

## Department of Justice

## § 24.306

served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

### § 24.302 Answer to application.

(a) Within 30 calendar days after service of the application, Department counsel may file an answer. If Department counsel 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.

(b) If Department counsel and applicant believe that they can reach a settlement concerning the award, Department counsel may file a statement of intent to negotiate. The filing of such a statement shall extend the time for filing an answer an additional 30 days.

(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, Department counsel shall include with the answer either a supporting affidavit or a request for further filings or other action.

### § 24.303 Comments by other parties.

Any party to a proceeding other than the applicant and Department counsel may file comments on an application within 30 calendar days after it is served or on an answer within 15 calendar days after it is served.

### § 24.304 Settlement.

A prevailing party and Department counsel 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 party and Department counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

### § 24.305 Extensions of time.

(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 filings or other action, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further action shall occur only when necessary for full and fair resolution of the issues arising from the application and shall take place as promptly as possible. A motion for further filings or other action shall specifically identify the information sought on the disputed issues and shall explain why the further filings or other action is necessary to resolve the issues.

(c) In the event that an evidentiary hearing is required or permitted by the adjudicative officer, such hearing and any related filings or other action required or permitted shall be conducted pursuant to the procedural rules governing adversary adjudications conducted by the Department component in which the underlying adversary adjudication was conducted.

### § 24.306 Decision on application.

The adjudicative officer shall promptly issue a decision on the application which shall include proposed written findings and conclusions 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

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for any difference between the amount requested and the amount awarded.

**§ 24.307 Department review.**

The decision of the adjudicative officer will be reviewed to the extent permitted by law by the Department in accordance with the Department's procedures for the type of proceeding involved. The Department will issue the final decision on the application.

**§ 24.308 Judicial review.**

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

**§ 24.309 Payment of award.**

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to the Department's Accounting Office for processing. 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.

**PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS**

**Subpart A—The National Instant Criminal Background Check System**

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**28 CFR Ch. I (7-1-08 Edition)**

**Subpart A—The National Instant Criminal Background Check System**

**§ 25.1 Purpose and authority.**

The purpose of this subpart is to establish policies and procedures implementing the Brady Handgun Violence Prevention Act (Brady Act), Public Law 103-159, 107 Stat. 1536. The Brady Act requires the Attorney General to establish a National Instant Criminal Background Check System (NICS) to be contacted by any licensed importer, licensed manufacturer, or licensed dealer of firearms for information as to whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. 923 would be in violation of Federal or state law. The regulations in this subpart are issued pursuant to section 103(h) of the Brady Act, 107 Stat. 1542 (18 U.S.C. 922 note), and include requirements to ensure the privacy and security of the NICS and appeals procedures for persons who have been denied the right to obtain a firearm as a result of a NICS background check performed by the Federal Bureau of Investigation (FBI) or a state or local law enforcement agency.

**§ 25.2 Definitions.**

*Appeal* means a formal procedure to challenge the denial of a firearm transfer.

*ARI* means a unique Agency Record Identifier assigned by the agency submitting records for inclusion in the NICS Index.

*ATF* means the Bureau of Alcohol, Tobacco, and Firearms of the Department of Treasury.

*Audit log* means a chronological record of system (computer) activities that enables the reconstruction and examination of the sequence of events and/or changes in an event.

*Business day* means a 24-hour day (beginning at 12:01 a.m.) on which state offices are open in the state in which the proposed firearm transaction is to take place.

*Control Terminal Agency* means a state or territorial criminal justice agency recognized by the FBI as the agency responsible for providing state- or territory-wide service to criminal justice users of NCIC data.