

the current PTFP rule, was included in the Notice of Availability of Funds for each program:

The Department of Commerce has a long standing policy of not funding projects for purposes the essential thrust of which is sectarian. Consistent with this policy, TIIAP [and NECET] will not fund projects the essential thrust of which is sectarian. Sectarian organizations, however, are eligible applicants and may request funds for non-sectarian purposes.<sup>7</sup>

NTIA's long-standing regulation in 15 CFR 2301.22(d) was recently challenged for the first time in the case of *Fordham University v. Brown*. There a PTFP applicant argued that NTIA's policy on sectarian broadcasting violated its right to free exercise of religion and freedom of speech under the First Amendment of the Constitution. The Fordham court rejected this challenge and held that NTIA's policy was not violative of the First Amendment. In *dicta*, however, the court noted that it was not addressing whether there were alternative interpretations of this regulation which could also be implemented by NTIA consistent with the First Amendment.<sup>8</sup>

#### Requests for Modification

NTIA has received a number of requests to consider modifying its policy. Various public broadcast stations have indicated concern because they wish to include in their schedules some individual programs that could be considered "sectarian" under PTFP's regulation as currently interpreted and applied. Accordingly, while our current approach has been ruled constitutionally permissible, we seek to determine whether we can and should modify our policy prospectively to permit some limited amount of sectarian programming or information via Federally-funded projects.

In considering whether the essential thrust of a project is sectarian, NTIA is considering whether to look to the overall purpose of the entire project rather than looking to individual components of the project. Under this approach, if the primary purpose of the

overall project is non-sectarian, a grant applicant would no longer be considered ineligible, nor would a grant recipient be found to be in violation of the grant conditions, due to use of Federal funds for a project with only a limited amount of sectarian programming or information.

Differences among the programs warrant close examination in adopting a new policy. For example, PTFP grantees, as broadcasters, have editorial control over the content of their transmissions, and NECET grantees control the subject matter of the children's programming that is funded, TIIAP grantees may have no or little control over transmissions sent by others via computer networks.<sup>9</sup> On the other hand, NECET funds specific programs and/or series, and TIIAP may also fund the creation of content for transmission over interactive networks, rather than facilities only, as with PTFP. While the current "bright-line" approach is applied to all three programs alike, we will examine the impact of the programs' differences on proposals to modify our current approach and allow a limited amount of sectarian programming or information.

We also recognize that the proposed modification to our current approach, or any other alternative approach, must pass muster under the First Amendment of the U.S. Constitution.<sup>10</sup> Therefore, NTIA is providing an opportunity for interested parties to comment on the following issues: (1) Whether allowing a limited amount of sectarian programming to be broadcast using PTFP-funded equipment, a limited amount of sectarian material to be included in a children's program produced using NECET funds, or a limited amount of sectarian information to be transmitted electronically over a network using TIIAP-funded facilities would be permissible under the First Amendment, if so whether there are sound policy reasons for such an approach, and what implementation issues are raised; (2) whether any other alternatives to NTIA's current approach have a sound policy basis and could be adopted consistent with the First Amendment and current jurisprudence, including how such a policy could, as practical and constitutional matters, be implemented and enforced; (3) whether the same policy can and should be applied to all three NTIA grant programs, and if the same policy cannot

be applied to all three NTIA grant programs, what policy should pertain to each grant program; and (4) whether the current definition of "sectarian" continues to be supportable if NTIA's current policy is modified.

This notice has been determined to be not significant for purposes of Exec. Order No. 12,866.

**Larry Irving,**

*Assistant Secretary for Communications and Information.*

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## DEPARTMENT OF DEFENSE

### Department of the Army

#### Armed Forces Epidemiological Board; Notice of Open Meeting

**AGENCY:** Armed Forces Epidemiological Board, DOD.

**ACTION:** Notice of open meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-462), announcement is made of the following committee meeting:

*Name of Committee:* Armed Forces Epidemiological Board Subcommittee on Injury Prevention Working Group, DOD.

*Date of Meeting:* 05 July 1995.

*Time:* 0930-1600.

*Place:* Great Lakes Naval Training Center, Illinois.

*Proposed Agenda:* Meeting of the Injury Prevention Working Group of the Armed Forces Epidemiological Board.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

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#### Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* 12 July 1995.

*Time of Meeting:* 0900-1700.

<sup>7</sup> See 60 FR 8,156 (February 10, 1995) and 60 FR 15,636 (March 24, 1995), respectively.

<sup>8</sup> *Fordham University v. Brown*, No. 93-2120 at 25 (CCR)(D.D.C. June 29, 1994) (appeal docketed, No. 94-5229, August 22, 1994). PTFP refused a grant to Fordham University's public radio station because it broadcast a Catholic mass every Sunday. In addition, the Supreme Court has before it the case of *Rosenberger v. Rector and Visitors of the University of Virginia*, No. 94-329 (oral arg. held Mar. 1, 1995). The *Rosenberger* case raises the constitutionality of a state-supported university's refusal to make a student activities fund grant to a Christian journal. A decision in the *Rosenberger* case is expected by the end of this Supreme Court term.

<sup>9</sup> Because TIIAP funds facilities used for transmission of information via interactive networks, some transmitted information may be under the control of the grantee and some may be under the control of end users.

<sup>10</sup> U.S. Const. amend. I.