notify the entity and afford it an opportunity to submit a statement.

PART 51-6—PROCUREMENT PROCEDURES

§ 51-6.1 Direct order process.

(a) Once a commodity or service is added to the Procurement List, the central nonprofit agency may authorize the contracting activity to issue orders directly to a nonprofit agency without requesting an allocation for each order. This procedure is known as the direct order process.

(b) In these cases, the central nonprofit agency shall specify the normal leadtime required for orders transmitted directly to the nonprofit agencies. This method shall be used whenever possible since it eliminates double handling and decreases the time required for processing orders.

(c) An order for commodities or services shall provide leadtime sufficient for purchase of materials, production or preparation, and delivery or completion.

(d) The central nonprofit agency shall keep the contracting activity informed of any changes in leadtime experienced by its nonprofit agencies in order to keep to a minimum requests for extensions once an order is placed. Where, due to unusual conditions, an order does not provide sufficient leadtime, the central nonprofit agency or the individual nonprofit agency may request an extension of delivery or completion date which should be granted, if feasible. If extension of delivery or completion date is not feasible, the contracting activity shall:

- (1) Notify the central nonprofit agency and the individual nonprofit agency(ies) as appropriate.
- (2) Request the central nonprofit agency to reallocate or to issue a purchase exception authorizing procurement from commercial sources as provided in § 51-5.4 of this chapter.

(e) The contracting activity shall promptly provide to the central nonprofit agency concerned a copy of all orders issued to nonprofit agencies.

(f) The written direct order authorization remains valid until it is revoked by the central nonprofit agency.

§ 51-6.2 Allocation process.

(a) In those cases where a direct order authorization has not been issued as described in § 51-6.1, the contracting activity shall submit written requests for allocation to the appropriate central nonprofit agency indicated by the Procurement List at the address listed below:

Agency	Agency symbol
National Industries for the Blind, 1901 North Beauregard Street, Suite 200 Alexandria, Virginia 22311-1727	NIB
NISH 8401 Old Courthouse Rd. Vienna, Virginia 22182	NISH

(b) Requests for allocations shall contain, as a minimum:

- (1) For commodities. Name, stock number, latest specification, quantity, unit price, and place and time of delivery.
- (2) For services. Type and location of service required, latest specification, work to be performed, estimated volume, and time for completion.

(c) Contracting activities shall request allocations in sufficient time for the central nonprofit agency to reply, for the order(s) to be placed, and for the nonprofit agencies to furnish the commodity or service (see paragraph (i) of this section).

(d) When a commodity on the Procurement List also appears on the Federal Prison Industries' "Schedule of Products," the contracting activity shall obtain clearance from the Federal Prison Industries prior to requesting an allocation or placing an order directly to the nonprofit agency(ies).

(e) The central nonprofit agency shall make allocations to the appropriate nonprofit agency(ies) upon receipt of a request from the contracting activity and instruct that the orders be forwarded to the central nonprofit agency or direct to the nonprofit agency(ies) with a copy provided promptly to the central nonprofit agency.

(f) Central nonprofit agencies shall reply promptly to requests for allocation. When a request for allocation provides a delivery schedule (based on established lead times and time required for processing the allocation request) which cannot be met, the central nonprofit agency shall request a revision, which the contracting activity shall grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in § 51-5.4 of this chapter.

(g) An allocation is not an obligation to supply a commodity or service, or an obligation for the contracting activity to issue an order. Nonprofit agencies are not authorized to commence production until receipt of an order.

(h) Upon receipt of an allocation, the contracting activity shall promptly submit an order to the appropriate central nonprofit agency or designated nonprofit agency(ies). Where this cannot be done promptly, the contracting activity shall advise the central nonprofit agency and the nonprofit agency(ies) immediately.

(i) An order for commodities or services shall provide leadtime sufficient for purchase of materials, production or preparation, and delivery or completion.

(j) The Central nonprofit agency shall keep the contracting activity informed of any changes in leadtime experienced by its nonprofit agency(ies) in order to keep to a minimum requests for extensions once an order is placed. Where, due to unusual conditions, an order does not provide sufficient leadtime, the central nonprofit agency or nonprofit agency may request an extension of delivery or completion date which should be granted, if feasible. If extension of delivery or completion date is not feasible, the contracting activity shall:

- (1) Notify the central nonprofit agency and nonprofit agency(ies) as appropriate.
- (2) Request the central nonprofit agency to reallocate or to issue a purchase exception authorizing procurement from commercial sources as provided in § 51-5.4 of this chapter.

(k) In those instances where the central nonprofit agency is the prime contractor rather than the nonprofit agency, the central nonprofit agency will designate the nonprofit agency(ies) authorized by the Committee to furnish definite quantities of commodities or specific services upon receipt of an order from the contracting activity.

