

required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualified under such section;

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)); or

(iii) It states that it is applying for an award solely on the basis stated in §13.5(c) of this part, and that it is a small entity as defined in 5 U.S.C. 601, and it describes the basis for its belief that it qualifies as a small entity under that section.

(6) A statement of the amount of fees and expenses for which an award is sought;

(7) A declaration that the applicant has not received, has not applied for, and does not intend to apply for reimbursement of the cost of items listed in the Statement of Fees and Expenses under any other program or statute; or if the applicant has received or applied for or will receive or apply for reimbursement of those expenses under another program or statute, a statement of the amount of reimbursement received or applied for or intended to be applied for; and

(8) Any other matters the applicant wishes the Department to consider in determining whether and in what amount an award should be made.

(b) All applications must be signed by the applicant or by an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(Approved by the Office of Management and Budget under control number 0990-0118)

[48 FR 45252, Oct. 4, 1983, as amended at 69 FR 2846, Jan. 21, 2004]

#### § 13.11 Net worth exhibits.

(a) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in §13.4(f) of this part) when the proceeding was initiated. This requirement does not apply to a qualified tax-exempt organization or cooperative association. Nor does it apply to a party that states

that it is applying for an award solely on the basis stated in §13.5(c) of this part. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of the voting shares or other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates or of the applicant including the affiliates. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, 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 directly to the adjudicative officer 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 agency

### § 13.12

against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, the officer will omit the material from the public record. In that case, any decision regarding disclosure of the material (whether in response to a request from an agency or person outside the Department or on the Department's own initiative) will be made in accordance with applicable statutes and Department rules and procedures for commercial and financial records which the submitter claims are confidential or privileged. In particular, this regulation is not a basis for a promise or obligation of confidentiality.

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[48 FR 45252, Oct. 4, 1983, as amended at 69 FR 2846, Jan. 21, 2004]

#### **§ 13.12 Documentation of fees and expenses.**

(a) All applicants must be accompanied by full documentation of the fees and expenses, including the cost of any study, exhibit, analysis, report, test or other similar item, for which the applicant seeks reimbursement.

(b) The documentation shall include an affidavit from each attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended, the rate at which fees and other expenses were computed, a description of the specific services performed, 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. Where the adversary adjudication includes covered proceedings (as described in §13.3) as well as excluded proceedings, or two or more matters, each of which could have been heard separately, the fees and expenses shall be shown separately for each proceeding or matter, and the basis for allocating expenses among the proceedings or matters shall be indicated.

(1) The affidavit shall itemize in detail the services performed by the date, number of hours per date and the serv-

### 45 CFR Subtitle A (10-1-14 Edition)

ices performed during those hours. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide affidavits from two attorneys or agents with similar experience, who perform similar work, stating the hourly rate which they bill and are paid by the majority of their clients during a comparable time period.

(c) If the applicant seeks reimbursement of any expenses not covered by the affidavit described in paragraph (b), the documentation must also include an affidavit describing all such expenses and stating the amounts paid or payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to §13.25 of this part.

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## **Subpart C—Procedures for Considering Applications**

### **§ 13.21 Filing and service of pleadings.**

All pleadings, including applications for an award of fees, answers, comments, and other pleadings related to the applications, shall be filed in the same manner as other pleadings in the proceeding and served on all other parties and participants, except as provided in §13.11(b) of this part concerning confidential financial information.

### **§ 13.22 When an application may be filed.**

(a) The applicant must file and serve its application no later than 30 calendar days after the Department's final disposition of the proceeding which makes the applicant a prevailing party.