

## § 625.5

(2) The action or inaction of the FCA upon which the adversary adjudication is based.

(c) Except as provided in paragraph (d) of this section, the FCA must prove that its position was substantially justified before an award may be denied to an otherwise eligible applicant.

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

### § 625.5 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed \$75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FCA pays expert witnesses. However, an award also may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

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

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

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert 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 adversary adjudication; and

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

(d) The reasonable cost of any study, analysis, audit, engineering report, test, project, or similar matter pre-

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pared 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 the preparation of the applicant's case.

### § 625.6 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 FCA may adopt regulations providing that attorney fees may be awarded at a rate higher than \$75 per hour in some or all of the types of proceedings covered by this part. The FCA 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 FCA a petition for rulemaking to increase the maximum rate for attorney fees. The petition should identify the rate the petitioner believes the FCA should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The FCA will respond to the petition within 90 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

### § 625.7 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 or in any way is a part of an adversary adjudication before the FCA and that agency's position is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

## Subpart B—Applicant Information Required

### § 625.10 Contents of application.

(a) An application for an award of fees and other expenses under the EAJA shall identify the applicant and the adversary adjudication for which an award is sought. The application