

Office of the Secretary, Commerce

§ 18.2

(c) Judicial review is available as the law permits.

[49 FR 7986, Mar. 5, 1984, as amended at 55 FR 38983, Sept. 24, 1990]

§ 17.26 Adjudicatory.

(a) Any appellant party who seeks review of the Director's decision based upon a modification or termination of a license by the Director under § 17.24(b), or who has filed a timely objection and can demonstrate damages as provided in § 17.24(c), shall be entitled to an adversary hearing in accord with the provisions of the Administrative Procedures Act (5 U.S.C. 554-557). A party may waive an adversary hearing by filing a written waiver with the Under Secretary.

(b) When an adversary hearing is required under § 17.24 (b) or (c) the Under Secretary shall appoint as promptly as possible an Administrative Law Judge who shall hold hearings no later than 45 days from the date of the appointment. The hearings will be conducted in conformity with the objectives of the Administrative Procedure Act. The Administrative Law Judge shall submit a written recommendation to the Under Secretary no later than 30 days subsequent to the hearing and/or the filing of any required written arguments or documentation.

(c) The Under Secretary shall render a final written decision on behalf of the Department based upon the appeal file which shall include the hearing record, exhibits, written submissions of the party(ies), and the recommendation of the Administrative Law Judge. The Under Secretary's decision shall include the reasons which form the basis of the determination. The final decision may uphold, overrule, or modify the Director's decision or take any action deemed appropriate.

(d) Judicial review is available as the law permits.

[49 FR 7986, Mar. 5, 1984, as amended at 55 FR 38983, Sept. 24, 1990]

PART 18—ATTORNEY'S FEES AND OTHER EXPENSES

GENERAL PROVISIONS

Sec.

18.1 Purpose of these rules.

- 18.2 Definitions.
- 18.3 When the Act applies.
- 18.4 Proceedings covered.
- 18.5 Eligibility of applicants.
- 18.6 Standards for awards.
- 18.7 Allowable fees and expenses.
- 18.8 Rulemaking on maximum rates for attorney fees.
- 18.9 Awards against other agencies.
- 18.10 Delegations of authority.

INFORMATION REQUIRED FROM APPLICANTS

- 18.11 Contents of application.
- 18.12 Net worth exhibit.
- 18.13 Documentation of fees and expenses.
- 18.14 When an application may be filed.

PROCEDURES FOR CONSIDERING APPLICATIONS

- 18.15 Filing and service of documents.
- 18.16 Answer to application.
- 18.17 Reply.
- 18.18 Comments by other parties.
- 18.19 Settlement.
- 18.20 Further proceedings.
- 18.21 Decision.
- 18.22 Agency review.
- 18.23 Judicial review.
- 18.24 Payment of award.

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

SOURCE: 47 FR 13510, Mar. 31, 1982, unless otherwise noted.

GENERAL PROVISIONS

§ 18.1 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 parties to certain administrative proceedings (called "adversary adjudications") before the Department of Commerce (the word Department includes its component agencies). An eligible party may receive an award when it prevails over the Department, unless the Department's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties that are eligible for awards and the Department's proceedings that are covered by the Act. They also explain how to apply for awards, and the procedures and standards that the Department will use to make them.

§ 18.2 Definitions.

As used in this part:

(a) *Adversary adjudication* means an adjudication under 5 U.S.C. 554 in