

## § 6.23

(d) The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(e) The administrative law judge may, within his or her discretion, make a determination as to whether a study, conducted by the applicant, was necessary to the preparation of the applicant's case.

### Subpart C—Procedures for Considering Applications

#### § 6.23 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

#### § 6.25 Answer to application.

(a) Within 30 calendar days after service of an application, the agency counsel may file an answer to the application. Unless the agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award request.

(b) If agency counsel and applicant believe that they can reach a settlement concerning the award, the agency counsel may file a statement of intent to negotiate. The filing of such a statement shall extend the time for filing an answer an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Department's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Department shall include with the answer either supporting affidavits or a request for further proceedings under § 6.3.

[48 FR 1070, Jan. 10, 1983, as amended at 62 FR 19234, Apr. 21, 1997]

#### § 6.27 Comments by other parties.

Any party to a proceeding, other than the applicant and the Department may file comments on an application within 30 days after it is served or on

## 49 CFR Subtitle A (10–1–04 Edition)

an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application.

#### § 6.29 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 agency's standard settlement procedure. If a prevailing party and the 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.

#### § 6.31 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 administrative law judge may order further proceedings, such as an informal conference, oral argument, additional written submissions 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.

(b) A request that the administrative law 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.

#### § 6.33 Decision.

The administrative law judge shall issue an initial decision on the application as soon as possible after completion of proceedings on the application. 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,

## Office of the Secretary of Transportation

## § 7.1

the decision shall allocate responsibility for payment or any award made among the agencies, and shall explain the reasons for the allocation made.

### § 6.35 Agency review.

Where Department review of the underlying decision is permitted, either the applicant or agency counsel, may seek review of the initial decision on the fee application, or the Department may decide to review the decision on its own initiative. If neither the applicant nor the agency counsel seeks review within 30 days after the decision is issued, it shall become final.

### § 6.37 Judicial review.

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

### § 6.39 Payment of award.

An applicant seeking payment of an award from the Department of Transportation or any of its operating administrations under this part shall submit a copy of the Department of Transportation's or any of its operating administration's final decisions granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The copy of the decision and the statement should be submitted to the head of the affected operating administration or the Secretary of Transportation, where the Department of Transportation, Office of the Secretary, has initiated the proceedings.

## PART 7—PUBLIC AVAILABILITY OF INFORMATION

### Subpart A—General Provisions

Sec.

- 7.1 General.
- 7.2 Definitions.

### Subpart B—Information Required To Be Made Public by DOT

- 7.3 Publication in the FEDERAL REGISTER.
- 7.4 Publication required.
- 7.5 Availability of opinions, orders, staff manuals, statements of policy, and interpretations and indices.
- 7.6 Deletion of identifying detail.
- 7.7 Access to materials and indices.
- 7.8 Copies.

- 7.9 Protection of records.
- 7.10 Public records.

### Subpart C—Availability of Reasonably Described Records Under the Freedom of Information Act

- 7.11 Applicability.
- 7.12 Administration of subpart.
- 7.13 Records available.
- 7.14 Requests for records.
- 7.15 Contacts for records requested under the FOIA.
- 7.16 Requests for records of concern to more than one government organization.
- 7.17 Consultation with submitters of commercial and financial information.

### Subpart D—Procedures for Appealing Decisions Not to Disclose Records and/or Waive Fees

- 7.21 General.

### Subpart E—Time Limits

- 7.31 Initial determinations.
- 7.32 Final determinations.
- 7.33 Extension.

### Subpart F—Fees

- 7.41 General.
- 7.42 Payment of fees.
- 7.43 Fee schedule.
- 7.44 Services performed without charge or at a reduced charge.
- 7.45 Transcripts.
- 7.46 Alternative sources of information.

AUTHORITY: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600, 3 CFR, 1987 Comp., p. 235.

SOURCE: Amdt. 1, 63 FR 38331, July 16, 1998, unless otherwise noted.

### Subpart A—General Provisions

#### § 7.1 General.

(a) This part implements 5 U.S.C. 552, and prescribes rules governing the availability to the public of DOT records. Many documents are made available to the public for inspection and copying through DOT's Primary Electronic Access Facility and public record unit locations that are discussed in subpart B of this part, which contains the DOT regulations concerning the availability to the public of opinions issued in the adjudication of cases,