

Subpart C—Procedures for Considering Applications

§ 1016.301 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after an administratively final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, see the Board's rules governing appellate procedures at §§ 1115.2 and 1115.3 to determine when a decision becomes administratively final.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.302 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, except as provided in § 1016.202(b) for confidential financial information.

§ 1016.303 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless 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 requested.

(b) If agency counsel 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 as justified.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1016.307.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.304 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1016.307.

§ 1016.305 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not broaden the issues.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.306 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. If a prevailing party and 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.

§ 1016.307 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 adjudicative officer may order further proceedings when necessary.

(b) A request that the adjudicative officer order further proceedings under

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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.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.308 Decision.

The adjudicative officer shall issue a decision on the application within 50 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Board's or other agency'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, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

[46 FR 61660, Dec. 18, 1981, as amended at 54 FR 26380, June 23, 1989]

§ 1016.309 Agency review.

In the event the adjudicative officer is not the entire Board, the applicant or agency counsel may seek review of the initial decision on the fee application, or the Board may review the decision on its own initiative, in accordance with § 1115.2. If no appeal is taken, the initial decision becomes the action of the Board 20 days after it is issued. If the adjudicative officer is the entire Board, § 1115.3 applies.

[54 FR 26380, June 23, 1989]

§ 1016.310 Judicial review.

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

§ 1016.311 General provisions.

An applicant seeking payment of an award shall submit to the appropriate official of the paying agency a copy of the Board's final decision granting the

award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Where the award is granted against the Surface Transportation Board the applicant shall make its submission to the Chief, Section of Financial Services, Surface Transportation Board, Washington, DC 20423-0001. The Board will pay the amount awarded to the applicant within 60 days of the applicant's submission unless the judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[74 FR 52905, Oct. 15, 2009]

PART 1017—DEBT COLLECTION— COLLECTION BY OFFSET FROM INDEBTED GOVERNMENT AND FORMER GOVERNMENT EMPLOYEES

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AUTHORITY: 31 U.S.C. 3716, 5 U.S.C. 5514; Pub. L. 97-365; 4 CFR parts 101-105; 5 CFR part 550.

SOURCE: 56 FR 32333, July 16, 1991, unless otherwise noted.

§ 1017.1 Purpose and scope.

(a) These regulations set forth guidelines for implementing the Debt Collection Act of 1982 at the Surface Transportation Board (STB). The purpose of the Act is to give agencies the ability to more aggressively pursue debts owed