

(4) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the adversary proceeding was initiated. Part-time employees are counted on a proportional basis.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. As used in this subpart, *affiliates* are: Individuals, corporations, and entities that directly or indirectly or acting through one or more entities control at least 25% of the voting shares of the applicant, and corporations and entities of which the applicant directly or indirectly owns or controls at least 25% of the voting shares. The Board may determine, in light of the actual relationship among the affiliated entities, that aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart and decline to aggregate the net worth and employees of such affiliate; alternatively, the Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

§ 263.104 Application for awards.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Board whenever the applicant has prevailed in the proceeding within 30 days after service of the final order of the Board disposing of the proceeding.

(b) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of the way in which the applicant believes that the position of the Board in the proceeding was not substantially justified;

(3) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(4) A description of any affiliated individuals or entities, as defined in § 263.103(c)(5), or a statement that none exist;

(5) A declaration that the applicant, together with any affiliates, had a net worth not more than the maximum set forth in § 263.103(b) as of the date the proceeding was initiated, supported by a net worth statement conforming to the requirements of § 263.105;

(6) A statement of the amount of fees and expenses for which an award is sought conforming to § 263.107; and

(7) Any other matters that the applicant wishes the Board to consider in determining whether and in what amount an award should be made.

(c) *Verification.* The application shall be signed by the applicant or an authorized officer of or attorney for the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

(d) *Service.* The application and related documents shall be served on all parties to the adversary proceeding in accordance with § 263.11, except that statements of net worth shall be served only on counsel for the Board.

(e) *Presiding officer.* Upon receipt of an application, the Board shall, if feasible, refer the matter to the administrative law judge who heard the underlying adversary proceeding.

§ 263.105 Statement of net worth.

(a) *General rule.* A statement of net worth shall be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant, as specified in § 263.103(c)(5). In all cases, the administrative law judge or the Board may call for additional information needed to establish the applicant's net worth as of the initiation of the proceeding.

(b) *Contents.* (1) Except as otherwise provided herein, the statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the