on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801*et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.589 is amended as follows:

■ a. In the table to paragraph (a)(1) by revising the entry for ''Almond, hulls'' and alphabetically adding commodities.

■ b. In the table to paragraph (d) by revising the entry ''Vegetable, leafy, group 4, except lettuce''.

§ 180.589 Boscalid; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Almond, hulls	17
* * *	* *
Banana, import[1]	0.20
* * *	* *
Celery	45
* * *	* *
Spinach	60
* * *	* *

[1] No US registration as of January 31, 2006.

* * * * *

(d)* * *

Commodity	Parts per million
* * *	* *
Vegetable, leafy, group 4, except lettuce, celery and spinach	1.0
* * *	* *

[FR Doc. 06–1170 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1094–AA49

Implementation of the Equal Access to Justice Act in Agency Proceedings

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending its regulations that implement the Equal Access to Justice Act to bring them up to date with amendments to the statute that have been enacted since 1983.

DATES: *Effective Date:* February 8, 2006.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203, Phone 703–235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

OHA published a proposed rule on October 5, 2005, to update its regulations that implement the Equal Access to Justice Act (EAJA), 5 U.S.C. 504 (2000). 70 FR 58167–58175 (October 5, 2005). Those regulations were first promulgated in 1983. 48 FR 17596 (April 25, 1983). A section-by-section analysis of the proposed regulations was provided. 70 FR 58168–58170 (October 5, 2005).

We received one comment on the proposed rule, from Hobbs, Straus, Dean & Walker, LLP, on behalf of client Indian tribes and organizations. It ''applaud[ed]'' the proposed changes and recommended that they be made applicable to cases pending before OHA on the date the regulations become effective. We accept this suggestion. Although we proposed to omit section 4.604 (''Applicability to Department of the Interior proceedings'') of the 1983 regulations because it is no longer needed, 70 FR 58169 (October 5, 2005), we did not intend that the 1983 regulations would apply to cases pending when the new regulations became effective. We have added paragraph (b) to section 4.601 of the regulations to make our intention explicit that, when the new regulations become effective, they will apply to any EAJA application pending then or filed subsequently.

We explained in the proposed rule that we had omitted any reference to fees for ''agents'' in section 4.606 because the Department does not authorize specialized non-attorney practitioners to practice before it. 70 FR 58169 (October 5, 2005). We have added a new paragraph (a) to section 4.606 to specify that an award is limited to the fees and expenses of attorneys and expert witnesses.

The regulations are otherwise adopted as proposed.

II. Procedural Requirements

A. Decision To Make the Rule Effective Upon Publication

The Department has determined that this rule should be effective upon publication because it relieves restrictions in OHA's regulations that are inconsistent with current provisions of EAJA and because good cause exists to make the revised regulations immediately available to parties in pending cases. 5 U.S.C. 553(d)(1), (3). Delaying the effective date by 30 days, as normally required by 5 U.S.C. 553(d), would mean that current applicants for an award of attorney fees and expenses under EAJA might be subject to these inconsistent restrictions, *e.g.*, in the types of proceedings covered or in the maximum rate payable.

B. Regulatory Planning and Review (E.O. 12688)

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget (OMB) has determined that this is not a significant rule. OMB has not reviewed the rule under Executive Order 12866.

1. This rule will not have an annual economic effect of $100 million or more or adversely affect in a material way an economic sector, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. A cost-benefit and economic analysis is not required. These amended regulations will have virtually no effect on the economy because they merely implement amendments to EAJA that are already in effect.

2. This rule will not create inconsistencies with or interfere with other agencies' actions, since all agencies are subject to EAJA and its amendments.

3. This rule will not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These regulations have to do only with the procedures implementing EAJA, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule does not raise novel legal or policy issues. The regulations will merely implement amendments to EAJA that are already in effect.

C. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulations merely implement amendments to EAJA that are already in effect. A Small Entity Compliance Guide is not required.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Will not have an annual effect on the economy of $100 million or more. The regulations merely implement amendments to EAJA that are already in effect. They should have no effect on the economy.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, will not affect costs or prices for citizens, individual industries, or government agencies.

3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we find that:

1. This rule will not have a significant or unique effect on state, local, or tribal governments or the private sector. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, will neither uniquely nor significantly affect these governments.

