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with evidence of the prevailing minimum compensation for similar activities. If the parties do not agree on the minimum compensation to be paid to such personnel, the matter shall be referred to the Administrator of the Wage and Hour Division for final determination.

(b)(1) Interested parties, including grant applicants, grantees, professional performers or related or supporting professional personnel and their representatives, may at any time submit to the Administrator a request for a determination of prevailing minimum compensation. The Administrator will make a determination concerning each such request in accordance with paragraph (b)(4) of this section.

(2) Any request for a determination of prevailing minimum compensation shall include or be accompanied by information as to the locality or localities, the class or classes of professional performers or related or supporting professional personnel for the project or production in question, the names and addresses (to the extent known) of interested parties, and all available information relating to prevailing minimum compensation currently being paid to such persons or to persons employed in similar activities. No particular form is prescribed for submission of information under this section.

(3) If the information specified in paragraph (b)(2) of this section is not submitted with a request for an alternative determination of prevailing minimum compensation or is insufficient to permit a determination, the Administrator may deny the request or request additional information, at the Administrator's discretion. Pertinent information from any source may be considered by the Administrator in connection with any request.

(4) The Administrator will respond to a request for determination under this section within 30 days of receipt, by issuing a determination of alternative prevailing minimum compensation or denying the request or advising that additional time is necessary for a decision. If the Administrator determines from a preponderance of all relevant evidence obtained in connection with the request that the compensation pro-

vided for in the agreements negotiated by the labor organizations set forth in paragraph (a) of this section does not prevail for any professional performer or related or supporting professional personnel employed on similar activities in the locality, the Administrator will issue a determination of the prevailing minimum compensation required to be paid under the Act to such persons. If the Administrator finds that the compensation provided for in the agreements negotiated by the labor organizations set forth in paragraph (a) of this section does prevail for the professional performers or related or supporting professional personnel in question, the requesting party will be so notified.

(c) All professional performers and related or supporting professional personnel (other than laborers or mechanics with respect to whom labor standards are prescribed in section 5(j) and 7(j) of the Act) employed on projects or productions which are financed in whole or in part under section 5 or section 7 of the Act will be paid, without subsequent deduction or rebate on any account, not less than the prevailing minimum compensation determined in accordance with paragraph (a) of this section, unless an alternative determination is made under paragraph (b) of this section. Pending the decision of the Administrator on a request for determination under paragraph (b) of this section, the grantee may be required to set aside in a separate escrow account sufficient funds to satisfy the difference between the compensation (including fringe benefits) actually paid to the employee(s) in question, and the compensation (including fringe benefits) required under the applicable collective bargaining agreement negotiated by the labor organization named in paragraph (a) of this section, or furnish a bond with a surety or sureties satisfactory to the Administrator for the protection of the compensation of the affected employees.

§ 505.4 Receipt of grant funds.

(a) The grantee shall not receive funds authorized by section 5 or section 7 of the Act until adequate initial assurances have been filed with the

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Chairperson of the National Endowment for the Arts or the Chairperson of the National Endowment for the Humanities, pursuant to sections 5(i) (1) and (2) and sections 7(g) (1) and (2) of the Act as provided in §505.5(a), that all professional performers and related or supporting professional personnel will be paid not less than the prevailing minimum compensation and that the safety and health requirements will be complied with. Neither shall the grantee receive any such funds if and after the Chairperson of the National Endowment for the Arts or Chairperson of the National Endowment for the Humanities is advised by the Secretary that continuing assurances as provided in §505.5(b) are inadequate or that labor standards contemplated by sections 5(i) (1) and (2) or sections 7(g) (1) and (2) of the Act have not been observed.

(b) In order to facilitate such assurances so that the grantee may receive the grant funds promptly, the Chairpersons of the National Endowment for the Arts and the National Endowment for the Humanities will transmit with the grant letter, to each grantee of a grant that will provide assistance to projects or productions employing professional performers or related or supporting professional personnel under section 5 or section 7 of the Act, a copy of these regulations together with two copies of the assurance form (Form No. ESA-38). The Chairperson will advise the grantee that before the grant may be received, the grantee must give assurances that all professional performers and related or supporting professional personnel (other than laborers or mechanics with respect to whom labor standards are prescribed in section 5(j) and section 7(j) of the Act), will be paid, without subsequent deduction or rebate on any account not less than the minimum compensation determined in accordance with §505.3 (a) or (b) and that the safety and health requirements under §505.6 will be met. The Chairpersons will maintain on file in Washington, DC, for a period of three (3) years and make available upon request of the Secretary the original signed Form ESA-38 and a copy of the grant letter together with any supplementary documents needed

to give a description of the project or production to be financed in whole or in part under the grant.

§ 505.5 Adequate assurances.

(a) *Initial assurances.* The grantee shall give adequate initial assurances that not less than the prevailing minimum compensation determined in accordance with §505.3 will be paid to all professional performers and related or supporting professional personnel, and that no part of the project or production will be performed under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employees, by executing and filing with the Chairperson of the National Endowment for the Arts or the Chairperson of the National Endowment for the Humanities, as appropriate, Form ESA-38.

(b) *Continuing assurances.* (1) The grantee shall maintain and preserve sufficient records as an assurance of compliance with section 5(i) (1) and (2) and section 7(g) (1) and (2) of the Act and shall make such reports therefrom to the Secretary as necessary or appropriate to assure the adequacy of the assurances given. Such records shall be kept for a period of three (3) years after the end of the grant period to which they pertain. These records shall include the following information relating to each performer and related or supporting professional personnel to whom a prevailing minimum compensation determination applies pursuant to §505.3. In addition the record required in paragraph (b)(1)(vii) of this section shall be kept for all employees engaged in the project or production assisted by the grant.

- (i) Name.
- (ii) Home address.
- (iii) Occupation.

(iv) Basic unit of compensation (such as the amount of a weekly or monthly salary, talent or performance fee, hourly rate or other basis on which compensation is computed), including fringe benefits or amounts paid in lieu thereof.

(v) Work performed for each pay period expressed in terms of the total units of compensation fully and partially completed.