

§6.5

(2) The sole owner of an unincorporated business who has a net worth of not more than \$5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141(a)) with not more than 500 employees, or

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than \$5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the matter in controversy is primarily related to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual or group of individuals, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares of another business, or controls in any manner the election of a majority of that business's board of directors, trustees, or other persons exercising similar functions, will be considered an affiliate of that business for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute

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special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§6.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with the *final* disposition of a proceeding, unless (1) the position of the agency was substantially justified, or (2) special circumstances make the award unjust. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§6.6 Allowable fees and other expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) Reasonable cost of any study, analysis, engineering report, test, or project which the agency finds necessary for the preparation of the party's case;

(3) Reasonable attorney or agent fees.

(b) The amount of fees awarded will be based upon the prevailing market rates for the kind and quality of services furnished, except that

(1) Compensation for an expert witness will not exceed the highest rate paid by the agency for expert witnesses; and

(2) Attorney or agent fees will not be in excess of \$75 per hour.

§6.7 Delegations of authority.

The Director, Bureau of Alcohol, Tobacco and Firearms and the Comptroller of the Currency are authorized to take final action on matters pertaining to the Equal Access to Justice Act, 5 U.S.C. 504, in proceedings listed in §6.3 under the respective bureau or office. The Secretary of the Treasury may by order delegate authority to

take final action on matters pertaining to the Equal Access to Justice Act in particular cases to other subordinate officials.

Subpart B—Information Required From Applicants

§ 6.8 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 the agency in the proceeding that the applicant alleges was not substantially justified. The application shall state the basis for the applicant's belief that the position was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe 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. 1141j(a)).

(c) The application shall itemize 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 the 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 with respect to the eligibility of the

applicant and by the attorney of the applicant with respect to fees and expenses sought. 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.

(Approved by the Office of Management and Budget under control number 1512-0444, for applications filed with the Bureau of Alcohol, Tobacco and Firearms)

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[47 FR 20765, May 14, 1982, as amended at 49 FR 14944, Apr. 16, 1984]

§ 6.9 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization, or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in §6.4(f)) when the proceeding was initiated. In the case of national banking associations, "net worth" shall be considered to be the total capital and surplus as reported, in conformity with the applicable instructions and guidelines, on the bank's last Consolidated Report of Condition filed before the initiation of the underlying proceeding.

(b) The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

§ 6.10 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, engineering report, test, or project, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.