

## United States Postal Service

## § 960.4

### § 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 in subpart B and must submit additional information to verify its eligibility upon order by the adjudicative officer.

(b) The types of eligible applicants 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 (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 partnerships, corporation, association, unit of local government, or organization with a net worth of not more than \$7 million and not more than 500 employees.

(c) For the purposes of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated, which in proceedings before the Board of Contract Appeals is the date the applicant files its appeal to the Board.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant