(6) The POTW must provide a hard copy of the public notice to the EPA, State, or public upon request.

(b) A POTW that is a member of the National Environmental Performance Track Program may take an alternative approach to the requirements of §§ 403.11 and 403.18 for public notification of modifications to approved pretreatment programs. Under this alternative approach, the following is required:

(1) The POTW must adequately notify the public of the change in public notice procedures;

(2) The POTW must post its public notice of program modifications under §§ 403.11 and 403.18 on a website maintained and managed by the Control Authority; and

(3) The POTW must provide a hard copy of the public notice to the EPA, State, or public upon request.

(c) A POTW that is a member of the National Environmental Performance Track Program may take an alternative approach to submitting its annual report under § 403.12 (i). Under this alternative approach, the following is required:

(1) The POTW must annually post their annual report (§ 403.12(i)) on a website maintained and managed by the Control Authority;

(2) The information must remain accessible as part of the website for at least three years;

(3) The POTW must provide written notice to the Approval Authority within five days of posting the annual report on the website. This notice must include a certification consistent with the certification language provided in 40 CFR 122.22(d) by an official attesting to the accuracy of the submitted information;

(4) Every other year, the POTW must submit a written report to the Approval Authority. The report must include specific information for only those SIUs found to be in significant noncompliance (SNC) during the reporting period instead of a summary of the status of all IU compliance over the reporting period; and

(5) The POTW must provide a written copy of the annual report containing all information currently required under § 403.12(i) to the EPA, State, or public upon request.

(d) A POTW that is a member of the National Environmental Performance Track Program shall prepare and maintain a list of its industrial users meeting the criteria in paragraph (a) of this section. The list shall identify the criteria in paragraph (a) of this section applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination pursuant to § 403.3 (t)(2) that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the Approval Authority pursuant to § 403.9 or as a non-substantial modification pursuant to § 403.18(b)(2). Modifications to the list shall be submitted to the Approval Authority pursuant to § 403.12(i)(1).

[FR Doc. 02–20347 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–7258–2]

Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Revisions to Regulations Requiring Availability of Information for Use of On-Board Diagnostic Systems and Emission-Related Repairs on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks and 2005 and Later Model Year Heavy-Duty Vehicles and Engines Weighing 14,000 Pounds Gross Vehicle Weight or Less; Notice of Document Availability

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, notice of document availability.

SUMMARY: On June 8, 2001, the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (66 FR 30830) proposing revisions to regulations requiring availability of information for use of on-board diagnostic systems (OBD) and emission-related repairs. One of the proposed changes specified that manufacturers comply with SAE Standardized Practice J2534 for ''pass-through reprogramming'' for MY 2003 and later OBD-equipped vehicles with reprogramming capabilities. At the time the proposal was issued in June 2001, SAE J2534 had not yet been finalized. In the proposal, EPA committed to issuing a notice of document availability in the **Federal Register** to announce that SAE J2534 had been finalized.

SAE J2534 was finalized in February of 2002 and is now available for inspection only in EPA Air Docket A–2000–49 (*see* **ADDRESSES**). In addition, interested parties can purchase this document directly from the Society of Automotive Engineers (SAE) (*see* **ADDRESSES**).

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–2000–49. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7549 and the facsimile number is (202) 260–4400 and the Internet e-mail is *a-and-r-docket@epamail.epa.gov.* A reasonable fee may be charged by EPA for copying docket material.

SAE J2534 can be purchased from the Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096–0001 or at *www.sae.org.*

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105, Telephone (734) 214–4288, or Internet e-mail at *pugliese.holly@epa.gov.*

Dated: August 5, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–20451 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 13

Implementation of the Equal Access to Justice Act in Agency Proceedings

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would extend the coverage of the Department's regulation implementing the Equal Access to Justice Act to include adversary administrative adjudications commenced after September 30, 1984. It would also amend the eligibility criteria and certain other aspects of that regulation to conform with amendments to the Act. Finally, it would reflect the separation of the Social Security Administration from HHS, and that component's establishment as an independent agency in 1995.

DATE: HHS will accept comments on this proposed rule through October 12, 2002. The Office of Management and Budget will accept comments on the amendments to §§ 13.10 through 13.12 through the same date.

