

Subpart 1262.3—Procedures for Considering Applications

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AUTHORITY: 5 U.S.C. 504; 42 U.S.C. 2473(c)(1).

SOURCE: 51 FR 15311, Apr. 23, 1986, unless otherwise noted.

Subpart 1262.1—General Provisions**§ 1262.101 Purpose of these rules.**

(a) The pertinent provisions of the Equal Access to Justice Act at 5 U.S.C. 504 (hereinafter “the Act”) provide for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called “adversary adjudications”). An eligible party may receive an award when it prevails, unless it has unreasonably protracted the proceedings, or the Agency’s position in the proceeding 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 National Aeronautics and Space Administration (NASA) will use in determining awards.

(b) As used in this part:

(1) *Adversary adjudication* means:

(i) 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 renewing a license;

(ii) Any appeal of a decision made pursuant to section 6 of the Contract Disputes Act (CDA) of 1978, as amended (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of the CDA (41 U.S.C. 607);

(iii) Any hearing conducted under Chapter 38 of Title 31 (added by section 6104 of the Program Fraud Civil Rem-

edies Act of 1986 (Pub. L. 99-509, 100 Stat. 1948, Oct. 21, 1986), 31 U.S.C. 3801, et seq., as amended); and

(iv) The Religious Freedom Restoration Act (RFRA) of 1993 (added by section 4(b), of RFRA (Pub. L. 103-141, 107 Stat. 1489, Nov. 16, 1993), 42 U.S.C. 2000bb).

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

(3) *Position of the agency* means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based;

(4) *Party*, as defined in 5 U.S.C. 551(3), includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes, and who meets the eligibility requirements of § 1262.104; and

(5) *Agency* with a capital A denotes the NASA.

(c) Determination of *Substantially justified*. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

[51 FR 15311, Apr. 23, 1986, as amended at 60 FR 12668, Mar. 8, 1995]

§ 1262.102 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before NASA on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in subpart 1262.2, had 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.