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but a copy also shall be transmitted to the party.

(b) Service of any document or paper under this subchapter, by any party, including documents and papers served by one party on any other party, shall be accomplished by certified mail, first-class mail, commercial delivery, or in person. Where facsimile equipment is available, service by facsimile of documents described in § 2429.24(e) is permissible.

(c) A signed and dated statement of service shall be submitted at the time of filing. The statement of service shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail, delivered in person, deposited with a commercial delivery service that will provide a record showing the date the document was tendered to the delivery service or, in the case of facsimile transmissions, the date transmitted.

[45 FR 3516, Jan. 17, 1980, as amended at 62 FR 40924, July 31, 1997; 74 FR 51745, Oct. 8, 2009]

§ 2429.28 Petitions for amendment of regulations.

Any interested person may petition the Authority or General Counsel in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.

§ 2429.29 Content of filings.

Any document that a party files in a proceeding covered by this subchapter that is before the Authority or the Office of Administrative Law Judges must include a table of contents if the document exceeds 10 double-spaced pages in length.

[74 FR 51745, Oct. 8, 2009]

5 CFR Ch. XIV (1-1-10 Edition)

PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES

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AUTHORITY: 5 U.S.C. 504.

SOURCE: 46 FR 48623, Oct. 2, 1981, unless otherwise noted.

§ 2430.1 Purpose.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney, agent, or witness fees and other expenses to eligible individuals and entities who are parties to Authority adversary adjudications. An eligible party may receive an award when it prevails over the General Counsel, unless the General Counsel's position in the proceeding was substantially justified, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards, and the Authority proceeding that is covered. They also set forth the procedures for applying for such awards, and the procedures by which the Authority will rule on such applications.

[51 FR 33837, Sept. 23, 1986]

§ 2430.2 Proceedings affected; eligibility for award.

(a) The provisions of this part apply to unfair labor practice proceedings pending on complaint against a labor

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organization at any time since October 1, 1981.

(b) A respondent in an unfair labor proceeding which has prevailed in the proceeding, or in a significant and discrete portion of the proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of attorneys fees and other expenses allowable under the provisions of § 2430.4 of these rules.

(1) Applicants eligible to receive an award in proceedings conducted by the Authority are any partnership, corporation, association, or public or private organization with a net worth of not more than \$5 million (\$7 million in cases involving adversary adjudications pending on or commenced on or after August 5, 1985) and not more than 500 employees.

(2) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the complaint was issued.

(3) 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 on a proportional basis.

(4) 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.

[46 FR 48623, Oct. 2, 1981, as amended at 51 FR 33837, Sept. 23, 1986]

§ 2430.3 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete portion of the proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that its position in initiating the proceeding was reasonable in law and fact.

(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.

§ 2430.4 Allowable fees and expenses.

(a)(1)(i) No award for the fee of an attorney or agent under this part may exceed \$125.00 per hour, or for adversary adjudications commenced prior to March 29, 1996, \$75.00 per hour, indexed to reflect cost of living increases as follows:

$$\frac{\text{CPI-U-Year of Service}}{\text{CPI-U-Base Year}} \times \$125 \text{ (or } \$75\text{)}/\text{hr} = \text{Adjusted Rate}$$

(ii) The cost of living index to be used is the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (CPI-U). If legal services are provided during more than one year, each year shall be calculated separately. If an annual average CPI-U for a particular year is not yet available, the prior year's annual average CPI-U shall be used.

(2) No award to compensate an expert witness may exceed the highest rate that the Authority pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate

item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the following matters may be considered:

(1) If the attorney, agent or witness is in 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;