ADDRESSES: Comments must be in writing. Please send them to: Katherine M. Drews, Acting Associate General

Counsel, Business and Administrative Law Division, Room 5362, 330 Independence Ave., SW., Cohen Building, Room 5362, Washington, DC 20201. Please send comments on the amendments to subpart B to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HHS.

FOR FURTHER INFORMATION CONTACT: Katherine M. Drews, Acting Associate General Counsel. Telephone: (202) 619–0150.

SUPPLEMENTARY INFORMATION:

Background

The Equal Access to Justice Act (EAJA), enacted in 1980, requires the Government to pay attorney fees to parties prevailing against it in litigation where the Government's position is not substantially justified. The Act applies to certain types of adversary administrative proceedings and to certain court litigation where attorney fees are not otherwise available.

The EAJA requires each agency to issue rules implementing the Act as it applies to administrative proceedings. The current rule of the Department of Health and Human Services (HHS) was published on October 4, 1983, and is codified at 45 CFR part 13. (All citations below to section 13 are to sections of 45 CFR part 13.)

The original Act had a sunset provision, causing it to expiring on September 30, 1984 (although it would continue to cover proceedings pending on that date). The HHS regulation presently in effect contains a similar sunset provision. A subsequent statutory change eliminated the sunset provision, revised the eligibility criteria for parties, and amended the Act in certain other respects. Public Law No. 99–80, 99 Stat. 183 (1985).

HHS published a Notice of Proposed Rulemaking to revise its EAJA regulation on June 19, 1987 (52 FR 23311). Pursuant to the notice, we received only one set of comments, from the Office of the Chairman of the Administrative Conference of the United States (ACUS), an agency that no longer exists. Since then, the Social Security Administration, certain proceedings of which were addressed in the proposed rule, became an independent agency. *See* Pub. L. No. 103–296, § 101 (codified at 42 U.S.C. 901). Also since than, the EAJA has been amended by section 231 of the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996). Because of those changes because substantial time has passed since the initial Notice of Proposed Rulemaking, we are publishing a new Notice of Proposed Rulemaking; this notice replaces the earlier notice. We considered the ACUS comments carefully, and this notice reflects some of those comments. This notice also reflects the changes effected by Pub. L. 104–121. Since the statutory change, we have been processing fee applications under the current regulation except to the extent that the amended statute requires changes.

This proposed rule would amend the existing rule in the following ways:

1. The Act provided for fee shifting only where the agency's position was not substantially justified. Pub. L.; 1–4–121 added a provision of fee shifting where the agency's demand was substantially in excess of the ultimate decision and was unreasonable when compared with decision. The proposed regulation would amend section 13.1, and would revise sections 13.5 and 13.10 (a)(2), to incorporate this new basis for fee awards. Pub. L. 104–121 also added a new category of party that would be eligible for a fee award, though only for awards made based on this excessive and unreasonable demand criterion. The proposed regulation would amend sections 13.4; 13.10(a)(3), (5); and 13.11(a) to the same effect.

2. The Act included a sunset clause, section 203(c), providing that the Act would not apply to administrative adjudications initiated after September 30, 1984. HHS's regulation includes a similar provisions, 45 CFR 13.2. Section 6(b)(1) of Pub. L. 99–80 repealed the sunset provision in the Act. The proposed regulation would similarly amend Section 13.2.

3. Section 13.3 generally provides that we have listed the covered proceedings in the Appendix to the rule. We propose revision this section to provide for situations involving proceedings not listed in the Appendix. The new provision would automatically cover proceedings where the procedural rights are incorporated by reference from certain statutes that we have already determined invoke the Act. It would also allow a party in any other administrative proceeding to file an EAJA application and claim coverage, and have the issue resolved in the resulting proceeding on the fee application.

4. Section 1(c)(1) of Pub. L. 99–80 increased the net worth limitations on parties eligible to recover fees under EAJA. It also added local government units to the categories of eligible entities. Section 7 of Pub. L. 99–80 makes these expanded eligibility criteria applicable to proceedings pending on or after August 5, 1985 (the effective date of that statute), and to proceedings commenced after September 30, 1984 (the sunset date of the original EAJA), even if finally disposed of before August 5, 1985. The proposed regulation would amend Sections 13.3(b) and 13.10(a)(5) to make the same changes with respect to the same categories of cases. The passage of time has made it unnecessary to provide explicitly for older cases. However, for proceedings commenced before October 1, 1984, and finally decided before August 5, 1985, the older eligibility criteria would govern, as follows: Individuals with a net worth of not more than $1 million; sole owners of unincorporated businesses if the owner has a net worth of not more than $5 million, including both personal and business interests, and if the business has no more than 500 employees; and all other partnerships, corporations, associations, or public or private organizations with a net worth of not more than $5 million and with not more than 500 employees.

5. Section 1(c)(3) of Pub. L. 99–80 defines the ''position of the agency'' to include the action or omission that was the basis for the proceeding, and section 1(a)(1) restricts the analysis of whether that position was substantially justified to the administrative record. The proposed regulation would revise sections 13.5(a) and 13.10(a)(2) likewise, and it would also amend section 13.25(a) to the same end.

6. We no longer take the position that the applicant must have actually paid (or must have actually become obligated to pay) the attorney fees and expenses in order to recover those fees and expenses under EAJA. Accordingly, the proposed regulation would delete the sentence in section 13.6(a) that stated this position.

7. Pub. L. 104–121 increased the allowable hourly rate for fees from $75 to $125. The proposed regulation would amend section 13.6(b) to the same effect.

8. The proposed regulation would amend section 13.12(d) to make clear that the adjudicative officer may require further substantiation of fees as well as expenses.

9. The EAJA and the HHS regulation require the prevailing party to file the fee application within 30 days of the final disposition of the administrative proceeding. 5 U.S.C. 504(a)(2); 45 CFR 13.22(a). Section 7(b) of Pub. L. 99–80 provides that, in cases commenced after September 30, 1984 (the sunset date of the original EAJA), and finally disposed of before August 5, 1985 (the effective date of the new law), this 30-day period runs from the latter date. The proposed

regulation would amend section 13.22(a) to this effect.

10. Section 1(B) of Pub. L. 99–80 provides that when the Government appeals the merits of a proceeding, any fee application is stayed until the appeal is finally resolved, and it specifies that a court decision is deemed to finally dispose of such an appeal only when that decision is final and unreviewable. There is a similar, but more inclusive, stay provision in section 13.22(d). The proposed regulation would amend sections 13.22(b) and (d) to conform with the statute. The proposed regulation would also revise section 13.23(a) to make clear that, when a fee proceeding is stayed in these circumstances, the agency need answer the fee application only after the final disposition of the underlying controversy.

11. The proposed rule would revise section 13.27 to designate as the review authority on fee decisions the same person or component that would have jurisdiction over an appeal of the merits of the adjudication. It would eliminate as unnecessary the requirement that the appellate authority review fee awards where neither party appeals. It would also revise section 13.27(b) to provide for cross-exceptions to be filed from an initial decision on a fee application.

12. Appendix A to the regulation lists the HHS proceedings that are covered by the regulation if the agency's litigating party enters an appearance and participates. The proposed regulation would revise the appendix to correct descriptions of categories of proceedings, to correct statutory citations for categories of proceedings, to add regulatory citations for categories, and to add new categories of proceedings that are covered.

13. The legislative history of Pub. L. 99–80 contains several references to the Social Security Administration Representation Project, under which SSA representatives participated in certain disability hearings involving Social Security benefits or Supplemental Security Income benefits. That project was discontinued in 1987. *See* 52 FR 17285 (May 7, 1987). We have taken the position that proceedings in that project were not within the scope of the EAJA as originally enacted, and thus Appendix A to the current regulation does not list them. The legislative history of Pub. L. 99–80 evidences the intent of some members of Congress that the EAJA as revised and amended should apply to cases in this project. As noted above, the project has been discontinued, and, in any case, the Social Security Administration is now an independent agency. However, we have determined that the EAJA should be applied to other HHS proceedings for which the statutory entitlement to a hearing rests either on a statute tracking the language of the provision underlying the disability hearings (section 205(b) of the Social Security Act, 42 U.S.C. 405(b)), or on a statute incorporating that provision by reference. Thus, the proposed regulation would add these proceedings to Appendix A.