§ 51-6.3 Long-term procurements.

(a) Contracting activities are encouraged to investigate long-term ordering agreements for commodities listed on the Procurement List to level off demand, thereby helping ensure stability of employment and development of job skills for persons who are blind or have other severe disabilities.

(b) Contracting activities are encouraged to use the longest contract term available by law to their agencies for contracts for commodities and services under the JWOD Program, in order to minimize the time and expense devoted to formation and renewal of these contracts.

§ 51-6.4 Military resale commodities.

(a) Purchase procedures for ordering military resale commodities are available from the central nonprofit agencies. Authorized resale outlets (military commissary stores, Armed Forces exchanges and like activities of other Government departments and agencies) shall request the central nonprofit agency responsible for the military resale commodity being ordered to designate the nonprofit agency or its agent to which the outlets shall forward orders.

(b) Authorized resale outlets shall stock military resale commodities in as broad a range as practicable. Authorized resale outlets may stock commercial items comparable to the military resale commodities they stock, except that military commissary stores shall stock military resale commodities in the 800-, 900-, and 1000- series exclusively, unless an exception has been granted on an individual store basis for the stocking of comparable commercial items for which there is a significant customer demand.

(c) The Defense Commissary Agency shall, after consultation with the Committee:

(1) Establish mandatory lists of military resale commodities to be stocked in commissary stores.

(2) Require the stocking in commissary stores of military resale commodities in the 400-, 500-, 800-, 900-, and 1000- series in as broad a range as is practicable.

(3) Issue guidance requiring commissary store personnel to maximize sales potential of military resale commodities.

(4) Establish policies and procedures which reserve to its agency headquarters the authority to grant exceptions to the exclusive stocking of 800-, 900-, and 1000- series military resale commodities.

(d) The Defense Commissary Agency shall provide the Committee a copy of each directive which relates to the stocking of military resale commodities in commissary stores, including exceptions authorizing the stocking of commercial items in competition with 800-, 900-, and 1000- series military resale commodities.

(e) The prices of military resale commodities include delivery to destination or, in the case of destinations overseas, to designated depots at ports of embarkation. Zone pricing is used for delivery to Alaska and Hawaii.

§ 51-6.5 Adjustment and cancellation of orders.

When the central nonprofit agency or an individual nonprofit agency fails to comply with the terms of a Government order, the contracting activity shall make every effort to negotiate an adjustment before taking action to cancel the order. When a Government order is canceled for failure to comply with its terms, the central nonprofit agency shall be notified, and, if practicable, requested to reallocate the order. The central nonprofit agency shall notify the Committee of any cancellation of an order and the reasons for that cancellation.

§ 51-6.6 Request for waiver of specification requirement.

(a) Nonprofit agencies and central nonprofit agencies are encouraged to recommend changes to specification requirements or request waivers where there are opportunities to provide equal or improved products at a lower cost to the Government.

(b) A nonprofit agency shall not request a waiver of a specification requirement except when it is not possible to obtain the material meeting the specification or when other requirements contained in the specification cannot be met.

(c) Requests for waiver of specification shall be transmitted by the nonprofit agency to its central nonprofit agency.

(d) The central nonprofit agency shall review the request and the specification to determine if the request is valid and shall submit to the contracting activity only those requests which it has determined are necessary to enable the nonprofit agency to furnish the item.

(e) The central nonprofit agency request for waiver shall be transmitted in writing to the contracting activity. In addition, a copy of the request shall be transmitted to the Committee, annotated to include a statement concerning the impact on the cost of producing the item if the waiver is approved.

§ 51-6.7 Orders in excess of nonprofit agency capability.

(a) Nonprofit agencies are expected to furnish commodities on the Procurement List within the time frames specified by the Government. The nonprofit agency must have the necessary production facilities to meet normal fluctuations in demand.

(b) Nonprofit agencies shall take those actions necessary to ensure that they can ship commodities within the time frames specified by the Government. In instances where the nonprofit agency determines that it cannot ship the commodity in the quantities specified by the required shipping date, it shall notify the central nonprofit agency and the contracting activity. The central nonprofit agency shall request a revision of the shipping schedule which the contracting activity should grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in § 51-5.4 of this chapter.

§ 51-6.8 Deletion of items from the Procurement List.

(a) When a central nonprofit agency decides to request that the Committee delete a commodity or service from the Procurement List, it shall notify the Committee staff immediately. Before reaching a decision to request a deletion of an item from the Procurement List, the central nonprofit agency shall determine that none of its nonprofit agencies is capable and desirous of furnishing the commodity or service involved.