2. This rule will not produce an unfunded Federal mandate of $100 million or more on state, local, or tribal governments, in the aggregate, or the private sector in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1532 is not required.

F. Takings (E.O. 12630)

In accordance with Executive Order 12630, we find that the rule will not have significant takings implications. A takings implication assessment is not required. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, should have no effect on property rights.

G. Federalism (E.O. 13132)

In accordance with Executive Order 13132, we find that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on states from updating OHA's procedural regulations implementing EAJA, based on amendments to that Act. A Federalism Assessment is not required.

H. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Because these regulations will merely implement amendments to EAJA that are already in effect, they will not burden either administrative or judicial tribunals.

I. Paperwork Reduction Act

This rule will not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I has not been prepared and has not been approved by the Office of Policy Analysis. The rule is an administrative and procedural rule that simply updates existing procedural regulations implementing EAJA, based on amendments to that Act.

J. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a ''categorical exclusion'' as a category of actions that

do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that this rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes ''[p]olicies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature * * *.'' In addition, the Department has determined that none of the extraordinary circumstances listed in 516 DM 2, Appendix 2, applies to the rule. The rule is an administrative and procedural rule that simply updates existing procedural regulations implementing EAJA, based on amendments to that Act. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

K. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of these regulations on Federally recognized Indian tribes and has determined that there are no potential effects. These regulations will not affect Indian trust resources; they will merely implement amendments to EAJA that are already in effect.

L. Effects on the Nation's Energy Supply (E.O. 13211)

In accordance with Executive Order 13211, we find that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, will not affect energy supply or consumption.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure; Claims; Equal access to justice.

Dated: February 1, 2006.

R. Thomas Weimer,

Assistant Secretary—Policy, Management and Budget.

■ For the reasons set forth in the preamble, part 4, subpart F, of title 43 of the Code of Federal Regulations is revised as set forth below:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Subpart F—Implementation of the Equal Access to Justice Act in Agency Proceedings

General Provisions

Sec.

Information Required from Applicants

Procedures for Considering Applications

Authority: 5 U.S.C. 504(c)(1).

General Provisions

§ 4.601 What is the purpose of this subpart?

(a) The Equal Access to Justice Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before the Department of the Interior. Under the Act, an eligible party may receive an award when it prevails over the Department or other agency, unless the position of the Department or other agency was substantially justified or special circumstances make an award unjust. The regulations in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Office of Hearings and Appeals will use in ruling on those applications.

(b) The regulations in this subpart apply to any application for an award of attorney fees and other expenses that is:

(1) Pending on February 8, 2006; or

(2) Filed on or after February 8, 2006.

§ 4.602 What definitions apply to this subpart?

As used in this subpart:

Act means section 203(a)(1) of the Equal Access to Justice Act, Public Law 96–481, 5 U.S.C. 504, as amended.

Adjudicative officer means the deciding official(s) who presided at the adversary adjudication, or any successor official(s) assigned to decide the application.

Adversary adjudication means any of the following:

(1) An adjudication under 5 U.S.C. 554 in which the position of the Department or other agency is presented by an attorney or other representative who enters an appearance and participates in the proceeding;

(2) An appeal of a decision of a contracting officer made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Interior Board of Contract Appeals pursuant to section 8 of that Act (41 U.S.C. 607);

(3) Any hearing conducted under section 6103(a) of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.); or

(4) Any hearing or appeal involving the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

Affiliate means:

(1) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant; or

(2) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest.

Demand means the express demand of the Department or other agency that led to the adversary adjudication, but does not include a recitation by the Department or other agency of the maximum statutory penalty:

(1) In the administrative complaint; or

(2) Elsewhere when accompanied by an express demand for a lesser amount.

Department means the Department of the Interior or the component of the Department that is a party to the adversary adjudication (e.g., Bureau of Land Management).

Final disposition means the date on which either of the following becomes final and unappealable, both within the Department and to the courts:

(1) A decision or order disposing of the merits of the proceeding; or

(2) Any other complete resolution of the proceeding, such as a settlement or voluntary dismissal.

Other agency means any agency of the United States or the component of the agency that is a party to the adversary adjudication before the Office of Hearings and Appeals, other than the Department of the Interior and its components.

