

2704.206 When an application may be filed.

Subpart C—Procedures for Considering Applications

- 2704.301 Filing and service of documents.
- 2704.302 Answer to application.
- 2704.303 Reply.
- 2704.304 Comments by other parties.
- 2704.305 Settlement.
- 2704.306 Further proceedings on the application.
- 2704.307 Decision of administrative law judge.
- 2704.308 Commission review.
- 2704.309 Judicial review.
- 2704.310 Payment of award.

AUTHORITY: (5 U.S.C. 504(c)(1); Pub. L. 99-80, 99 Stat. 183; Pub. L. 104-121, 110 Stat. 862.

SOURCE: 47 FR 10001, Mar. 9, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 2704.100 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504, 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 this Commission. An eligible party may receive an award when it prevails over the Department of Labor, Mine Safety and Health Administration (MSHA), unless the Secretary of Labor’s position in the proceeding was substantially justified or special circumstances make an award unjust. In addition to the foregoing ground of recovery, an eligible party may receive an award if the demand of the Secretary is substantially in excess of the decision of the Commission and unreasonable, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The rules in this part describe the parties eligible for each type of award. They also explain how to apply for awards, and the procedures and standards that this Commission will use to make the awards.

[63 FR 63175, Nov. 12, 1998]

§ 2704.101 Definitions.

The following terms shall have the following meaning when used in these rules:

Adjudication Officer, as defined in 5 U.S.C. 504(b)(1)(D), means the Commission’s administrative law judge who presided at the underlying adversary adjudication between the applicant and the Secretary of Labor. For the sake of clarity, references hereafter shall be to “administrative law judge”.

The Act means the Equal Access to Justice Act 5 U.S.C. 504;

The Commission means the Federal Mine Safety and Health Review Commission, created as an independent agency under 30 U.S.C. 823;

The Mine Act means the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq*;

The Secretary means the Secretary of Labor or his designee.

§ 2704.102 Applicability.

Section 2704.105(a) applies to adversary adjudications before the Commission pending or commenced on or after August 5, 1984. Section 2704.105(b) applies to adversary adjudications commenced on or after March 29, 1996.

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§ 2704.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by this Commission. These are adjudications before the Commission arising under the Mine Act in which the position of the Secretary of Labor is represented by an attorney or other representative who enters an appearance and participates in the proceeding. For this Commission, the types of proceedings generally covered include:

(1) Contests of citations or orders issued under section 104 or 107 of the Mine Act (30 U.S.C. 814, 817);

(2) Contests of penalties proposed under section 105 (a) and (b) of the Mine Act (30 U.S.C. 815(a), (b));

(3) Challenges to claims of discrimination under section 105(c) of the Mine Act (30 U.S.C. 815(c)) where the Secretary of Labor represents the miner;

(b) The Commission may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating