

(b)(1) The net worth exhibit shall be included in the public record of the proceeding except as provided in paragraph (b)(2) of this section.

(2) 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 in a sealed envelope labeled "Confidential 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)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on the Secretary but need not be served on any other party to the proceeding. If the Commission finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's procedures under the Freedom of Information Act, part 2201.

§ 2204.203 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Commission may require the applicant to provide vouchers, receipts, or other

substantiation for any fees or expenses claimed.

[46 FR 48080, Sept. 30, 1981, as amended at 52 FR 5457, Feb. 23, 1987]

Subpart C—Procedures for Considering Applications

§ 2204.301 Filing and service of documents.

An EAJA application is deemed to be filed only when received by the Commission. In all other respects, an application for an award and any other pleading or document related to an application shall be filed and served on all parties to the proceeding in accordance with §§ 2200.7 and 2200.8, except as provided in § 2204.202(b) for confidential financial information.

[62 FR 35964, July 3, 1997]

§ 2204.302 When an application may be filed.

(a) An application may be filed whenever an applicant has prevailed in a proceeding or in a discrete substantive portion of the proceeding, but in no case later than thirty days after the Commission's final disposition of the proceeding.

(b) If Commission review is sought or directed of a judge's decision as to which an application for a fee award has been filed, proceedings concerning the award of fees shall be stayed until there is a final Commission disposition of the case and the period for seeking review in a court of appeals expires.

(c) If review of a Commission decision, or any item or items contained in that decision, is sought in the court of appeals under section 11 of the OSH Act, 29 U.S.C. 660, an application for an award filed with the Commission with regard to that decision shall be dismissed under 5 U.S.C. 554(c)(1) as to the item or items of which review is sought. If the petition for review in the court of appeals is thereafter withdrawn, the applicant may reinstate its application before the Commission within thirty days of the withdrawal.

(d) For purposes of this section, the date of final disposition is:

(1) The date on which the order of the judge disposing of the case becomes

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final under section 12(j) of the OSH Act, 29 U.S.C. 661(i); or

(2) The date on which the order of the Commission affirming, modifying, or vacating the Secretary's citation or proposed penalty or directing other appropriate relief becomes final under section 10(c) of the OSH Act, 29 U.S.C. 659(c).

§ 2204.303 Answer to application.

(a) Within 30 days after service of an application, the Secretary shall file an answer to the application.

(b) If the Secretary 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 upon request.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Secretary's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Secretary shall include with the answer either supporting affidavits or a request for further proceedings under § 2204.307.

§ 2204.304 Reply.

Within 15 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 § 2204.307.

§ 2204.305 Comments by other parties.

Any party to a proceeding other than the applicant and the Secretary 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 proceedings on the application unless the Commission determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

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§ 2204.306 Settlement.

The applicant and the Secretary 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. If a prevailing party and the Secretary agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 2204.307 Further proceedings.

(a)(1) The determination of an award shall be made on the basis of the record made during the proceeding for which fees and expenses are sought, except as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) On the motion of a party or on the judge's own initiative, the judge may order further proceedings, including discovery and an evidentiary hearing, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses).

(3) If the proceeding for which fees and expenses are sought ended before the Secretary had an opportunity to introduce evidence supporting the citation or notification of proposed penalty (for example, a citation was withdrawn or settled before an evidentiary hearing was held), the Secretary may supplement the record with affidavits or other documentary evidence of substantial justification.

(b) A request that the judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[46 FR 48080, Sept. 30, 1981, as amended at 52 FR 5457, Feb. 23, 1987]

§ 2204.308 Decision.

The preparation and issuance of decision shall be in accordance with § 2200.90. Additionally, the judge's decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party and an explanation of the reasons for