Party means a party as defined in 5 U.S.C. 551(3).

Position of the Department or other agency means:

(1) The position taken by the Department or other agency in the adversary adjudication; and

(2) The action or failure to act by the Department or other agency upon which the adversary adjudication is based.

Proceeding means an adversary adjudication as defined in this section.

You means a party to an adversary adjudication.

§ 4.603 What proceedings are covered by this subpart?

(a) The Act applies to adversary adjudications conducted by the Office of Hearings and Appeals, including proceedings to modify, suspend, or revoke licenses if they are otherwise adversary adjudications.

(b) The Act does not apply to:

(1) Other hearings and appeals conducted by the Office of Hearings and Appeals, even if the Department uses procedures comparable to those in 5 U.S.C. 554 in such cases;

(2) Any proceeding in which the Department or other agency may prescribe a lawful present or future rate; or

(3) Proceedings to grant or renew licenses.

(c) If a hearing or appeal includes both matters covered by the Act and matters excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 4.604 When am I eligible for an award?

(a) To be eligible for an award of attorney fees and other expenses under the Act, you must:

(1) Be a party to the adversary adjudication for which you seek an award; and

(2) Show that you meet all conditions of eligibility in this section.

(b) You are an eligible applicant if you are any of the following:

(1) An individual with a net worth of $2 million or less;

(2) The sole owner of an unincorporated business who has a net worth of $7 million or less, including both personal and business interests, and 500 or fewer employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with 500 or fewer employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees;

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of $7 million or less and 500 or fewer employees; or

(6) For purposes of § 4.605(c), a small entity as defined in 5 U.S.C. 601(6).

(c) For the purpose of eligibility, your net worth and the number of your employees must be determined as of the date the proceeding was initiated.

(1) Your employees include all persons who regularly perform services for remuneration under your direction and control.

(2) Part-time employees must be included on a proportional basis.

(d) You are considered an ''individual'' rather than a ''sole owner of an unincorporated business'' if:

(1) You own an unincorporated business; and

(2) The issues on which you prevail are related primarily to personal interests rather than to business interests.

(e) To determine your eligibility, your net worth and the number of your employees must be aggregated with the net worth and the number of employees of all of your affiliates. However, this paragraph does not apply if the adjudicative officer determines that aggregation would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities.

(f) The adjudicative officer may determine that financial relationships other than those described in the definition of ''affiliate'' in § 4.602 constitute special circumstances that would make an award unjust.

(g) If you participate in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible, you are not eligible for an award.

§ 4.605 Under what circumstances may I receive an award?

(a) You may receive an award for your fees and expenses in connection with a proceeding if:

(1) You prevailed in the proceeding or in a significant and discrete substantive portion of a proceeding; and

(2) The position of the Department or other agency over which you prevailed was not substantially justified. The Department or other agency has the burden of proving that its position was substantially justified.

(b) An award will be reduced or denied if you have unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) This paragraph applies to an adversary adjudication arising from an action by the Department or other agency to enforce compliance with a statutory or regulatory requirement:

(1) If the demand of the Department or other agency in the action is excessive and unreasonable compared with the adjudicative officer's decision, then the adjudicative officer must award you your fees and expenses related to defending against the excessive demand, unless:

(i) You have committed a willful violation of law;

(ii) You have acted in bad faith; or

(iii) Special circumstances make an award unjust.

(2) Fees and expenses awarded under this paragraph will be paid only if appropriations to cover the payment have been provided in advance.

§ 4.606 What fees and expenses may be allowed?

(a) If the criteria in §§ 4.603 through 4.605 are met, you may receive an award under this subpart only for the fees and expenses of your attorney(s) and expert witness(es).

(b) The adjudicative officer must base an award on rates customarily charged by persons engaged in the business of acting as attorneys and expert witnesses, even if the services were made available to you without charge or at a reduced rate.

(1) The maximum that can be awarded for the fee of an attorney is $125 per hour.

(2) The maximum that can be awarded for the fee of an expert witness is the highest rate at which the Department or other agency pays expert witnesses with similar expertise.

(3) An award may also include the reasonable expenses of the attorney or expert witness as a separate item, if the attorney or expert witness ordinarily charges clients separately for those expenses.