(b) Except in cases where the Government is no longer procuring the item in question, the Committee shall, prior to deleting an item from the Procurement List, determine that none of the nonprofit agencies of the other central nonprofit agency is desirous and capable of furnishing the commodity or service involved.

(c) Nonprofit agencies will normally be required to complete production of any orders for commodities on hand regardless of the decision to delete the item. Nonprofit agencies shall obtain concurrence of the contracting activity and the Committee prior to returning a purchase order to the contracting activity.

(d) For services, a nonprofit agency shall notify the contracting activity of its intent to discontinue performance of the service 90 days in advance of the termination date to enable the contracting activity to assure continuity of the service after the nonprofit agency's discontinuance.

(e) The Committee may delete an item from the Procurement List without a request from a central nonprofit agency if the Committee determines that none of the nonprofit agencies participating in the JWOD Program are capable and desirous of furnishing the commodity or service to the Government, or if the Committee decides that the commodity or service is no longer suitable for procurement from nonprofit agencies employing people who are blind or have other severe disabilities. In considering such an action, the Committee will consult with the appropriate central nonprofit agency, the nonprofit agency or agencies involved, and the contracting activity.

§ 51-6.9 Correspondence and inquiries.

Routine contracting activity correspondence or inquiries concerning deliveries of commodities being shipped from or performance of services by nonprofit agencies employing persons who are blind or have other severe disabilities shall be with the

nonprofit agency involved. Major problems shall be referred to the appropriate central nonprofit agency. In those instances where the problem cannot be resolved by the central nonprofit agency and the contracting activity involved, the contracting activity or central nonprofit agency shall notify the Committee of the problem so that action can be taken by the Committee to resolve it.

§ 51-6.10 Quality of merchandise.

(a) Commodities furnished under Government specification by nonprofit agencies employing persons who are blind or have other severe disabilities shall be manufactured in strict compliance with such specifications. Where no specifications exist, commodities furnished shall be of a quality equal to or higher than similar items available on the commercial market. Commodities shall be inspected utilizing nationally recognized test methods and procedures for sampling and inspection.

(b) Services furnished by nonprofit agencies employing persons who are blind or have other severe disabilities shall be performed in accordance with Government specifications and standards. Where no Government specifications and standards exist, the services shall be performed in accordance with commercial practices.

§ 51-6.11 Quality complaints.

(a) When the quality of a commodity received is not considered satisfactory by the using activity, the activity shall take the following actions as appropriate:

(1) For commodities received from Defense Logistics Agency supply centers, General Services Administration supply distribution facilities, Department of Veterans Affairs distribution division or other central stockage depots, or specifically authorized supply source, notify the supplying agency in writing in accordance with that agency's procedures. The supplying agency shall, in turn, provide copies of the notice to the nonprofit agency involved and its central nonprofit agency.

(2) For commodities received directly from nonprofit agencies employing persons who are blind or have other severe disabilities, address complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.

(b) When the quality of a service is not considered satisfactory by the contracting activity, it shall address complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.

§ 51-6.12 Specification changes and similar actions.

(a) Contracting activities shall notify the nonprofit agency or agencies authorized to furnish a commodity on the Procurement List and the central nonprofit agency concerned of any changes to the specification or other description of the commodity.

(b) When a Government entity is changing the specification or description of a commodity on the Procurement List, including a change that involves the assignment of a new national stock number or item designation, the office assigned responsibility for the action shall obtain the comments of the Committee and the central nonprofit agency concerned on the proposed change and shall notify the nonprofit agency and the central nonprofit agency concerned at least 90 days prior to placing an order for a commodity covered by the new specification or description.

(c) For services on the Procurement List, the contracting activity shall notify the nonprofit agency furnishing the service and the central nonprofit agency concerned at least 90 days prior to the date that any changes in the statement of work or other conditions of performance will be required, including assumption of performance of the service by the contracting activity.

(d) If an emergency makes it impossible for a contracting activity to give the 90-day notice required by paragraphs (b) and (c) of this section, the contracting activity shall inform the nonprofit agency and the central nonprofit agency concerned of the reasons it cannot meet the 90-day notice requirement when it places the order or change notice.

(e) Nonprofit agencies shall recommend changes in specifications, item descriptions, and statements of work that will improve the commodity or service being provided, reduce costs, or improve overall value to the Government. Contracting activities shall respond promptly to these recommendations and work with the nonprofit agencies to implement them when appropriate.

§ 51-6.13 Replacement and similar commodities.

(a) When a commodity on the Procurement List is replaced by another commodity which has not been recently procured, and a nonprofit agency can furnish the replacement commodity in accordance with the Government's quality standards and delivery schedules, the replacement commodity is automatically considered to be on the Procurement List and shall be procured from the nonprofit agency designated by the Committee at the fair market price the Committee has set for the replacement commodity. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a Government requirement for that commodity.