Economic Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 (Federalism).

Executive Order 12866 (the Order) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant affects ($100 million or more in any 1 year).

We have determined that the proposed rule is consistent with the principles set forth in the Order, and we also find that the proposed rule would not have economically significant effects. In addition, the rule is not a major rule as defined at 5 USC 804(2). In accordance with the provisions of the Order, this regulation was reviewed by the Office of Management and Budget.

The Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The basis for the Secretary's certification is that, although small entities are eligible to apply for awards, the regulation will apply only to a small number of the proceedings held by the Department each year, and, in many of those proceedings, there will not be any fee award because the Department's position will be substantially justified or its demand will be reasonable. Also, most of the changes reflected in the regulation are mandated by the statue, so it is the statute rather than the regulation that would have any impact. Finally, the procedures prescribed by the regulation are no more onerous than those imposed by the current rule. In sum, the regulation will have negligible effect on such entities.

The Secretary states, in accordance with section 3(c) of Executive Order 12988 (Civil Justice Reform), that the Department has reviewed this regulatory proposal in light of section 3 of that Order and that the proposal meets the applicable standards in subsections (a) and (b) of that Order.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. As noted above, we find that this proposal would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive order 13132, and we find that there would be no substantial direct effect on the States, on the relationship between the States and the national Government, or on the distribution of power between the levels of government on our federal system. Thus, a federalism impact statement is not required.

Information Collection

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. Subpart B of the proposed 45 CFR part 13 contains collection of information requirements. These collection of information requirements are necessary to carry out the provisions of the EAJA. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

—Whether the information collection is necessary and useful to carry out the proper functions of the agency;
—The accuracy of the agency's estimate of the information collection burden;
—The quality, utility, and clarity of the information to be collected; and
—Recommendations to minimize the information collection burden on the

affected public, including automated collection techniques.

Section 13.10 of the proposed rule contains the requirements for the application for an award of fees and expenses. The burden associated with these requirements is the time and effort necessary for an applicant to prepare and submit the application. On an annual basis it is estimated that it will take 10 applicants 20 hours each to prepare and submit an application. The total annual burden associated with this requirement is 200 hours.

Section 13.11 of the proposed rule contains the requirements for the submission of the applicant's net worth exhibits. The burden associated with these requirements is the time and effort necessary for an applicant to prepare and submit the net worth exhibits. On an annual basis it is estimated that it will take 10 applicants 10 hours each to prepare and submit net worth exhibits. The total annual burden associated with this requirement is 100 hours.

Section 131.12 of the proposed rules contains the requirements for submission of the applicant's documentation of fees and expenses. The burden associated with these requirements is the time and effort necessary for an applicant to prepare and submit the fee and expense documentation. On an annual basis it is estimated that it will take 10 applicants 5 hours each to prepare and submit fee and expense documentation. The total annual burden associated with this requirement is 50 hours.

The Department will submit a copy of this proposed Rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection requirements, please mail copies directly to the following:

Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Allison Eydt, HHS Desk Officer.

List of Subjects in 45 CFR Part 13

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

For the reasons set out in the preamble, the Secretary proposes to amend 45 CFR part 13 as follows:

1. The authority citation for part 13 is revised to read as follows:

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

2. In § 13.1, the third sentence is revised to read as follows:

§ 13.1 Purpose of these rules.

* * * the Department may reimburse parties for expenses incurred in adversary adjudications if the party prevails in the proceeding and if the Department's position in the proceeding was not substantially justified or if the action is one to enforce compliance with a statutory or regulatory requirement and the Department's demand is substantially in excess of the ultimate decision and is unreasonable when compared with that decision. * * *

3. Section 13.2 is revised to read as follows:

§ 13.2 When these rules apply.

These rules apply to adversary adjudications before the Department.

4. Section 13.3 is amended by removing the last sentence in paragraph (a), by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b) as follows:

§ 13.3 Proceedings covered.

