

Commodity Futures Trading Commission

§ 148.3

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,