(b) If contracting activities desire to procure additional sizes, colors, or other variations of a commodity after the commodity is added to the Procurement List, and these similar commodities have not recently been procured, these commodities are also automatically considered to be on the Procurement List.

(c) In accordance with § 51-5.3 of this chapter, contracting activities are not permitted to purchase commercial items that are essentially the same as commodities on the Procurement List.

§ 51-6.14 Replacement services.

If a service is on the Procurement List to meet the needs of a Government entity at a specific location and the entity moves to another location, the service at the new location is automatically considered to be on the Procurement List if a qualified nonprofit agency is available to provide the service at the new location, unless the service at that location is already being provided by another contractor. If the service at the new location is being provided by another contractor, the service will not be on the Procurement List unless the Committee adds it as prescribed in Part 51-2 of this chapter. If another Government entity moves into the old location, the service at that location will remain on the Procurement List to meet the needs of the new Government entity.

§ 51-6.15 Disputes.

Disputes between a nonprofit agency and a contracting activity arising out of matters covered by parts 51-5 and 51-6 of this chapter shall be resolved, where possible, by the contracting activity and the nonprofit agency, with assistance from the appropriate central nonprofit agency. Disputes which cannot be resolved by these parties shall be referred to the Committee for resolution.

PART 51-7—PROCEDURES FOR ENVIRONMENTAL ANALYSIS

§ 51-7.1 Purpose and scope.

(a) Purpose. This part implements the National Environmental Policy Act of 1969 (NEPA) and provides for the implementation of those provisions identified in 40 CFR 1507.3(b) of the regulations issued by the Council on Environmental Quality (CEQ) (40 CFR parts 1500-1508) published pursuant to NEPA.

(b) Scope. This part applies to all actions of the Committee for Purchase from Persons who are Blind or Severely Disabled which may affect environmental quality in the United States.

§ 51-7.2 Early involvement in private, State, and local activities requiring Federal approval.

(a) 40 CFR 1501.2(d) requires agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some sort of Federal approval. Pursuant to the JWOD Act (41 U.S.C. 46-48c), the Committee for Purchase From People Who Are Blind or Severely Disabled makes the determination as to which qualified nonprofit agency serving persons who are blind or have other severe disabilities will furnish designated products and services to the Government.

(b) To implement the requirements of 40 CFR 1501.2(d) with respect to these actions, the Committee staff shall consult as required with other appropriate parties to initiate and coordinate the necessary environmental analysis. The Executive Director shall determine on the basis of information submitted by private agencies and other non-Federal entities or generated by the

Committee whether the proposed action is one that normally does not require an environmental assessment or environmental impact statement (EIS) as set forth in § 51-7.4, or is one that requires an environmental assessment as set forth in 40 CFR 1501.4.

(c) To facilitate compliance with these requirements, private agencies and other non-Federal entities are expected to:

- (1) Contact the Committee staff as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their request;
- (2) Conduct any studies which are deemed necessary and appropriate by the Committee to determine the impact of the proposed action on the human environment;
- (3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;
- (4) Submit applications for all Federal, regional, State and local approvals as early as possible in the planning process;
- (5) Notify the Committee as early as possible of all other Federal, regional, State, local and Indian tribe actions required for project completion so that the Committee may coordinate all Federal environmental reviews; and
- (6) Notify the Committee of all known parties potentially affected by or interested in the proposed action.

§ 51-7.3 Ensuring environmental documents are actually considered in agency determinations.

(a) 40 CFR 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, the Committee staff shall:

- (1) Consider all relevant environmental documents in evaluating proposals for agency action;
- (2) Ensure that all relevant environmental documents, comments and responses accompany the proposal through the agency review processes;
- (3) Consider only those alternatives discussed in the relevant environmental documents when evaluating proposals for agency action; and
- (4) Where an EIS has been prepared, consider the specific alternative analysis in the EIS when evaluating the proposal which is the subject of the EIS.

(b) For each of the Committee's actions authorized by the JWOD Act, the following list identifies the point at which the NEPA process begins, the point at which it ends, and the key agency official or office required to consider the relevant environmental documents as a part of their decision-making:

- (1) Action: Request.
- (2) Start of NEPA process: Upon receipt of request.
- (3) Completion of NEPA process: When the deciding official reviews the proposal and makes a determination. (4) Key official or office required to consider environmental document: When a positive determination is made under § 51-7.2(b), the applicant in conjunction with the Committee staff will prepare the necessary papers.

§ 51-7.4 Typical classes of action.

