(iv) For contract amendments, unless specifically exempted by the Department, prior to execution of the contract amendment involving contract cost increases exceeding $1,000,000 or contract time extensions of more than 120 days. States will be required to submit contract amendments under these threshold amounts on an exception basis or if the contract amendment is not adequately described and justified in an APD.

* * * * *

(c) * * *

(1) * * *

(i) For an annual APDU for projects with a total acquisition cost of more than $5,000,000, when specifically required by the Department.

(ii) For an ''As Needed APDU'' when changes cause any of the following:

(A) A projected cost increase of $1,000,000 or more.

* * * * *

(d) *Prompt action on requests for prior approval.* The ACF will promptly send to the approving components the items specified in paragraph (b) of this section. If the Department has not provided written approval, disapproval, or a request for information within 60 days of the date of the Departmental letter acknowledging receipt of a State's request, the request will automatically be deemed to have provisionally met the prior approval conditions of paragraph (b) of this section.

3. Section 95.621 is amended by revising paragraph (f)(6) to read as follows:

§ 95.621 APD reviews.

* * * * *

(f) * * *

(6) The State agency shall maintain reports of their biennial ADP system security reviews, together with pertinent supporting documentation, for HHS on-site review.

[FR Doc. 96–19488 Filed 7–30–96; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 96–306]

Implementation of the Equal Acess to Justice Act in Agency Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its rules implementing the Equal Access to Justice Act to conform to and carry out the intent of recent amendments of that Act to permit recovery, in conjunction with adversary adjudications commenced on or after March 29, 1996, of attorney fees, not exceeding $125.00 per hour, and other expenses. In addition, such an award is permitted when the demand of the Commission for relief is substantially in excess of the decision in an adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Finally, a small entity as defined in 5 U.S.C. 601 is declared to be an eligible party for such relief.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: John I. Riffer, Office of General Counsel, (202) 418–1756.

SUPPLEMENTARY INFORMATION:

Adopted: July 15, 1996.
Released: July 18, 1996.

1. By this Order, we amend our rules implementing the Equal Access to Justice Act (EAJA) for Commission proceedings in conformance with recent amendments of that Act adopted as part of the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996).

2. The pertinent provisions of the Contract with America Advancement Act of 1996 amend the EAJA to permit recovery, in conjunction with adversary adjudications commenced on or after March 29, 1996, of attorney fees, not exceeding $125.00 per hour, and other expenses. In addition, the legislation provides for such an award when the demand of the Commission for relief is substantially in excess of the decision in an adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Finally, the statute establishes that a small entity as defined in 5 U.S.C. 601 is an eligible party for such relief. The revised rules, as set forth below, simply incorporate the changes in the EAJA and make those changes applicable to Commission proceedings. These changes merely reiterate the specific terms of the statute and do not involve any discretionary action. Under these circumstances, this action comes within the ''good cause'' exemptions of the Administrative Procedure Act, 5 U.S.C. 553(b)(B) and 553(d), and the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.

3. Accordingly, it is ordered, That, effective July 31, 1996, part 1 is amended as set forth below.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Federal Communications Commission.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rule Changes

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. The second sentence of § 1.1501 is revised to read as follows:

§ 1.1501 Purpose of these rules.

* * * An eligible party may receive an award when it prevails over the Commission, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust, or when the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. * * *

3. Section 1.1502 is revised to read as follows:

§ 1.1502 When the EAJA applies.

The EAJA applies to any adversary adjudication pending or commenced before the Commission on or after August 5, 1985. The provisions of § 1.1505(b) apply to any adversary adjudications commenced on or after March 29, 1996.

4. Section 1.1504 is amended by removing the period at the end of paragraph (b)(5), adding in its place a semicolon, and adding a new paragraph (b)(6) to read as follows:

§ 1.1504 Eligibility of applicants.

* * * * *

(6) For purposes of § 1.1505(b), a small entity as defined in 5 U.S.C. 601.

* * * * *

5. Section 1.1505 is revised to read as follows:

§ 1.1505 Standards for awards.

(a) A prevailing party may receive an award for fees and expenses incurred in connection either with an adversary adjudication, or with a significant and discrete substantive portion of an adversary adjudication in which the party has prevailed over the position of the Commission.

(1) The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based.

(2) An award will be reduced or denied if the Commission's position was substantially justified in law and fact, if special circumstances make an award unjust, or if the prevailing party unduly or unreasonably protracted the adversary adjudication.