(c) The adjudicative officer may award only reasonable fees and expenses under this subpart. In determining the reasonableness of the fee for an attorney or expert witness, the adjudicative officer must consider the following:

(1) If the attorney or expert witness is in private practice, his or her customary fee for similar services;

(2) If the attorney or expert witness is your employee, the fully allocated cost of the services;

(3) The prevailing rate for similar services in the community in which the attorney or expert witness ordinarily performs services;

(4) The time actually spent in representing you in the proceeding;

(5) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(6) Any other factors that bear on the value of the services provided.

(d) The adjudicative officer may award the reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on your behalf to the extent that:

(1) The charge for the service does not exceed the prevailing rate for similar services; and

(2) The study or other matter was necessary for preparation of your case.

Information Required From Applicants

§ 4.610 What information must my application for an award contain?

(a) Your application for an award of fees and expenses under the Act must:

(1) Identify you;

(2) Identify the proceeding for which an award is sought;

(3) Show that you have prevailed;

(4) Specify the position of the Department or other agency that you allege was not substantially justified;

(5) Unless you are an individual, state the number of your employees and those of all your affiliates, and describe the type and purpose of your organization or business;

(6) State the amount of fees and expenses for which you seek an award;

(7) Be signed by you or your authorized officer or attorney;

(8) Contain or be accompanied by a written verification under oath or under penalty of perjury that the information in the application is true and correct; and

(9) Unless one of the exceptions in paragraph (b) of this section applies, include a statement that:

(i) Your net worth does not exceed $2 million, if you are an individual; or

(ii) Your net worth and that of all your affiliates does not exceed $7 million in the aggregate, if you are not an individual.

(b) You do not have to submit the statement of net worth required by paragraph (a)(9) of this section if you do any of the following:

(1) Attach a copy of a ruling by the Internal Revenue Service that you qualify as a tax-exempt organization described in 26 U.S.C. 501(c)(3);

(2) Attach a statement describing the basis for your belief that you qualify under 26 U.S.C. 501(c)(3), if you are a tax-exempt organization that is not required to obtain a ruling from the Internal Revenue Service on your exempt status;

(3) State that you are a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)); or

(4) Seek fees and expenses under § 4.605(c) and provide information demonstrating that you qualify as a small entity under 5 U.S.C. 601.

(c) You may also include in your application any other matters that you wish the adjudicative officer to consider in determining whether and in what amount an award should be made.

§ 4.611 What information must I include in my net worth exhibit?

(a) Unless you meet one of the criteria in § 4.610(b), you must file with your application a net worth exhibit that meets the requirements of this section. The adjudicative officer may also require that you file additional information to determine your eligibility for an award.

(b) The exhibit must show your net worth and that of any affiliates when the proceeding was initiated. The exhibit may be in any form that:

(1) Provides full disclosure of your and your affiliates' assets and liabilities; and

(2) Is sufficient to determine whether you qualify under the standards in this subpart.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, if you object to public disclosure of information in any portion of the exhibit and believe there are legal grounds for withholding it from disclosure, you may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion to withhold the information from public disclosure.

(1) The motion must describe the information sought to be withheld and explain, in detail:

(i) Why it falls within one or more of the exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b);

(ii) Why public disclosure of the information would adversely affect you; and

(iii) Why disclosure is not required in the public interest.

(2) You must serve the net worth exhibit and motion on counsel representing the agency against which you seek an award, but you are not required to serve it on any other party to the proceeding.

(3) If the adjudicative officer finds that the information should not be withheld from disclosure, it must be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit will be disposed of in accordance with the Department's procedures under the Freedom of Information Act, 43 CFR 2.7 *et seq.*

§ 4.612 What documentation of fees and expenses must I provide?

(a) Your application must be accompanied by full documentation of the fees and expenses for which you seek an award, including the cost of any study, analysis, engineering report, test, project, or similar matter.

(b) You must submit a separate itemized statement for each professional firm or individual whose services are covered by the application, showing:

(1) The hours spent in connection with the proceeding by each individual;

(2) A description of the specific services performed;

(3) The rates at which each fee has been computed;

(4) Any expenses for which reimbursement is sought;

(5) The total amount claimed; and

(6) The total amount paid or payable by you or by any other person or entity for the services provided.

