
29 C.F.R. § 2204.406

Decision.

The preparation and issuance of decision on the fee application shall be in accordance with § 2200.90 of this chapter.

- (a) *For an application involving a prevailing party.* The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if applicable, findings on whether the Secretary's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.
- (b) *For an application involving an allegedly excessive agency demand.* The decision shall include written findings and conclusions on the applicant's eligibility and an explanation of the reasons why the agency's demand was or was not determined to be substantially in excess of the underlying decision in the matter and whether the Secretary's demand was or was not unreasonable. That determination shall be based upon all the facts and circumstances of the case.

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