* * * * *

(b) If the agency's litigating party enters an appearance, Department proceedings listed in Appendix A to this part are covered by these rules. Also covered are any other proceedings under statutes that incorporate by reference the procedures of sections 1128(f), 1128A(c)(2), or 1842(j)(2) of the Social Security Act, 42 U.S.C. 1320a–7(f), 1320a–7a(c)(2), or 1395u(j)(2). If a proceeding is not covered under either of the two previous sentences, a party may file a free application as otherwise required by this part and may argue that the act covers the proceeding. Any coverage issue shall be determined by the adjudicative officer and, if necessary, by the appellate authority on review.

* * * * *

5. Section 13.4(b) is revised to read as follows:

§ 13.4 Eligibility of applicants.

* * * * *

(b) The categories of eligible applicants are as follows:

(1) Charitable or other tax-exempt organizations described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(2) Cooperative associations as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees;

(3) Individuals with a net worth of not more than $2 million;

(4) Sole owners of unincorporated businesses if the owner has a net worth of not more than $7 million, including both personal and business interests, and if the business has not more than 500 employees;

(5) All other partnerships, corporations, associations, local governmental units, and public and private organizations with a net worth of not more than $7 million and with not more than 500 employees; and

(6) Where an award is sought on the basis stated in § 13.5(c) of this part, small entities as defined in 5 U.S.C. 601.

* * * * *

6. Section 13.5 is amended by redesignating paragraphs (a) through (d) as paragraphs (b)(1) through (b)(4), respectively; adding new paragraph (a) and a paragraph (b) heading; revising newly designated paragraph (b)(1); and adding a new paragraph (c) to read as follows:

§ 13.5 Standards for awards.

(a) An award of fees and expenses may be made either on the basis that the Department's position in the proceeding was not substantially justified or on the basis that, in a proceeding to enforce compliance with a statutory or regulatory requirement, the Department's demand substantially exceeded the ultimate decision and was unreasonable when compared with that decision. These two bases are explained in greater detail in paragraphs (b) and (c) of this section.

(b) *Awards where the Department's position was not substantially justified.* (1) Awards will be made on this basis only where the Department's position in the proceeding was not substantially justified. The Department's position includes, in addition to the position taken by the agency in the proceeding, the agency action or failure to act that was the basis for the proceeding. Whether the Department's position was substantially justified is to be determined on the basis of the administrative record as a whole. The fact that a party has prevailed in a proceeding does not create a presumption that the Department's position was not substantially justified. The burden of proof as to substantial justification is on the agency's litigating party, which may avoid an award by showing that its position was reasonable in law and fact.

* * * * *

(c) *Awards where the Department's demand was substantially excessive and*

unreasonable. (1) Awards will be made on this basis only where the adversary adjudication arises from the Department's action to enforce a party's compliance with a statutory or regulatory requirement. An award may be made on this basis only if the Department's demand that led to the proceeding was substantially in excess of the ultimate decision in the proceeding, and that demand is unreasonable when compared with that decision, given all the facts and circumstances of the case.

(2) Any award made on this basis shall be limited to the fees and expenses that are primarily related to defending against the excessive nature of the demand. An award shall not include fees and expenses that are primarily related to defending against the merits of charges, or fees and expenses that are primarily related to defending against the portion of the demand that was not excessive, to the extent that these fees and expenses are distinguishable from the fees and expenses primarily related to defending against the excessive nature of the demand.

(3) Awards will be denied if the party has committed a willful violation of law or otherwise acted in bad faith, or if special circumstances make an award unjust.

7. In § 13.6, the second sentence of paragraph (a) is removed and the first sentence of paragraph (b) is amended by removing ''$75.00'' and adding in its place ''$125.00''.

8.–9. In § 13.10, paragraphs (a)(2) and (a)(3) and the first sentence of paragraph (a)(5) introductory text are revised; paragraph (a)(5)(i) is amended by removing the word ''or'' at the end and paragraph (a)(5)(ii) is amended by adding the word ''or'' at the end; and paragraph (a)(5)(iii) is added to read as follows:

§ 13.10 Contents of application.

