

§ 2704.108

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees. The petition should identify the rate the petitioner believes the Commission 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 Commission will respond to the petition within 60 days after it is filed, by initiating an informal rulemaking proceeding, denying the petition, or taking other appropriate action.

[47 FR 10001, Mar. 9, 1982, as amended at 63 FR 63176, Nov. 12, 1998]

§ 2704.108 Awards.

If an applicant is entitled to an award under § 2704.105(a) or (b), the award shall be made by the Commission against the Department of Labor.

[63 FR 53176, Nov. 12, 1998]

§ 2704.109 Delegations of authority.

The Commission retains authority to take final action on matters pertaining to the Equal Access to Justice Act in actions arising under the Mine Act. The Commission may, however, 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 or bodies.

Subpart B—Information Required From Applicants

SOURCE: 63 FR 63176, Nov. 12, 1998, unless otherwise noted.

§ 2704.201 Contents of application—in general.

(a) An application for an award of fees and expenses under the Act shall be made to the Chief Administrative Law Judge of the Commission at 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001. The application shall identify the applicant and the underlying proceeding for which an award is sought.

(b) The application shall state the amount of fees and expenses for which an award is sought. The application may also include a request that attor-

29 CFR Ch. XXVII (7–1–04 Edition)

ney's fees be awarded at a rate higher than \$125 per hour because of an increase in the cost of living or other special factors.

(c) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(d) The application should be signed by the applicant or 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.

(e) Upon receipt of an application, the Chief Administrative Law Judge shall immediately assign it for disposition to the administrative law judge who presided over the underlying Mine Act proceeding.

[63 FR 63176, Nov. 12, 1998, as amended at 67 FR 60863, Sept. 27, 2002]

§ 2704.202 Contents of application—where the applicant has prevailed.

(a) An application for an award under § 2704.105(a) shall show that the applicant has prevailed in a significant and discrete substantive portion of the underlying proceeding and identify the position of the Department of Labor in the proceeding that the applicant alleges 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 also shall include 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, as described in § 2704.104(b)(2) of this part).

(c) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as described in § 2704.104(b)(2) of this part) when the underlying proceeding was initiated. 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