

§ 13.7

may not exceed the highest rate at which the Department pays expert witnesses, which is \$24.09 per hour, regardless of the actual rates charged by the witness. These limits apply only to fees; an award may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges separately for such expenses.

(c) In determining the reasonableness of the fees sought for attorneys, agents or expert witnesses, the adjudicative officer must consider factors bearing on the request, which include, but are not limited to:

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

(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.

§ 13.7 Studies, exhibits, analyses, engineering reports, tests and projects.

The reasonable cost (or the reasonable portion of the cost) for any study, exhibit, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded to the extent that:

(a) The charge for the service does not exceed the prevailing rate payable for similar services,

(b) The study or other matter was necessary to the preparation for the administrative proceeding, and

(c) The study or other matter was prepared for use in connection with the administrative proceeding. No award will be made for a study or other matter which was necessary to satisfy statutory or regulatory requirements, or which would ordinarily be conducted as part of the party's business irrespective of the administrative proceeding.

45 CFR Subtitle A (10-1-00 Edition)

Subpart B—Information Required from Applicants

§ 13.10 Contents of application.

(a) Applications for an award of fees and expenses must include:

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

(2) A declaration that the applicant believes it has prevailed, and an identification of the position of the Department that the applicant alleges was not substantially justified at the time of the initiation of the proceeding;

(3) Unless the applicant is an individual, a statement of the number of its employees on the date on which the proceeding was initiated, and a brief description of the type and purpose of its organization or business;

(4) A description of any affiliated individuals or entities, as the term "affiliate" is defined in § 13.4(f), or a statement that none exist;

(5) A statement that the applicant's net worth as of the date on which the proceeding was initiated did 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:

(i) 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 qualified under such section; or

(ii) 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));

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

(7) A declaration that the applicant has not received, has not applied for, and does not intend to apply for reimbursement of the cost of items listed in the Statement of Fees and Expenses under any other program or statute; or if the applicant has received or applied for or will receive or apply for reimbursement of those expenses under another program or statute, a statement

of the amount of reimbursement received or applied for or intended to be applied for; and

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

(b) All applications must be signed by the applicant or by 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.

(Approved by the Office of Management and Budget under control number 0990-0118)

§ 13.11 Net worth exhibits.

(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 §13.4(f) of this part) when the proceeding was initiated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of the voting shares or other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates or of the applicant including the affiliates. 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.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)-(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, the officer will omit the material from the public record. In that case, any decision regarding disclosure of the material (whether in response to a request from an agency or person outside the Department or on the Department's own initiative) will be made in accordance with applicable statutes and Department rules and procedures for commercial and financial records which the submitter claims are confidential or privileged. In particular, this regulation is not a basis for a promise or obligation of confidentiality.

(Approved by the Office of Management and Budget under control number 0990-0118)

§ 13.12 Documentation of fees and expenses.

(a) All applicants must be accompanied by full documentation of the fees and expenses, including the cost of any study, exhibit, analysis, report, test or other similar item, for which the applicant seeks reimbursement.