

§ 1.189

or an appropriate portion of the award shall be made against that agency.

§ 1.189 Delegations of authority.

The Secretary of Agriculture delegates to the Judicial Officer authority to take final action on matters pertaining to the Act in proceedings covered by these rules. The Secretary by order may delegate authority to take final action on matters pertaining to the Act in particular cases to other subordinate officials or bodies. With respect to proceedings covered under § 1.183(a)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

INFORMATION REQUIRED FROM APPLICANTS

§ 1.190 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of this Department that the applicant alleges was not substantially justified and shall briefly state the basis for such allegation. Unless the applicant is an individual, the application also shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application also shall include a statement that the applicant's net worth does not exceed \$2 million (if an individual) or \$7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

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(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application also may include any other matters that the applicant wishes this Department to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It also shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

§ 1.191 Net worth exhibit.

(a) An applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1.184 of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure 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. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1) through (9). The material in question shall be served on counsel representing the agency against which the applicant