(a) 40 CFR 1507.3(b)(2) in conjunction with 40 CFR 1508.4 requires agencies to establish three typical classes of action for similar treatment under NEPA. These typical classes of action are set forth below:

- (1) Actions normally requiring EIS: None.
- (2) Actions normally requiring assessments but not necessarily EISs: Requests for actions for which determinations under § 51-7.2(b) are found to be affirmative.
- (3) Actions normally not requiring assessments or EISs: Request for actions by nonprofit agencies through the central nonprofit agencies to add a commodity or service to the Committee's Procurement List.

(b) The Committee shall independently determine, by referring to 40 CFR 1508.27, whether an EIS or an environmental assessment is required where:

- (1) A proposal for agency action is not covered by one of the typical classes of action above; or
- (2) For actions which are covered, but where the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 51-7.5 Environmental information.

Interested parties may contact the Executive Director at (703) 603-7740 for information regarding the Committee's compliance with NEPA.

PART 51-8—PUBLIC AVAILABILITY OF AGENCY MATERIALS

§ 51-8.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of material maintained by the Committee, provide for administrative appeal of initial determinations to deny requests for material, and prescribe fees to be charged by the Committee to recover search, review, and duplication costs

§ 51-8.2 Scope.

(a) These regulations shall apply to all final determinations made by the Committee, including all objections; and to any other Committee records reasonably described and requested by a person in accordance with these regulations--except to the extent that such material is exempt in accordance with paragraph (b) of this section. Where a request does not reasonably describe the requested information, the requester will be asked to provide more specific information.

(b) Requests for inspection and copies shall not be granted with respect to matters that are:

(1) Related to records:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Committee;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Committee;

(6) Personnel, medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution, which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operation, or condition of reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps concerning wells.

(c) Whenever a request is made which involves access to records described in paragraph (b)(7)(i) of this section and:

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that:

(i) The subject of the investigation or proceeding is not aware of its pendency, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, then the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(d) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(e) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in paragraph (b)(1) of this section, the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

§ 51-8.3 Definitions.

As used in this part:

(a) The term *Act* means the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) The term *Chairperson* means the Chairperson of the Committee for Purchase From People Who Are Blind or Severely Disabled.

(c) The term *Executive Director* means the Executive Director of the Committee for Purchase From People Who Are Blind or Severely Disabled.

(d) The term *exempt materials* means those materials described in § 51-8.2(b).

(e) The term *non-exempt materials* refers to all materials described in § 51-8.2(a), except *exempt materials* included in § 51-8.2(b).

(f) The term *duplication* refers to the process of making a copy of a document necessary to respond to a request. Such copies can take the form of paper copy, audio-visual materials, or machine readable materials (e.g., magnetic tape or disk), among others.

(g) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(h) The term *review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 51-8.4 Availability of materials.

Material described in 5 U.S.C. 552(a)(2) shall be available for inspection during normal business hours at the Committee's offices, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259. An individual who intends to visit the Committee offices to inspect this material shall make an appointment with the Executive Director at least one week in advance, except when the Committee has provided notification to the individual that the material is available for inspection in the Committee offices, in which case an appointment must be made at least 24 hours in advance.

§ 51-8.5 Requests for records.

(a) Requests to obtain copies of any material maintained by the Committee must be submitted in writing to the Executive Director at the Committee's offices, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259. The requester may in his or her petition ask for a fee waiver if there is likely to be a charge for the requested information. All requests for records shall be deemed to have been made pursuant to the FOIA, regardless of whether the Act is specifically mentioned. Failure to submit a request in accordance with these procedures may delay the processing of the request.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, and other identification which will help to identify the records.

(c) If the Committee determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend to the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records he or she is seeking. The "date of receipt" in such instances shall be the date of receipt of the amended or clarified request.

(d) Nothing in this part shall be interpreted to preclude the Committee from honoring an oral request for information, but, if the requester is dissatisfied with the response, the Committee official involved shall advise the requester to submit a written request in accordance with paragraph (a) of this section. The "date of receipt" of such a request shall be the date of receipt of the written request. For recordkeeping purposes, the Committee in responding to an oral request for information may ask the requester to confirm the oral request in writing.

§ 51-8.6 Aggregating requests.

When the Committee reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Committee may aggregate any such requests and charge accordingly. Elements to be considered in determining whether a belief would be reasonable include the time period in which the requests have occurred and the subject matter involved.

§ 51-8.7 Committee response to requests for records.

(a) An initial determination whether, and to what extent, to grant each request for records or a fee waiver shall be made by the Executive Director within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the request shall be notified as soon as the determination is made.

(b) In making an initial determination whether and to what extent requested information will be released, the Committee shall first consider whether the material requested is of a type described in § 51-8.2(a); if it is, the request shall be granted unless the material is exempted by § 51-8.2(b). If the material requested is not a type described in § 51-8.2(a), or is the subject of one or more exemptions, the request may be denied.

