

§ 18.16 Answer to application.

(a) Within 30 calendar days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing (an extension for an additional 30 days is available as a matter of right) or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30 calendar day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 18.20.

[47 FR 13510, Mar. 31, 1982, as amended at 53 FR 6799, Mar. 3, 1988]

§ 18.17 Reply.

Within 15 calendar days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 18.20.

§ 18.18 Comments by other parties.

Any party to a proceeding other than the applicant and the agency counsel may file comments on an application within 30 calendar days after it is served or on an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer deter-

mines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

[47 FR 13510, Mar. 31, 1982, as amended at 53 FR 6799, Mar. 3, 1988]

§ 18.19 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the component agency's standard settlement procedure. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

[47 FR 13510, Mar. 31, 1982, as amended at 53 FR 6799, Mar. 3, 1988]

§ 18.20 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed

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issues and shall explain why the additional proceedings are necessary to resolve the issues.

[47 FR 13510, Mar. 31, 1982, as amended at 53 FR 6799, Mar. 3, 1988]

§ 18.21 Decision.

The adjudicative officer shall issue an initial decision on the application within 30 calendar days after completion of proceedings on the application. The initial decision of the adjudicative officer shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Department's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

[47 FR 13510, Mar. 31, 1982, as amended at 53 FR 6799, Mar. 3, 1988]

§ 18.22 Agency review.

Either the applicant or agency counsel may file a petition for review of the initial decision on the fee application, or the Department may decide to review the decision on its own initiative. The petition must be filed with the General Counsel, Office of the Assistant General Counsel for Administration, Rm. 5882, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230, not later than 30 calendar days after the initial decision is issued. For purposes of this section, a document will be considered filed with the General Counsel as of the date of the postmark (or for government penalty mail, as shown by a certificate of mailing), if mailed, or if not mailed, as of the date actually delivered to the Office of General Counsel. A petition for review must be accompanied by a full written statement in support thereof, including

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a precise statement of why the petitioner believes the initial decision should be reversed or modified, and proof of service upon all parties. A response to the petition may be filed by another party to the proceeding and must be filed with the General Counsel at the above address not more than 30 calendar days after the date of service of the petition for review. The General Counsel may request any further submissions deemed helpful in resolving the petition for review. If neither the applicant nor agency counsel seeks review and the Department does not take review on its own initiative, the initial decision on the application shall become a final decision of the Department 30 calendar days after it is issued. Whether to review a decision is a matter within the discretion of the General Counsel. If review is taken, the General Counsel will issue the Department's final decision on the application or remand the application to the adjudicative officer for further proceedings. The standard of review exercised by the General Counsel shall be that which was required for the highest level of Departmental review which could have been exercised on the underlying covered proceeding.

[53 FR 6799, Mar. 3, 1988]

§ 18.23 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 18.24 Payment of award.

An applicant seeking payment of an award by the Department shall submit a copy of the final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts to the General Counsel, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 5870, Washington, D.C. 20230. The Department will pay the amount awarded to the applicant within 60 calendar days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been