

this part. The administrative law judge may require an applicant to file additional information to determine its eligibility for an award.

§ 2704.203 Contents of application—where the Secretary's demand is substantially in excess of the judgment finally obtained and unreasonable.

(a) An application for an award under § 2704.105(b) shall show that the Secretary's demand is substantially in excess of the decision of the Commission; the application shall further allege that the Secretary's demand is unreasonable when compared with the Commission's decision.

(b) The application shall show that the applicant is a small entity as defined in 5 U.S.C. 601(6), and the application must conform to the standards of the Small Business Administration at 13 CFR 121.201 for mining entities. The application shall include a statement of the applicant's annual receipts or number of employees, as applicable, in conformance with the requirements of 13 CFR 121.104 and 121.106. The application shall describe briefly the type and purpose of its organization or business.

§ 2704.204 Confidential financial information.

Ordinarily, the net-worth and annual-receipts exhibits will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of such exhibits and believes there are legal grounds for withholding the information from disclosure may submit that portion of the exhibit directly to the administrative law judge 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)–(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 counsel representing the Secretary of

Labor against whom the applicant seeks an award, but need not be served on any other party to the proceeding. If the administrative law judge 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 established procedures under the Freedom of Information Act (29 CFR part 2702).

§ 2704.205 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 underlying 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 administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 2704.206 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the underlying proceeding or in a significant and discrete substantive portion of that proceeding. An application may also be filed when a demand by the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision. In no case may an application be filed later than 30 days after the Commission's final disposition of the underlying proceeding, or 30 days after issuance of a court judgment that is final and nonappealable in any Commission adjudication that has been appealed pursuant to section 106 of the Mine Act, 30 U.S.C. 816.