

after the public announcement only if a majority of the members of the Board who will participate in the meeting determine that agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereto issued pursuant to the provisions of paragraphs (b) and (d) of this section, or pursuant to the provisions of §102.140(d), shall be submitted for publication in the FEDERAL REGISTER immediately following their release to the public.

(f) Announcements of meetings made pursuant to the provisions of this section shall be made publicly available by the executive secretary.

**§ 102.142 Transcripts, recordings or minutes of closed meetings; public availability; retention.**

(a) For every meeting or portion thereof closed under the provisions of §102.139 of this part, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the agency. For each such meeting or portion thereof there shall also be maintained a complete transcript or electronic recording of the proceedings, except that for meetings closed pursuant to §102.139(a) the Board may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reasons thereof and views thereon, documents considered, and the members' vote on each roll call vote.

(b) The agency shall make promptly available to the public copies of transcripts, recordings or minutes maintained as provided in accordance with paragraph (a) of this section, except to the extent the items therein contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552(c). Copies of transcripts or minutes, or transcriptions of electronic recordings in-

cluding the identification of speakers, shall to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs in accordance with the schedule of fees set forth in §102.117(c)(2)(iv), and the actual cost of transcription.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete set of the minutes for each meeting or portion thereof closed to the public, for a period of at least one year after the close of the agency proceeding of which the meeting was a part, but in no event for a period of less than two years after such meeting.

**Subpart T—Awards of Fees and Other Expenses**

AUTHORITY: Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2325.

SOURCE: 46 FR 48087, Sept. 30, 1981, unless otherwise noted.

**§ 102.143 “Adversary adjudication” defined; entitlement to award; eligibility for award.**

(a) The term *adversary adjudication*, as used in this subpart, means unfair labor practice proceedings pending before the Board on complaint and back-pay proceedings under §§ 102.52 to 102.59 of these rules pending before the Board on notice of hearing at any time after October 1, 1984.

(b) A respondent in an adversary adjudication who prevails in that proceeding, or in a significant and discrete substantive portion of that proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of fees and other expenses allowable under the provisions of §102.145 of these rules.

(c) Applicants eligible to receive an award are as follows:

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, 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

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(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, unit of local government, or public or private organization with a net worth of not more than \$7 million and not more than 500 employees.

(d) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date of the complaint in an unfair labor practice proceeding or the date of the notice of hearing in a backpay proceeding.

(e) An applicant who owns an unincorporated business will be considered as an “individual” rather than a “sole owner of unincorporated business” if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(f) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant’s direction and control. Part-time employees shall be included on a proportional basis.

(g) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless such treatment would be unjust and contrary to the purposes of the Equal Access to Justice Act (94 Stat. 2325) in light of the actual relationship between the affiliated entities. In addition financial relationships of the applicant other than those described in this paragraph may constitute special circumstances that would make an award unjust.

(h) An applicant that participates in an adversary adjudication primarily on

behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[46 FR 48087, Sept. 30, 1981, as amended at 51 FR 17733, May 15, 1986; 51 FR 36224, Oct. 9, 1986]

### § 102.144 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication or in connection with a significant and discrete substantive portion of that proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that the General Counsel’s position in the proceeding was substantially justified.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust.

[46 FR 48087, Sept. 30, 1981, as amended at 51 FR 17733, May 15, 1986]

### § 102.145 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the attorney or agent fees under these rules may exceed \$75.00 per hour. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the following matters shall be considered:

(1) If the attorney, agent or expert witness is in practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;