

proceeding, together with a petition asking that the order be enforced.

(c) *Notice.* The Secretary shall give notice of the filing of a petition for enforcement or review to the Attorney General, and to the association, by service of a copy of the petition.

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: 53 FR 36949, Sept. 23, 1988, unless otherwise noted.

GENERAL PROVISIONS

§ 1.180 Definitions.

(a) The definitions contained in Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings (§ 1.132 of this part) are incorporated into and made applicable to this subpart.

(b) *Adjudicative Officer* means an administrative law judge, administrative 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 sub-

part 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