

### § 21.33

- (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.