

United States Postal Service

§ 960.4

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AUTHORITY: 5 U.S.C. 504 (c)(1); 39 U.S.C. 204, 401 (2).

SOURCE: 46 FR 45945, Sept. 16, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 960.1 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 parties to certain administrative proceedings (called “adversary adjudications”) before the Postal Service. An eligible party may receive an award when it prevails over the Postal Service, unless the Postal Service’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 Postal Service will use to make them.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6797, Mar. 5, 1987]

§ 960.2 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Postal Service 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 B of these rules, has been filed with the Postal Service 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.

[52 FR 6797, Mar. 5, 1987]

§ 960.3 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Postal Service. These are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the Postal Service is presented by an attorney or other representative who enters an appearance and participates in the proceeding (for the Postal Service, the types of proceedings generally covered are proceedings relative to false representation and cease and desist orders and mailability under chapter 30 of title 39, U.S.C., with the exception of proceedings under 39 U.S.C. 3008); and

(2) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Postal Service Board of Contract Appeals as provided in section 8 of that Act. (41 U.S.C. 607).

(b) The Postal Service may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) 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.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987; 67 FR 62179, Oct. 4, 2002]

§ 960.4 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. 551(3). The applicant must show by clear and convincing evidence that it meets all conditions of eligibility set out in this subpart and