

judge, or other person assigned to conduct a proceeding covered by the Act.

(c) *Agency* means an organizational unit of the Department whose head reports to an official in the Office of the Secretary.

(d) *Agency counsel* means the attorney from the Office of the General Counsel representing the agency of the Department administering the statute involved in the proceeding.

(e) *Days* means calendar days.

(f) *Department* means the United States Department of Agriculture.

§ 1.181 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called *the Act* in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called *adversary adjudications*) before the Department. An eligible party may receive an award when it prevails over the Department unless the position of the Department was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this Department will use to make awards.

§ 1.182 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before this Department on or after August 5, 1985, except with respect to a proceeding covered under § 1.183(a)(1)(iii) of this part, which shall be effective on or after October 21, 1986. It also applies to any adversary adjudication commenced on or after October 1, 1984, and disposed of finally before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the agency within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 1.183 Proceedings covered.

(a)(1) These rules apply to adversary adjudications. These are:

(i) Adjudications required by statute to be conducted by this Department under 5 U.S.C. 554 in which the position of this Department or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding,

(ii) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Agriculture Board of Contract Appeals as provided in section 8 of that Act (41 U.S.C. 607), and

(iii) Any hearing conducted under chapter 38 of title 31, United States Code.

(2) Any proceeding in which this Department may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses also are excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." The proceedings covered are adversary adjudications under the statutory provisions listed below.

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A))
 Animal Quarantine Act (21 U.S.C. 104)
 Animal Welfare Act (7 U.S.C. 2149)
 Archaeological Resources Protection Act (16 U.S.C. 470ff)
 Beef Research and Information Act (7 U.S.C. 2912)
 Capper-Volstead Act (7 U.S.C. 292)
 Cotton Research and Promotion Act (7 U.S.C. 2111)
 Egg Products Inspection Act (21 U.S.C. 1047)
 Egg Research and Consumer Information Act (7 U.S.C. 2713, 2714(b))
 Endangered Species Act (16 U.S.C. 1540(a))
 Federal Land Policy and Management Act (43 U.S.C. 1766)
 Federal Meat Inspection Act (21 U.S.C. 604, 606, 607(e), 608, 671)
 Federal Seed Act (7 U.S.C. 1599)
 Horse Protection Act (15 U.S.C. 1823(c), 1825)
 Packers and Stockyards Act (7 U.S.C. 193, 204, 213, 218d, 221)
 Perishable Agricultural Commodities Act (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))
 Plant Quarantine Act (7 U.S.C. 163)
 Potato Research and Promotion Act (7 U.S.C. 2620)

§ 1.184

Poultry Products Inspection Act (21 U.S.C. 455, 456, 457(d), 467)
Swine Health Protection Act (7 U.S.C. 3804(b), 3805(a))
U.S. Cotton Standards Act (7 U.S.C. 51b, 53)
U.S. Grain Standards Act (7 U.S.C. 79(g)(3), 85, 86)
U.S. Warehouse Act (7 U.S.C. 246, 253)
Virus-Serum-Toxin Act (21 U.S.C. 156)
Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409)

(b) The failure of this Department to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a prevailing party to the adversary adjudication for which it seeks an award. The term *party* is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in §§ 1.181 through 1.186 and in §§ 1.190 through 1.193 of this subpart.

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

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, and not more than 500 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 not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than \$7 million and not more than 500 employees.

7 CFR Subtitle A (1-1-01 Edition)

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated: Provided, that for purposes of eligibility in proceedings covered by § 1.183(a)(1)(ii) of this part, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(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 the 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. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) 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.