

Farm Credit Administration

§ 625.5

§ 625.3 Eligibility of applicants.

(a) To be eligible for an award under the EAJA, an applicant must be a prevailing party named or admitted to the adversary adjudication for which an award is sought. The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of \$2 million or less;

(2) The sole owner of an unincorporated business who has both a net worth of \$7 million or less (including personal and business interests), and 500 or fewer 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 500 or fewer employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of \$7 million or less and 500 or fewer employees.

(c) For eligibility purposes, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication 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 issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

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

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility unless the presiding officer determines that aggregation would be unjust and contrary to the purposes of the EAJA in light of the

actual relationship between the affiliated entities.

(1) For purposes of this part, an affiliate is:

(i) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant; or

(ii) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interests.

(2) The presiding officer may determine that financial relationships of the applicant other than those described in paragraph (f)(1) of this section constitute special circumstances that would make an award unjust.

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

§ 625.4 Standards for awards.

(a) If an eligible applicant prevails over the FCA in an adversary adjudication, or in a significant and discrete substantive portion thereof, the applicant may receive an award for fees and expenses incurred in the adjudication, or portion thereof, unless the position of the FCA over which the applicant prevailed was substantially justified.

(b) The position of the FCA includes:

(1) The position taken by the FCA in the adversary adjudication; and

(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