

§4.612

other expenses filed prior to final disposition of the proceeding shall be stayed pending such final disposition.

(b) Final disposition means the later of (1) the date on which the final Department decision is issued; or (2) the date of the order which finally resolves the proceeding, such as an order approving settlement or voluntary dismissal.

PROCEDURES FOR CONSIDERING APPLICATIONS

§4.612 Filing and service of documents.

Any application for an award and any other pleading or document related to an application shall be filed with the adjudicative officer and serve on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in §4.609(c) for confidential financial information.

§4.613 Answer to application.

(a) Within 30 calendar days after service of an application, the Department shall file an answer. If the Department fails to answer or otherwise fails to contest or settle the application, the adjudicative officer may, upon a satisfactory showing of entitlement by the applicant, make an award for the applicant's fees and other expenses under 5 U.S.C. 504 in accordance with §4.616.

(b) If the Department and the applicant believe that they can reach a settlement concerning the award, the Department and the applicant may jointly file a statement of their intent to negotiate. The filing of such a statement shall extend the time for filing an answer for an additional 30 days from the date of filing of the statement. Further extensions may be granted by the adjudicative officer upon the joint request of the Department and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on to support the objection. If the answer is based on any alleged facts not already reflected in the record of the proceeding, the Department shall include with the answer either a supporting af-

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fidavit or a request for further proceedings.

§4.614 Settlement.

An applicant and the Department may agree on a proposed settlement of an 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 the applicant and the Department agree on a proposed settlement of an award before an applicant has been filed, the application shall be filed with the proposed settlement.

§4.615 Extensions of time and further proceedings.

(a) The adjudicative officer may on motion and for good cause shown grant extensions of time other than for filing an application for fees and expenses after final disposition in the adversary adjudication.

(b) Ordinarily, the determination of an award will be made on the basis of the written record of the underlying proceeding and the filings required or permitted by the foregoing sections of these rules. However, the adjudicative officer may, *sua sponte*, or on motion of any party to the proceedings require or permit further proceedings, such as informal conferences, 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. A motion for further proceedings shall specifically identify the information sought on the disputed issues and shall explain why the further proceedings are necessary to resolve the issues.

§4.616 Decision on application.

The adjudicative officer shall promptly issue a decision on the application which shall include proposed written findings and conclusions, and the reasons or basis therefore, on such of the following as are relevant to the decision:

(a) The applicant's status as a prevailing party;

(b) The applicant's qualification as a "party" under 5 U.S.C. 504(b)(1)(B);

(c) Whether the Department's position as a party to the proceeding was substantially justified;

(d) Whether special circumstances make an award unjust;

(e) Whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and

(f) The amounts, if any, awarded for fees and other expenses, with reasons for any difference between the amount requested and the amount awarded. If neither the applicant nor the Department appeals within 30 days from receipt of the adjudicative officer's decision, this decision will be the final Departmental decision.

§ 4.617 Appeals Board review.

If review is sought by the applicant or the Department, the decision of the adjudicative officer will be reviewed by the appropriate appeals board in accordance with the Department's procedures for the type of underlying proceeding involved. The appeals board will then issue the final Departmental decision on the application.

§ 4.618 Judicial review.

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

§ 4.619 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to the Assistant Secretary for Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240. A statement that review of the underlying decision is not being sought in the United States courts, or that the process for seeking review of the award has been completed, must also be included.

Subpart G—Special Rules Applicable to Other Appeals and Hearings

AUTHORITY: 5 U.S.C. 301.

§ 4.700 Who may appeal.

Any party aggrieved by an adjudicatory action or decision of a Departmental official relating to rights or privileges based upon law in any case or proceeding in which Departmental regulations allow a right of appeal to the head of the Department from such action or decision, should direct his appeal to the Director, Office of Hearings and Appeals, if the case is not one which lies within the appellate review jurisdiction of an established Appeals Board and is not excepted from the review authority delegated to the Director. No appeal will lie when the action of the Departmental official was based solely upon administrative or discretionary authority of such official.

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971]

§ 4.701 Notice of appeal.

The appellant shall file a written notice of appeal, signed by him or by his attorney or other qualified representative, in the Office of the Director, within 30 days from the date of mailing of the decision from which the appeal is taken. The notice shall contain an identification of the action or decision appealed from and give a concise but complete statement of the facts relied upon and the relief sought. The appellant shall mail a copy of the notice of appeal, any accompanying statement of reasons therefor, and any written arguments or briefs, to each party to the proceedings or whose rights are involved in the case, and to the Departmental official whose action or decision is being appealed. The notice of appeal shall contain a certificate setting forth the names of the parties served, their addresses, and the dates of mailing.

§ 4.702 Transmittal of appeal file.

Within 10 days after receipt of a copy of the notice of appeal, the Departmental official whose action or decision is being appealed shall transmit to the Office of the Director the entire official file in the matter, including all records, documents, transcripts of testimony, and other information compiled during the proceedings leading to the decision being appealed.