

§ 24.102

28 CFR Ch. I (7-1-08 Edition)

§ 24.102 Definitions.

As used in this part:

(a) *The Act* means section 504 of title 5, U.S. Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Public Law No. 96-481.

(b) *Adversary adjudication* means an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or reviewing a license.

(c) *Adjudicative officer* means the official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication.

(d) *Department* refers to the relevant departmental component which is conducting the adversary adjudication (e.g., Drug Enforcement Administration or Office of Justice Assistance, Research, and Statistics).

(e) *Proceeding* means an adversary adjudication as defined in § 24.102(b) above.

§ 24.103 Proceedings covered.

(a) These rules apply to adversary adjudications required by statute to be conducted by the Department under 5 U.S.C. 554. Specifically, the proceedings conducted by the Department to which these rules apply are:

(1) Hearings conducted by the Drug Enforcement Administration (DEA) in connection with suspension or revocation of registration of manufacturers, distributors, and dispensers of controlled substances under 21 U.S.C. 824(c) and 21 CFR 1301.51; suspension or revocation of import and export registrations pursuant to 21 U.S.C. 958 and 21 CFR 1311.51;

(2) Hearings conducted by DEA in connection with the scheduling of drugs pursuant to 21 U.S.C. 811(a) and 21 CFR 1308.41;

(3) Handicap discrimination hearings conducted by the Department under 29 U.S.C. 794a(a) and 28 CFR 42.109(d);

(4) Title VI civil rights hearings conducted by the Department under 42 U.S.C. 2000d-1 and 28 CFR 42.109(d);

(5) Grant denial and grant termination hearings conducted by the Of-

fice of Justice Assistance, Research, and Statistics (OJARS), the National Institute of Justice (NIJ), the Bureau of Justice Statistics (BJS) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), or the Law Enforcement Assistance Administration (LEAA) under 42 U.S.C. 3783 and 28 CFR part 18; and

(6) Civil rights hearings conducted by OJARS under 42 U.S.C. 3789d and 28 CFR 42.214-15.

(b) 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.

§ 24.104 Applicability to Department of Justice proceedings.

The Act applies to an adversary adjudication pending before the Department at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final Department action has not been taken before that date, and proceedings pending on September 30, 1984.

§ 24.105 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 in 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 this subpart and in subpart B.

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

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

(2) The sole owner of an unincorporated business who has a net worth of not more than \$5 million 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, or public or private