(c) If a determination is made to grant a request, the relevant material shall be furnished as soon as possible following the determination to grant the request, and after payment of the fee specified in § 51-8.12 when required, except that copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request.

(d) Where portions of the requested material are exempt under § 51-8.2(b), and are reasonably segregable from the remainder of the material, those portions shall be excised from the materials disclosed.

(e) If a determination is made to deny a request, or a portion thereof, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under § 51-8.10 to appeal the denial to the Chairperson.

(f) The Committee will require prepayment of fees for search, review, and reproduction which are likely to exceed \$250.00. When the anticipated total fee exceeds \$250.00, the requester will receive notice to prepay and at the same time will be given an opportunity to modify his or her request to reduce the fee. The Committee will also inform the requester that fees for search time will be charged even if the search proves unsuccessful. The Committee will not start processing a request until payment is received.

(g) Whenever duplication fees or search fees are anticipated to exceed \$25.00, but not more than \$250.00 and the requester has not indicated, in advance, a willingness to pay fees as high as those anticipated, the Committee will notify the requester of the amount of the anticipated fee. Similarly, where an extensive and therefore costly successful search is anticipated, the Committee will notify requesters of the anticipated fees. The Committee will not start processing the request until assurance of payment is received.

(h) Photocopies and directives furnished to the public are restricted to one copy of each page.

§ 51-8.8 Business information.

(a) When, in responding to an FOIA request, the Committee cannot readily determine whether the information obtained from a person is privileged or confidential business information or when a submitter has labeled information as proprietary at the time of submission, it shall:

(1) Obtain and consider the views of the submitter of the information and provide the submitter at least 10 working days to object to any decision to disclose the information and to provide reasons for the objection;

(2) Provide business information submitters with notice of any determination to disclose such records, to which the submitter has objected to disclosure, 10 working days prior to the disclosure date, and the reasons for which its disclosure objection is not sustained;

(3) Notify business information submitters promptly of all instances in which FOIA requesters are bringing suit seeking to compel disclosure of submitted information.

(b) The submitter, in responding to a request under paragraph (a)(1) of this section, must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain how disclosure would cause such harm.

(c) When a central nonprofit agency has submitted business information on behalf of a workshop, the workshop shall be considered to be the "business information submitter" for the purposes of this section.

§ 51-8.9 Records of other agencies.

(a) When the Committee receives a request to make available current records that are the primary responsibility of another agency, the Committee will refer the request to the agency concerned for appropriate action.

(b) The Committee will notify the requestor of the referral in paragraph (a) of this section and include the name and address of the office to which the request was referred.

§ 51-8.10 Appeals.

(a) An appeal to the Chairperson of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests shall state the specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests must be addressed to the Chairperson at the Committee offices and must be received within 30 calendar days of the requester's receipt of the Committee's initial denial.

(b) The Chairperson shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Chairperson, any material with which the reversal is concerned shall be made available in accordance with § 51-8.7(b).

(d) If the denial is upheld, in whole or in part, the Chairperson shall include in the notification a statement of the requester's right of judicial review under 5 U.S.C. 552(a)(4), and the name and position of the person responsible for the denial.

§ 51-8.11 Extensions of time.

(a) Whenever unusual circumstances exist, such as those set forth in paragraph (b) of this section, the times within which determinations must be made by the Executive Director on requests for access (10 working days), and by the Chairperson on requests for reconsideration (20 working days), may be extended by written notice to the requester for a time not to exceed an aggregate of 30 working days. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made. Extensions of time shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, "unusual circumstances" may mean:

- (1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request;
- (2) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request; or
- (3) The need to obtain and consider the views of a business information submitter under § 51-8.8.

§ 51-8.12 Fee schedule.

(a) This schedule sets forth fees to be charged for processing requests for records under the FOIA. No higher fees or charges in addition to those provided for in this schedule may be charged a party requesting records under FOIA.

(b) Subject to the criteria set forth in § 51-8.13, fees may be assessed under FOIA on all requests involving document search, duplication, and review. Fees may also be charged in situations involving special service to requests, such as certifying that records requested are true copies, or sending records by special methods such as express mail, etc.

(c) Instances in which fees may not be charged are as follows:

- (1) No charge shall be made for the first 100 pages of duplicated information (8 1/2" x 14" or smaller-size paper), or the first two hours of manual search time, or the first two minutes of computer search time, except on requests seeking documents for a commercial use, as specified in § 51-8.13;
- (2) Also, no charge shall be made--even to commercial use requesters--if the cost of collecting a fee would be equal to or greater than the fee itself;
- (3) In addition, fees shall not be charged for time spent by an agency employee in resolving legal or policy issues, or in monitoring a requester's inspection of agency records;
- (4) Documents shall also be furnished without charge when members of the public provide their own copying equipment, in which case no copying fee will be charged (although search and review fees may still be assessed).

