

§ 21.31

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

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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.

(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;