(a) * * *

(2) Where an award is sought on the basis stated in § 13.5(b) of this part, a declaration that the applicant believes it has prevailed, and an identification of the position of the Department that the applicant alleges was not substantially justified. Where an award is sought on the basis stated in § 13.5(c) of this part, an identification of the statutory or regulatory requirement that the applicant alleges the Department was seeking to enforce, and an identification of the Department's demand and of the document or documents containing that demand;

(3) Unless the applicant is an individual, a statement of the number of its employees on the date on which the proceeding was initiated, and a brief description of the type and purpose of its organization or business. However, where an award is sought solely on the basis stated in § 13.5(c) of this part, the applicant need not state the number of its employees;

* * * * *

(5) A statement that the applicant's net worth as of the date on which the proceeding was initiated did not exceed the appropriate limits as stated in § 13.4(b) of this part. * * *

* * * * *

(iii) It states that it is applying for an award solely on the basis stated in § 13.5(c) of this part, and that it is a small entity as defined in 5 U.S.C. 601, and it describes the basis for its belief that it qualifies as a small entity under that section.

* * * * *

10.–12. Section 13.11(a) is amended by removing the first sentence and adding in its place the sentences reading as follows:

§ 13.11 Net worth exhibits.

(a) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 13.4(f) of this part) when the proceeding was initiated. This requirement does not apply to a qualified tax-exempt organization or cooperative association. Nor does it apply to a party that states that it is applying for an award solely on the basis stated in § 13.5(c) of this part. * * *

* * * * *

13. Section 13.12(d) is revised to read as follows:

§ 13.12 Documentation of fees and expenses.

* * * * *

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to § 13.25 of this part.

14. Section 13.22 is amended by revising paragraphs (b) and (d), as follows:

§ 13.22 When an application may be filed.

* * * * *

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

* * * * *

(d) If review or reconsideration is sought or taken, whether within the agency or to the courts, of a decision as to which an applicant believes it has prevailed, proceedings on the application shall be stayed pending final disposition of the underlying controversy.

15. In § 13.23(a), the first sentence is removed and two sentences are added in its place to read as follows:

§ 13.23 Responsive pleadings.

(a) The agency's litigating party shall file an answer within 30 calendar days after service of the application or, where the proceeding is stayed as provided in § 13.22(d) of this part, within 30 calendar days after the final disposition of the underlying controversy. The answer shall either consent to the award or explain in detail any objections to the award requested and identify the facts relied on in support of the agency's position. * * *

* * * * *

16. Section 13.25(a) is amended by adding the following sentence at the end:

§ 13.25 Further proceedings.

(a) * * * In no such further proceeding shall evidence be introduced from outside the administrative record in order to prove that the Department's position was, or was not, substantially justified.

* * * * *

17. Section 13.27 is revised to read as follows:

§ 13.27 Agency review.

(a) The appellate authority for any proceedings shall be the official or component that would have jurisdiction over an appeal of the merits.

(b) If either the applicant or the agency's litigating party seeks review of the adjudicative officer's decision on the fee application, it shall file and serve exceptions within 30 days after issuance of the initial decision. Within another 30 days after receipt of such exceptions, the opposing party, if it has not done so previously, may file its own exceptions to the adjudicative officer's decision. The appellate authority shall issue a final decision on the application as soon as possible or remand the application to the adjudicative officer for further proceedings. Any party that does not file and serve exceptions within the stated time limit loses the opportunity to do so.