(b) If, in an adversary adjudication arising from a Commission action to enforce a party's compliance with a statutory or regulatory requirement, the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with that decision, under the facts and circumstances of the case, the party shall be awarded the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The ''demand'' of the Commission means the express demand which led to the adversary adjudication, but it does not include a recitation by the Commission of the maximum statutory penalty in the administrative complaint, or elsewhere when accompanied by an express demand for a lesser amount.

(c) The burden of proof that an award should not be made is on the appropriate Bureau (see § 1.21) whose representative shall be called ''Bureau counsel'' in this subpart K.

6. The first sentence of § 1.1506(b) is revised to read as follows:

§ 1.1506 Allowable fees and expenses.

* * * * *

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00, or for adversary adjudications commenced on or after March 29, 1996, $125.00, per hour. * * *

* * * * *

§ 1.1507 [Amended]

7. The first sentence of § 1.1507(a) is amended by removing the word ''attorney's'' and adding in its place the word ''attorneys'' and by removing ''$75'' and adding in its place ''$125.00.''

§ 1.1508 [Amended]

8. The first sentence of § 1.1508 is revised by removing the word ''for'' and adding in its place the word ''or.''

9. Section 1.1511 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 1.1511 Contents of application.

(a) An application for an award of fees and expenses under EAJA shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified; or

(2) Show that the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application shall also include a declaration that the applicant is a small entity as defined in 5 U.S.C. 601 or a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit the statement concerning its net worth if:

* * * * *

10. The first and second sentence of § 1.1513 are revised to read as follows:

§ 1.1513 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. * * *

11. Section 1.1514 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.1514 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, or when the demand of the Commission is substantially in excess of the decision in the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

* * * * *

(c) For purposes of this rule, *final disposition* means the later of

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an Administrative Law Judge becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Commission's order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such petition could have been filed;

(4) Issuance of a final order by the Commission or any other final resolution of a proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for reconsideration, or to a petition for judicial review; or

(5) Completion of judicial action on the underlying controversy and any subsequent Commission action pursuant to judicial mandate.

§ 1.1524 [Amended]

12. The first sentence of § 1.1524 is amended by removing the word ''often'' and adding in its place the word ''after.''

13. Section 1.1526(a) is revised to read as follows:

§ 1.1526 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Bureau counsel, or on his or her own initiative, the Administrative Law Judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than excessive demand or substantial justification, an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the

agency embodied an excessive demand or was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

* * * * *

14. Section 1.1527 is revised to read as follows:

§ 1.1527 Decision.

The Administrative Law Judge shall issue an initial decision on the application as soon as possible after completion of proceedings on the application. The decision shall include written findings and conclusions regarding the applicant's eligibility and whether the applicant was a prevailing party or whether the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the adversary adjudication, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's position substantially justified, whether the applicant unduly protracted the proceedings, committed a willful violation of law, or otherwise acted in bad faith, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1.1528 [Amended]

15. The first sentence of § 1.1528 is amended by removing the word ''fee.''

[FR Doc. 96–19500 Filed 7–30–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

[DFARS Case 96–D304]

Defense Federal Acquisition Regulation Supplement; Comprehensive Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has amended the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect revisions made to the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. This action was subject to Office of Management and Budget review under Executive Order 12866.

DATES: Effective Date: July 31, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 30, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D304 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 219.7 and the clause at 252.219–7004 to reflect revisions made to the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. The revisions to the test program implement Section 811 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106). The revised test plan is published elsewhere in this issue of the Federal Register.

This rule also contains editorial revisions to reflect changes to Part 19 of the Federal Acquisition Regulation, published as Item V of Federal Acquisition Circular 90–32 on September 18, 1995 (60 FR 48206).

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because small businesses are exempt from subcontracting plan requirements, and the rule does not change the contractor's obligation to maximize subcontracting opportunities for small business concerns. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 96–D304 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose any information collection requirements which require approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment. This interim DFARS rule reflects changes to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, as required by Section 811 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106). Section 811, which amends requirements that contractors must meet to participate in the test program, was effective upon enactment on February 10, 1996. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulation Council.

Therefore, 48 CFR Parts 219 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Part 219 heading is revised to read as follows:

PART 219—SMALL BUSINESS PROGRAMS

3. Section 219.702 is amended by revising the introductory text of paragraph (a) to read as follows:

219.702 Statutory and requirements.

(a) Section 834 of Public Law 101–189, as amended, requires the DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns.

* * * * *