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applications for an award of fees and expenses arising from the OSH Act cases that are assigned to the judge under section 12(j) of the OSH Act, 29 U.S.C. 661(j). However, the Commission retains its right to consider an application for an award of fees and expenses without assignment to a judge or to assign such an application to a judge other than the one to whom the underlying OSH Act case is assigned. When entertaining an application for an award of fees and expenses pursuant to this section, each judge is authorized to take any action that the Commission may take under this part, with the exception of actions provided in §§2204.309 and 2204.310.


Subpart B—Information Required From Applicants

§ 2204.202 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association shall provide with its application a detailed exhibit showing the net worth of the applicant as of the date specified by §2204.105(c). The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant’s assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The Commission may require an applicant to file additional information to determine its eligibility for an award.

(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.

(b)(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.


§ 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 period for seeking appellate review expires.

(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(d)(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.


§ 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.