18. Appendix A to part 13 is revised to read as follows:

Appendix A To Part 13

Proceedings covered	Statutory authority	Applicable regulations
Office of Inspector General		
1. Proceedings to impose civil monetary penalties, assessments, or exclusions from Medicare and State health care program.	42 U.S.C. 1320a–7a(c)(2); 1320b–10(c); 1395l–3(b)(3)(B)(ii), (g)(2)(A)(i); 1395*l*(h)(5)(D), (i)(6); 1395m(a)(11)(A), (a)(18), (b)(5)(C), (j)(2)(A)(iii); 1395u(j)(2), (k), (*l*)(3), (m)(3), (n)(3), (p)(3)(A); 1395y(b)(3)(C), (b)(6)(B); 1395cc(g); 1395dd(d)(1)(A), (B); 1395mm(i)(6)(B); 1395nn(g)(3), (4); 1395ss(d); 1395bbb(c)(1); 1396b(m)(5)(B); 1396r(b)(3)(B)(ii), (g)(2)(A)(i); 1396t(i)(3); 11131(c); 11137(b)(2).	42 CFR Part 1003; 42 CFR Part 1005.
2. Appeals of exclusions from Medicare and State health care programs and/or other programs under the Social Security Act.	42 U.S.C. 1320a–7(f); 1395*l*(h)(5)(D); 1395m(a)(11)(A), (b)(5)(C); 1395u(j)(2), (k), (*l*)(3), (m)(3), (n)(3), (p)(3)(B).	42 CFR Part 1001; 42 CFR Part 1005.
3. Appeal of exclusions from programs under the Social Security Act, for which services may be provided on the recommendation of a Peer Review Organization.	42 U.S.C. 1320c–5(b)(4), (5)	42 CFR Part 1004; 42 CFR Parts 1005.
4. Proceedings to impose civil penalties and assessments for false claims and statements.	31 U.S.C. 3803	45 CFR Part 79.
Centers for Medicare and Medicaid Services		
1. Proceedings to suspend or revoke licenses of clinical laboratories.	42 U.S.C. 263a(i); 1395w–2	42 CFR Part 493, Subpart R.
2. Proceedings provided to a fiscal intermediary before assigning or reassigning Medicare providers to a different fiscal intermediary.	42 U.S.C. 1395h(e)(1)–(3)	42 CFR 421.114, 421.128.
3. Appeals of determinations that an institution or agency is not a Medicare provider of services, and appeals of terminations or nonrenewals of Medicare provider agreements.	42 U.S.C. 1395cc(h); 1395dd(d)(1)(A)	42 CFR 489.53(d); 42 CFR Part 498.
4. Proceedings before the Provider Reimbursement Review Board when Department employees appear as counsel for the intermediary.	42 U.S.C. 1395oo	42 CFR Part 405, Subpart R.
5. Appeals of CMS determinations that an intermediate care facility for the mentally retarded (ICFMR) no longer qualifies as an ICFMR for Medicaid purposes.	42 U.S.C. 1396i	42 CFR Part 498.
6. Proceedings to impose civil monetary penalties, assessments, or exclusions from Medicare and State health care programs.	42 U.S.C. 1395l–3(h)(2)(B)(ii); 1395*l*–(q)(2)(B)(i); 1395m(a)(11)(A), (c)(4)(C); 1395w–2(b)(2)(A); 1395w–4(g)(1), (g)(3)(B), (g)(4)(B)(ii); 1395nn–(g)(5); 1395ss–(a)(2), (p)(8), (p)(9)(C), (q)(5)(C), (r)(6)(A), (s)(3), (t)(2); 1395bbb(f)(2)(A); 1396r(h)(3)(C)(ii); 1396r–8(b)(3)(B), (C)(ii); 1396t(j)(2)(C); 1396u(h)(2).	42 CFR Part 1003.
7. Appeals of exclusions from Medicare and State health care programs and/or other programs under the Social Security Act.	42 U.S.C. 1395*l*(q)(2)(B)(ii); 1395m(a)(11)(A), (c)(5)(C); 1395w–4(g)(1), (g)(3)(B), (g)(4)(B)(ii).	42 CFR Part 498; 42 CFR 1001.107.
Food and Drug Administration		
1. Proceedings to withdraw approval of new drug applications.	21 U.S.C. 355(e)	21 CFR Part 12: 21 CFR 314.200.
2. Proceedings to withdraw approval of new animal drug applications and medicated feed applications.	21 U.S.C. 360b(e), (m)	21 CFR Part 12; 21 CFR Part 514, Subpart B.
3. Proceedings to withdraw approval of medical device premarket approval applications.	21 U.S.C. 306e(e), (g)	21 CFR Part 12.
Office for Civil Rights		
1. Proceedings to enforce Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.	42 U.S.C. 2000d–1	45 CFR 80.9.
2. Proceedings to enforce section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap by recipients of Federal financial assistance.	29 U.S.C. 794a; 42 U.S.C. 2000d–1	45 CFR 84.61.
3. Proceedings to enforce the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age by recipients of Federal financial assistance.	42 U.S.C. 6104(a)	45 CFR 91.47.
4. Proceedings to enforce Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in certain education programs by recipients of Federal financial assistance.	20 U.S.C. 1682	45 CFR 86.71.

Dated: May 10, 2002.

Tommy G. Thompson,

Secretary.

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