

### § 13.24

litigating party shall file an answer either consenting to the award or explaining in detail any objections to the award requested, and identifying the facts relied on in support of its position. The adjudicative officer may for good cause grant an extension of time for filing an answer.

(b) Within 15 calendar 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 § 13.25.

(c) Any party to or participant in a proceeding may file comments on an application within 30 calendar days, or on an answer within 15 calendar days after service of the application or answer.

### § 13.24 Settlements.

The applicant and the agency's litigating party may agree on a proposed settlement of the award at any time prior to final action on the application. If the parties agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. All settlements must be approved by the adjudicative officer and the head of the agency or office or his or her designee before becoming final.

### § 13.25 Further proceedings.

(a) Ordinarily, a decision on an application will be made on the basis of the hearing record and pleadings related to the application. However, at the request of either the applicant or the agency's litigating party, or on his or her own initiative, the adjudicative officer may order further proceedings, including an informal conference, 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.

(b) A request that the adjudicative officer order additional written submissions or oral testimony shall identify the information sought and shall

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explain why the information is necessary to decide the issues.

(c) The adjudicative officer may impose sanctions on any party for failure to comply with his or her order to file pleadings, produce documents, or present witnesses for oral examination. These sanctions may include but are not limited to granting the application partly or completely, dismissing the application, and diminishing the award granted.

### § 13.26 Decisions.

The adjudicative officer shall issue an initial decision on the application as promptly as possible after the filing of the last document or conclusion of the hearing. The decision must include written findings and conclusions on the applicant's eligibility and status as a prevailing party, including a finding on the net worth of the applicant. Where the adjudicative officer has determined under § 13.11(b) that the applicant's net worth information is exempted from disclosure under the Freedom of Information Act, the finding on net worth shall be kept confidential. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, an explanation of any difference between the amount requested and the amount awarded, and whether any special circumstances make the award unjust.

### § 13.27 Agency review.

(a) The head of the agency or office, or his or her designee, shall review any award granted under this part whether or not the parties request such review, and issue a final decision. No award shall be made under this subpart without approval of the head of the agency or office or his or her designee.

(b) If either the applicant or the agency's litigating party seeks review of the adjudicative officer's decision on the fee application, it shall file and serve exceptions within 30 days after issuance of the initial decision. The head of the agency or office or his or her designee shall issue a final decision on the application as soon as possible or remand the application to the adjudicative officer for further proceedings.

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Any party that does not file and serve exceptions within the stated time limit loses the opportunity to do so.

**§ 13.28 Judicial review.**

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

**§ 13.29 Payment of award.**

The notification to an applicant of a final decision that an award will be made shall contain the name and address of the appropriate Departmental finance office that will pay the award. An applicant seeking payment of an award shall submit to that finance officer a copy of the final decision granting the award, accompanied by a statement that the applicant will not seek

review of the decision in the United States courts. The Department will pay the amount awarded to the applicant within 60 days, unless 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 proceedings.

**§ 13.30 Designation of adjudicative officer.**

Upon the filing of an application pursuant to §13.11(a), the officer who presided over the taking of evidence in the proceeding which gave rise to the application will, if available, be automatically designated as the adjudicative officer for the handling of the application.

APPENDIX A TO PART 13

Proceedings covered	Statutory authority	Applicable regulations
Office of the Inspector General		
Proceeding to impose civil monetary penalties or assessments for fraudulent claims under Medicare, Medicaid, and Title V.	42 U.S.C. 1320a-7a	
Health Care Financing Administration		
Proceedings to suspend or revoke licenses of clinical laboratories .....	42 U.S.C. 263a(e), (g).	
Proceedings provided to a fiscal intermediary before assigning or reassigning Medicare providers to a different fiscal intermediary.	42 U.S.C. 1395h .....	
Proceedings before the Provider Reimbursement Review Board when CMS acts as fiscal intermediary.	42 U.S.C. 1395oo ...	42 CFR Part 405, Subpart R.
Food and Drug Administration		
Proceedings to withdraw approval of new drug applications .....	21 U.S.C. 355(d), (e).	21 CFR Part 12, 21 CFR 314.200.
Proceedings to withdraw approval of new animal drug applications and medicated feed applications.	21 U.S.C. 360b(d), (e), (m).	21 CFR Part 12, 21 CFR Part 514, Subpart B.
Proceedings to withdraw approval of medical device premarket approval applications.	21 U.S.C. 306e(d), (e), (g).	21 CFR Part 12.
Office of Civil Rights		
Proceedings to enforce Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.	42 U.S.C. 200d-1 ...	45 CFR 80.9.
Proceedings to enforce Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap by recipients of Federal financial assistance.	29 U.S.C. 794 .....	45 CFR 84.61.
Proceedings to enforce the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age by recipients of Federal financial assistance.	42 U.S.C. 6101, 6104(a).	45 CFR 90.47.
Proceedings to enforce Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in certain education programs by recipients of Federal financial assistance.	20 U.S.C. 1681, 1682.	45 CFR 86.71.