

§ 1.1507

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 service 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 or after issuance of a show cause order.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

§ 1.1507 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than \$125.00 per hour in some or all of the types of proceedings covered by this part. The Commission will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees, in accordance with subpart C of this chapter. The petition should identify the rate the petitioner believes this agency should establish and the types of proceedings in which the

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rate should be used. It should also explain fully the reasons why the higher rate is warranted. This agency will respond to the petition by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

§ 1.1508 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Commission and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency. Counsel for that agency shall be treated as Bureau counsel for the purpose of this subpart.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

INFORMATION REQUIRED FROM APPLICANTS

§ 1.1511 Contents of application.

(a) An application for an award of fees and expenses under EAJA shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) 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; or

(2) Show that the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application shall also include a declaration that the applicant is a small entity as defined in 5 U.S.C. 601 or a statement that the applicant's net worth does not exceed \$2 million (if an individual) or \$7 million (for all other applicants, including their affiliates). However, an applicant may omit the statement concerning its net worth if: