

Subpart D—How Does One Apply for an Award?

§ 21.30 Time for filing application.

(a) In order to be considered for an award under this part, an applicant may file its application when it prevails in an adversary adjudication—or in a significant and discrete substantive portion of an adversary adjudication—but no later than 30 days after the Department's final disposition of the adversary adjudication.

(b) In the case of a review or reconsideration of a decision in which an applicant has prevailed or believes it has prevailed, the adjudicative officer shall stay the proceedings on the application pending final disposition of the underlying issue.

(c) For purposes of this part, final disposition of the adversary adjudication means the latest of—

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer becomes administratively final;

(2) The date of an order disposing of any petitions for reconsideration of the final order in the adversary adjudication;

(3) If no petition for reconsideration is filed, the last date on which that type of petition could have been filed; or

(4) The date of a final order or any other final resolution of a proceeding—such as a settlement or voluntary dismissal—that is not subject to a petition for reconsideration.

(Authority: 5 U.S.C. 504 (a)(2) and (c)(1))

§ 21.31 Contents of application.

(a) In its application for an award of fees and other expenses, an applicant shall include the following:

(1) Information adequate to show that the applicant is a prevailing party in an adversary adjudication or in a significant and discrete substantive portion of an adversary adjudication.

(2) A statement that the adversary adjudication is covered by the Act according to § 21.10.

(3) An allegation that the position of the Department was not substantially

justified, including a description of the specific position.

(4) Unless the applicant is a qualified tax-exempt organization or a qualified agricultural cooperative association, information adequate to show that the applicant qualifies under the requirements of §§ 21.20 and 21.21 regarding net worth. The information, if applicable, shall include a detailed exhibit of the net worth of the applicant—and its affiliates as described in § 21.21—as of the date the proceeding was initiated.

(5) (i) The total amount of fees and expenses sought in the award; and

(ii) An itemized statement of—

(A) Each expense; and

(B) Each fee, including the actual time expended for this fee and the rate at which the fee was computed.

(6) A written verification under oath or affirmation or under penalty of perjury from each attorney representing the applicant stating—

(i) The rate at which the fee submitted by the attorney was computed; and

(ii) The actual time expended for the fee.

(7) A written verification under oath, affirmation, or under penalty of perjury that the information contained in the application and any accompanying material is true and complete to the best of the applicant's information and belief.

(b) The adjudicative officer may require the applicant to submit additional information.

(Authority: 5 U.S.C. 504 (a)(2) and (c)(1))

§ 21.32 Confidentiality of information about net worth.

(a) In a proceeding on an application, the public record ordinarily includes the information showing the net worth of the applicant.

(b) However, if an applicant objects to public disclosure of any portion of the information and believes there are legal grounds for withholding it from disclosure, the applicant may submit directly to the adjudicative officer—

(1) The information the applicant wishes withheld in a sealed envelope labeled "Confidential Financial Information;" and

(2) A motion to withhold the information from public disclosure.

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- (c) The motion must—
- (1) Describe the information the applicant is requesting be withheld; and
 - (2) Explain in detail—
 - (i) Why that information falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act;
 - (ii) Why public disclosure of the information would adversely affect the applicant; and
 - (iii) Why disclosure is not required in the public interest.
 - (d)(1) The applicant shall serve on Department's counsel a copy of the material referred to in paragraph (c) of this section.

(2) The applicant is not required to give a copy of that material to any other party to the proceeding.

(e)(1) If the adjudicative officer finds that the information should not be withheld from public disclosure, the information is placed in the public record of the proceeding.

(2) If the adjudicative officer finds that the information should be withheld from public disclosure, any request to inspect or copy the information is treated in accordance with the Department's established procedures under the Freedom of Information Act (34 CFR part 5).

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

§ 21.33 Allowable fees and expenses.

(a) A prevailing party may apply for an award of fees and other expenses incurred by the party in connection with—

- (1) An adversary adjudication; or
- (2) A significant and discrete substantive portion of an adversary adjudication.

(b) If a proceeding includes issues covered by the Act and issues excluded from coverage, the applicant may apply only for an award of fees and other expenses related to covered issues.

(c) Allowable fees and expenses include the following, as applicable:

(1) An award of fees based on rates customarily charged by attorneys, agents, and expert witnesses.

(2) An award for the reasonable expenses of the attorney, agent, or expert witness as a separate item if the attorney, agent, or expert witness ordinarily

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charges clients separately for those expenses.

(3) The cost of any study, analysis, engineering report, test, or project related to the preparation of the applicant's case in the adversary adjudication.

(d) The calculation of fees and expenses as provided for under paragraph (c) of this section shall be in accordance with the standards for awards as described in § 21.50(a) through (c).

(Authority: 5 U.S.C. 504(a)(1), (b)(1)(A) and (c)(1))

Subpart E—What Procedures Are Used in Considering Applications?

§ 21.40 Filing and service of documents.

(a) Except as provided in § 21.32 and in applications subject to the jurisdiction of the CRRA, an applicant shall—

(1) File with the adjudicative officer its application and any related documents; and

(2) Serve on all parties to the adversary adjudication copies of its application and any related documents.

(b)(1) In an application subject to the jurisdiction of the CRRA, the applicant shall—

(i) File with the CRRA its application and any other related documents; and

(ii) Serve on all parties to the adversary adjudication copies of its application and any related documents.

(2) In applications subject to § 21.40(b)(1), the CRRA shall direct the adjudicative officer to issue an initial decision within 30 days of the completion of the proceedings on the application. The adjudicative officer shall conduct proceedings under the procedures of §§ 21.41-21.44.

(Authority: 5 U.S.C. 504(a)(2) and (c)(1); 20 U.S.C. 1681; 29 U.S.C. 794; 42 U.S.C. 2000d-1 *et seq.* and 6101 *et seq.*)

§ 21.41 Answer to application.

(a)(1) Within 30 days after receiving an application for an award under this part, the Department's counsel may file an answer to the application.

(2) The Department's counsel may request an extension of time for filing the Department's answer.