(d) Fees for records and related services are as follows:

- (1) The fee for photocopies of pages 8 1/2" x 14" or smaller shall be \$0.20 for each page;
- (2) The fee for photocopies larger than 8 1/2" x 14" shall be \$0.50 per linear foot of the longest side of the copy;
- (3) The fee for other forms of duplicated information, such as microfilm, audio-visual materials, or machine-readable documentation (i.e., magnetic tape or disk) shall be the actual direct cost of producing the document(s);
- (4) Manual searches shall be charged at the salary rate of the employee conducting the search, plus 16 percent of the employee's basic pay.

(e) Computer searches and services shall be charged at the rate of \$22.00 per minute. The \$22.00-per-minute rate includes the cost of operating the central processing unit (CPU), and the computer operator's salary. When the services of a computer programmer or a computer program analyst are required in connection with an FOIA request, the fee for those services shall be \$16.00 and \$20.00 per hour, respectively.

(f) Charges for unsuccessful searches, or searches which fail to locate records or which locate records which are exempt from disclosure, shall be assessed at the same fee rate as searches which result in disclosure of records.

(g) The fee for providing review services shall be the hourly salary rate (i.e., basic pay plus 16 percent) of the employee conducting the review to determine whether any information is exempt from mandatory disclosure.

§ 51-8.13 Fees charged by category of requester.

(a) Under the FOIA, as amended, there are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each category.

(b) Commercial use requesters. For commercial use requesters, the Committee shall assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents referenced in § 51-8.12(c)(1). The Committee may

charge for the cost of searching for and reviewing records for commercial use requesters even if there is ultimately no disclosure of records.

(1) A commercial use requester is defined as one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) In determining whether a requester properly belongs in this category the Committee must determine whether the requester will put the documents to a commercial use. Where the Committee has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Committee may seek additional clarification from the requester.

(c) Educational and non-commercial scientific institution requesters. Fees for this category of requesters shall be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for search or review services. To qualify for this category, requesters must show that the request is being made as authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from a non-commercial scientific institution).

(1) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(2) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(d) Requesters who are representatives of the news media--Fees for this category of requesters shall also be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for providing search for review services. Requests in this category must not be made for a commercial use.

(1) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(2) The term "news" means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) All other requesters. Fees for requesters who do not fit into any of the above categories shall be assessed for the full reasonable direct cost of searching for and duplicating documents that are responsive to a request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

§ 51-8.14 Fee waivers and reductions.

The Committee will waive or reduce fees on requests for information if disclosure of the information is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and is not primarily in the commercial interest of the requester.

(a) In determining when fees shall be waived or reduced, the Committee will consider the following six factors:

(1) The subject of the request, i.e., whether the subject of the requested records concerns "the operations or activities of the Government;"

(2) The informative value of the information to be disclosed, i.e., whether the disclosure is "likely to contribute" to an understanding of Government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to "public understanding;"

(4) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities;

(5) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(6) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(b) The Committee may waive or reduce fees associated with a request for disclosure regardless of whether a waiver or reduction has been requested if the Committee determines that disclosure will primarily benefit the general public.

(c) Fees shall be waived in all circumstances where the amount of the fee is \$10 or less as the cost of collection would be greater than the fee. This minimum shall be applied separately to each Committee response when it is necessary for the Committee to make more than one response to a request for records.

§ 51-8.15 Collection of fees and charges.

(a) Except when prepayment is required, payments shall be collected to the fullest extent possible at the time the requested materials are furnished. Payments shall be made by requesters within 30 days of the date of the billing.

(b) Payments shall be made by check, draft, or money order made payable to the Treasury of the United States.

(c) In instances where a requester has previously failed to pay a fee, the Committee may require the requester to pay the full amount owed, plus any applicable interest as provided below, as well as the full estimated fee associated with any new request before it begins to process the new or subsequent request.

(d) On requests that result in fees being assessed, interest will be charged on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 United States Code, and will accrue from the date of the billing.

(e) In attempting to collect fees levied under FOIA, the Committee will abide by the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365) in disclosing information to consumer reporting agencies and in the use of collection agencies, where appropriate, to encourage payment.

§ 51-8.16 Preservation of records.

The Committee shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 United States Code, and to the General Records schedule. Records shall not be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

PART 51-9—PRIVACY ACT RULES

Subpart 51-9.1--General Policy

Subpart 51-9.2--Disclosure of Records

Subpart 51-9.3--Individual Access to Records

Subpart 51-9.4--Requests To Amend Records

Subpart 51-9.5--Report on New Systems and Alteration of Existing Systems

Subpart 51-9.6--Exemptions [Reserved]

Subpart 51-9.7--Rules of Conduct for Disclosure of Information About an Individual

§ 51-9.701 Committee rules of conduct.

