

the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, the transcript, electronic recording or set of minutes of the discussion of any item on the agenda of any closed meeting or closed portion thereof (as required by §147.7), or of any item of the testimony of any witness received at such meeting or portion thereof, except for such item or items of such discussion or testimony that are determined, in accordance with the procedure set forth in paragraph (b) of this section, to contain information which may be withheld under §147.3(b).

(b)(1) All determinations made pursuant to paragraph (a) of this section that items of discussion or testimony reflected in transcripts, recordings or sets of minutes of closed meetings or closed portions thereof are exempt from disclosure pursuant to §147.3(b), shall be made by the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts compliance after due consultation with the Office of the Commission's General Counsel and the Director of any affected staff division.

(2) Any person who objects to any determination made pursuant to paragraph (b)(1) of this section may seek Commission review of that determination by filing with the Commission's Office of the Secretariat a brief written statement that review is sought which contains a concise statement of the reasons why the determination should be set aside.

(c) The Commission shall maintain a complete verbatim copy of the transcript, a complete electronic recording or a complete copy of the minutes of each meeting or portion of a meeting closed to the public, which are made in accordance with §147.7(a) or §147.7(b), for a period of at least two years after such meeting or portion of meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

[42 FR 13704, Mar. 11, 1977, as amended at 45 FR 26955, Apr. 22, 1980; 60 FR 49336, Sept. 25, 1995]

§147.9 Requests for copies of transcripts, recordings or minutes of closed meetings.

(a) Copies of a transcript transcription of an electronic recording or set of minutes disclosing the identity of each speaker, which are publicly available pursuant to §147.8(a), shall be furnished to any person at the actual cost of duplication or transcription pursuant to the schedule of fees set forth in 17 CFR part 145, appendix B (a)(4), (a)(5), (a)(7), (a)(8), (a)(9), (d) and (e).

(b) Requests for copies of transcripts, transcriptions of electronic recordings or sets of minutes as described in paragraph (a) of this section shall be made either in person, by telephone, or by mail addressed to the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(7 U.S.C. 4a(j) and 16a as amended by Pub. L. 97-444, 96 Stat. 2294 (1983) and 5 U.S.C. 552, 552a, and 552b)

[42 FR 13704, Mar. 11, 1977, as amended at 45 FR 26955, Apr. 22, 1980; 48 FR 46012, Oct. 11, 1983; 49 FR 12684, Mar. 30, 1984; 60 FR 49336, Sept. 25, 1995]

§147.10 Interpretation of this part with other provisions.

(a) Nothing in this part shall be interpreted as:

(1) Expanding or limiting the present rights of any person under part 145 of this title (implementing the provisions of the Freedom of Information Act, 5 U.S.C. 552), except that the exemptions set forth in §147.3(b) of this part shall govern in the case of any request made pursuant to part 145 to copy or inspect the transcripts, recordings or sets of minutes described in this part; or

(2) Authorizing the Commission to withhold from any person any record, including transcripts, recordings or sets of minutes required by this part, which is otherwise accessible to such individual under part 146 of this title (implementing the provisions of the Privacy Act, 5 U.S.C. 552a).

(b) The requirements of chapter 33 of title 44, U.S. Code (with respect to the disposal of records), shall not apply to

the transcripts, recordings and minutes described in this part.

PART 148—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COVERED ADJUDICATORY PROCEEDINGS BEFORE THE COMMISSION

Subpart A—General Provisions

Sec.

- 148.1 Purpose of these rules.
- 148.2 When the Act applies.
- 148.3 Proceedings covered.
- 148.4 Eligibility of applicants.
- 148.5 Standards for awards.
- 148.6 Allowable fees and expenses.
- 148.7 Rulemaking on maximum rates for attorney fees.
- 148.8 Awards against other agencies.

Subpart B—Information Required from Applicants

- 148.11 Contents of application.
- 148.12 Net worth exhibit.
- 148.13 Documentation of fees and expenses.
- 148.14 When an application may be filed.

Subpart C—Procedures for Considering Applications

- 148.21 Filing and service of documents.
- 148.22 Answer to application.
- 148.23 Reply.
- 148.24 Comments by other parties.
- 148.25 Settlement.
- 148.26 Further proceedings.
- 148.27 Decision.
- 148.28 Appeal to the Commission.
- 148.29 Judicial review.
- 148.30 Payment of award.

AUTHORITY: Equal Access to Justice Act, 5 U.S.C. 504(c)(1) and secs. 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5), unless otherwise noted.

SOURCE: 46 FR 57671, Nov. 25, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 148.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called “the Act” in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are prevailing private parties in adjudicatory proceedings before the Commission. An eligible party may receive an award when it prevails over the Commission,

unless the Commission’s position was substantially justified or special circumstances make an award unjust. The rules in this 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 the Commission will use to make them.

[51 FR 18880, May 23, 1986]

§ 148.2 When the Act applies.

The Act applies to any covered adjudicatory proceeding pending before the Commission on or after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date. Awards may be sought for fees and other expenses incurred before October 1, 1981, in any such covered proceeding.

[51 FR 18880, May 23, 1986]

§ 148.3 Proceedings covered.

(a) The Act applies to adjudicatory proceedings conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission 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. Reparation proceedings under section 14 of the Commodity Exchange Act, 7 U.S.C. 18, Commission review of exchange disciplinary and access denial actions under section 8c of the Commodity Exchange Act, 7 U.S.C. 12c, and registered futures association disciplinary and membership denial actions under section 17 of the Commodity Exchange Act, 7 U.S.C. 21, are not covered by the Act. Proceedings brought to determine whether or not to grant or renew registrations pursuant to sections 8a or 17(o), of the Commodity Exchange Act, 7 U.S.C. 8, 12a and 21(o), or contract market designations pursuant to section 6(a) of the Commodity Exchange Act, 7 U.S.C. 8 (a), are excluded, but proceedings brought to suspend or revoke registrations or contract market designations are covered if they are otherwise adjudicatory proceedings.