

### Subpart C—Procedures for Considering Applications

#### § 2704.301 Filing and service of documents.

Any application for an award or other pleading or other document related to an application, including a petition for discretionary review, shall be filed and served on all parties in the same manner as pleadings in the underlying proceeding, except as provided in § 2704.202(b) for confidential financial information.

#### § 2704.302 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Secretary of Labor may file an answer to the application. Unless counsel requests an extension of time for filing, files a statement of intent to negotiate under paragraph (b), or a proceeding is stayed pursuant to § 206(b), failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If counsel for 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 by the administrative law judge upon request by counsel for the Secretary and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the position of the Secretary of Labor. If the answer is based on any alleged facts not already in the record of the underlying proceeding, counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 2704.306 of this part.

[63 FR 63176, Nov. 12, 1998, as amended at 71 FR 44210, Aug. 4, 2006]

#### § 2704.303 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 § 2704.306 of this part.

#### § 2704.304 Comments by other parties.

Any party to a proceeding other than the applicant and counsel for the Secretary of Labor 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 participate further in proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

#### § 2704.305 Settlement.

In the event that counsel for the Secretary and an applicant agree to settle an EAJA claim after an application has been filed with the Commission, the applicant shall timely notify the Commission of the settlement and request dismissal of the application.

[63 FR 63177, Nov. 12, 1998]

#### § 2704.306 Further proceedings on the application.

(a) The determination of an award will be made on the basis of the record made during the proceeding for which fees and expenses are sought, except as provided in paragraphs (b) and (c) of this section.

(b) On request of either the applicant or the Secretary, or on the administrative law judge's own initiative, the judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery 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.

(c) If the proceeding for which fees and expenses are sought was conceded by the Secretary on the merits, withdrawn by the Secretary, or otherwise settled before any of the merits were heard, the applicant and the Secretary