(a) Every Committee member and employee who is involved in the design, development, operation, or maintenance of a system of records, or who has access to a system of records, shall familiarize himself with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and the Committee regulations and orders issued thereunder and apply these requirements to all systems of records.

(b) No Committee member or employee shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure would be to a recipient specified in paragraph (c) of this section. The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. The term "system of records" means a group of any records under the control of the Committee from which information is retrieved by the name of the individual or by some identifying number symbol, or other identifying particular assigned to the individual. The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence. The term "agency" is defined in 5 U.S.C. 552(e).

(c) An employee may disclose any record which is contained in a system of records, without a written request by and without the prior written consent of the individual to whom the record pertains, if the disclosure would be:

- (1) To those Committee members and employees of the agency which maintains the record who have a need for the record in the performance of their duties;
- (2) Required under section 552 of Title 5 U.S.C.;
- (3) For a routine use as described in paragraph (b) of this section;
- (4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 U.S.C.;
- (5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;
- (6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;
- (7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;
- (8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;
- (9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;
- (10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or
- (11) Pursuant to the order of a court of competent jurisdiction.

(d) No Committee member or employee shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(e) No Committee member or employee shall sell or rent an individual's name and address unless such action is specifically authorized by law.

(f) A Committee member or employee, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by paragraph a of this section or by any other rules or regulations established under the Privacy Act of 1974, and who

- (1) knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, or (2) willfully maintains a system of records without meeting the notice requirements of the Privacy Act of 1974, or (3) knowingly and willfully requests or obtains any record concerning an individual from any agency under false pretenses, is subject to criminal penalties and administrative sanctions. Any Committee member or employee who (i) makes a determination not to amend an individual's record in accordance with the Privacy Act of 1974, or (ii) refuses to comply with an individual's request to gain access to review, and obtain a copy of any information pertaining to him, or (iii) fails to

maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities or of benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual, or (iv) fails to comply with any provision of the Privacy Act of 1974 or any Committee regulation implementing it, subjects the Committee to civil penalties and himself to administrative sanctions.

CFR Part 51-10

PART 51-10—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

§ 51-10.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 51-10.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 51-10.103 Definitions.

For purposes of this part, the term:

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment includes-*

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means-

- (i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;
- (ii) Has a physical or mental impairment that substantially limits major activities only as a result of the attitudes of others toward such impairment; or
- (iii) Has none of the impairments defines in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means:

- (1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.
- (2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;
- (3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 51-10.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation Comprehensive Services, and Development Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 51-10.104--51-10.109 [Reserved]

§ 51-10.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) a description of areas examined and any problems identified, and
- (2) a description of any modifications made.

§ 51-10.111 Notice

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 51-10.112--51-10.129 [Reserved]

§ 51-10.130 General prohibitions against discrimination

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap-

- (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- (iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in the programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would-

- (i) Subject qualified handicapped persons to discrimination on the basis of handicap; or
- (ii) Defeat or substantially impair accomplishment of the objectives of a program activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would-

- (i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or
- (ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 51-10.131--51-10.139 [Reserved]

§ 51-10.140 Employment

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 51-10.141--51-10.148 [Reserved]

§ 51-10.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 51-10.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 51-10.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not-

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 51-10.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods--(1) General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of the services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 51-10.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 51-10.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include- (i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible; (ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or (iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 months after the effective date], a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum-

- (1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;
- (2) Describe in detail the methods that will be used to make the facilities accessible;
- (3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (4) Indicate the official responsible for implementation of the plan.

§ 51-10.151 Program accessibility: New construction and alterations

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 51-10.152--51-10.159 [Reserved]

§ 51-10.160 Communications

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to enjoy to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens the agency has the burden of proving that compliance with § 51-10.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 51-10.161--51-10.169 [Reserved]

§ 51-10.170 Compliance procedures

- (a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.
- (b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).
- (c) The Executive Director shall be responsible for coordinating the implementation of this section. Complaints may be sent to the Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202-3259.
- (d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.
- (e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.
- (f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.
- (g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing-
- (1) Findings of fact and conclusions of law;
 - (2) A description of a remedy for each violation found; and (3) A notice of the right to appeal.
- (h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 51-10.170(g). The agency may extend this time for good cause.
- (i) Timely appeals shall be accepted and processed by the head of the agency.
- (j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.
- (k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.
- (l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, accept that the authority for making the final determination may not be delegated to another agency.

§§ 51-10.171--51-10.999 [Reserved]