(c) The adjudicative officer may require you to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed, in accordance with § 4.624.

§ 4.613 When may I file an application for an award?

(a) You may file an application whenever you have prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding. You must file the application no later than 30 days after the final disposition of the proceeding.

(b) Consideration of an application for an award must be stayed if:

(1) Any party seeks review or reconsideration of a decision in a proceeding in which you believe you have prevailed; or

(2) The Department or other agency (or the United States on its behalf) appeals an adversary adjudication to a court.

(c) A stay under paragraph (b)(1) of this section will continue until there has been a final disposition of the review or reconsideration of the decision. A stay under paragraph (b)(2) of this section will continue until either:

(1) A final and unreviewable decision is rendered by the court on the appeal; or

(2) The underlying merits of the case have been finally determined.

Procedures for Considering Applications

§ 4.620 How must I file and serve documents?

You must file and serve all documents related to an application for an award under this subpart on all other parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 4.611(c) for confidential information. The Department or other agency and all other parties must likewise file and serve their pleadings and related documents on you and on each other, in the same manner as other pleadings in the proceeding.

§ 4.621 When may the Department or other agency file an answer?

(a) Within 30 days after service of an application, the Department or other agency against which an award is sought may file an answer to the application. However, if consideration of an application has been stayed under § 4.613(b), the answer is due within 30 days after the final disposition of the review or reconsideration of the decision.

(1) Except as provided in paragraph (a)(2) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested. In such case, the adjudicative officer will issue a decision in accordance with § 4.625 based on the record before him or her.

(2) Failure to file an answer within the 30-day period will not be treated as a consent to the award requested if the Department or other agency either:

(i) Requests an extension of time for filing; or

(ii) Files a statement of intent to negotiate under paragraph (b) of this section.

(b) If the Department or other agency and you believe that the issues in the fee application can be settled, you may jointly file a statement of intent to negotiate a settlement. Filing this statement will extend for an additional 30 days the time for filing an answer, and the adjudicative officer may grant further extensions if you and the agency counsel so request.

(c) The answer must explain in detail any objections to the award requested and identify the facts relied on to support the Department's or other agency's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Department or other agency must include with the answer either supporting affidavits or a request for further proceedings under § 4.624.

§ 4.622 When may I file a reply?

Within 15 days after service of an answer, you may file a reply. If your reply is based on any alleged facts not already in the record of the proceeding, you must include with the reply either supporting affidavits or a request for further proceedings under § 4.624.

§ 4.623 When may other parties file comments?

Any party to a proceeding other than the applicant and the Department or other agency may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in the proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 4.624 When may further proceedings be held?

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, the adjudicative officer may order further proceedings, which will be held only when necessary for full and fair resolution of the issues and will be conducted as promptly as possible.

(b) The adjudicative officer may order further proceedings on his or her own initiative or in response to a request by you or by the Department or other agency. A request for further proceedings under this section must:

(1) Identify the information sought or the disputed issues; and

(2) Explain why the additional proceedings are necessary to resolve the issues.

(c) As to issues other than substantial justification (such as your eligibility or substantiation of fees and expenses), further proceedings under this section may include an informal conference, oral argument, additional written submissions, pertinent discovery, or an evidentiary hearing.

(d) The adjudicative officer will determine whether the position of the Department or other agency was substantially justified based on the administrative record of the adversary adjudication as a whole.

§ 4.625 How will my application be decided?

The adjudicative officer must issue a decision on the application promptly after completion of proceedings on the application. The decision must include written findings and conclusions on all of the following that are relevant to the decision:

(a) Your eligibility and status as a prevailing party;

(b) The amount awarded, and an explanation of the reasons for any difference between the amount requested and the amount awarded;

(c) Whether the position of the Department or other agency was substantially justified;

(d) Whether you unduly protracted the proceedings; and

(e) Whether special circumstances make an award unjust.

§ 4.626 How will an appeal from a decision be handled?

(a) If the adjudicative officer is an administrative law judge, you or the Department or other agency may appeal his or her decision on the application to the appeals board that would have jurisdiction over an appeal involving the merits of the proceeding. The appeal will be subject to the same regulations and procedures that would apply to an appeal involving the merits of the proceeding. The appeals board will issue the final Departmental or other agency decision on the application.

