used hereinafter, the term ''agency'' applies to the FAA.

§ 14.02 Proceedings covered.

(a) The Act applies to certain adversary adjudications conducted by the FAA under 49 CFR part 17 and the Acquisition Management System (AMS). These are adjudications under 5 U.S.C. 554, in which the position of the FAA is represented by an attorney or other representative who enters an appearance and participates in the proceeding. This subpart applies to proceedings under 49 U.S.C. 46301, 46302, and 46303 and to the Default Adjudicative Process under part 17 of this chapter and the AMS.

(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.

(c) Fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which such party has unreasonably protracted the proceedings.

[54 FR 46199, Nov. 1, 1989, as amended by Amdt. 14–03, 64 FR 32935, June 18, 1999]

§ 14.03 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term ''party'' is defined in 5 U.S.C. 504(b)(1)(B) and 5 U.S.C. 551(3). The applicant must show that it meets all conditions or eligibility set out in this subpart.

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

(1) An individual with a net worth of not more than $2 million at the time the adversary adjudication was initiated;

(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 at the time the adversary adjudication was initiated;

(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 at the time the adversary adjudication was initiated; and

(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 at the time the adversary adjudication was initiated; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $7 million and not more than 500 employees at the time the adversary adjudication was initiated.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

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

(e) 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.

(f) 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 the ALJ or adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the ALJ or adjudicative officer may determine that financial relationships of the applicant, other than those described in this paragraph, constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one