

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

(e) Fees may be awarded only for work performed after designation of a proceeding.

[48 FR 1070, Jan. 10, 1983, as amended at 62 FR 19234, Apr. 21, 1997]

§ 6.13 Delegations of authority.

The Secretary of Transportation delegates to the head of each operating administration of this Department the authority to take final action, other than rulemaking, on matters pertaining to the Act in actions that require section 554 proceedings. The head of each operating administration may redelegate this authority.

Subpart B—Information Required from Applicants

§ 6.17 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges

was not substantially justified. Unless the applicant is an individual, the application shall also state that it did not have more than 500 employees at the time the proceeding was initiated, giving the number of employees of the applicant and describing briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed \$1 million (if an individual) or \$5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of 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 is true and correct.

(f) If the applicant is a partnership, corporation, association, or organization, or a sole owner of an unincorporated business, the application shall state that it did not have more than 500 employees at the time the proceeding was initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.