(b) If the adjudicative officer is a panel of appeals board judges, their decision on the application is final for the Department or other agency.

§ 4.627 May I seek judicial review of a final decision?

You may seek judicial review of a final Departmental or other agency decision on an award as provided in 5 U.S.C. 504(c)(2).

§ 4.628 How will I obtain payment of an award?

(a) To obtain payment of an award against the Department or other agency, you must submit:

(1) A copy of the final decision granting the award; and

(2) A certification that no party is seeking review of the underlying decision in the United States courts, or that the process for seeking review of the award has been completed.

(b) If the award is against the Department:

(1) You must submit the material required by paragraph (a) of this section to the following address:

Director, Office of Financial Management, Policy, Management and

Budget, U.S. Department of the Interior, Washington, DC 20240.

(2) Payment will be made by electronic funds transfer whenever possible. A representative of the Department will contact you for the information the Department needs to process the electronic funds transfer.

(c) If the award is against another agency, you must submit the material required by paragraph (a) of this section to the chief financial officer or other disbursing official of that agency. Agency counsel must promptly inform you of the title and address of the appropriate official.

(d) The Department or other agency will pay the amount awarded to you within 60 days of receiving the material required by this section.

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

RIN 3137–AA16

Institute of Museum and Library Services; Technical Amendments To Reflect the New Authorizing Legislation of the Institute of Museum and Library Services

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Final rule.

SUMMARY: The Institute of Museum and Library Services has amended its grants regulations by removing outdated regulations and making certain technical amendments to reflect Congress' reauthorization of the Institute of Museum and Library Services under The Museum and Library Services Act of 2003. The amendments also reorganize certain sections to provide greater clarity for agency applicants and grantees.

EFFECTIVE DATE: February 2, 2006.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street, NW., Ninth Floor, Washington, DC 20036. E-mail: *nweiss@imls.gov.* Telephone: (202) 653–4787. Facsimile: (202) 653–4625.

SUPPLEMENTARY INFORMATION:

I. Technical Amendments and Removal of the Institute's Outdated Regulations

The Institute of Museum and Library Services herein removes outdated regulations and makes minor technical amendments to reflect Congress' reauthorization of the Institute of Museum and Library Services with The Museum and Library Services Act of 2003, Public Law 108–81 (September 25, 2003). These revisions are meant to fulfill the Institute's responsibility to its eligible grant applicants by ensuring that all regulations, policies, and procedures are up-to-date. The regulations removed include regulations relating to programs and requirements no longer in existence at the Institute as a result of both agency practice and The Museum and Library Services Act of 2003. In the interests of economy of administration, and because all of the regulations to be removed are outdated and the technical amendments are minor, they are included in one rulemaking vehicle. The proposed rule was published by the Institute in the **Federal Register** on December 14, 2005. The Institute received no comments suggesting changes to the text of the rule.

II. Matters of Regulatory Procedure

Regulatory Planning and Review (E.O. 12866)

Under Executive Order 12866, the Institute must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rule removes a number of outdated regulations and makes technical amendments to reflect Congress' reauthorization of the Institute of Museum and Library Services under The Museum and Library Services Act of 2003, Public Law 108–81 (September 25, 2003). As such, it does not impose a compliance burden on the economy generally or on any person or entity. Accordingly, this rule is not a ''significant regulatory action'' from an economic standpoint, and it does not otherwise create any inconsistencies or budgetary impacts to any other agency or Federal Program.

Regulatory Flexibility Act

Because this rule removes outdated regulations and make certain technical amendments, the Institute has determined in Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) review that this rule will not have a significant economic impact on a substantial number of small entities because it simply makes technical amendments and removes outdated regulations.

Paperwork Reduction Act

This rule is exempt from the requirements of the Paperwork Reduction Act, since it removes existing outdated regulations and makes only technical amendments to reflect Congress' reauthorization of the Institute of Museum and Library Services under The Museum and Library Services Act of 2003, Public Law 108–81 (September 25, 2003). An OMB form 83–1 is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more as adjusted for inflation) in any one year.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No rights, property or compensation has been, or will be, taken. A takings implication assessment is not required.