

## Surface Transportation Board, DOT

## § 1016.103

1016.109 Awards against other agencies.

### Subpart B—Information Required From Applicants

1016.201 Contents of application.  
1016.202 Net worth exhibit.  
1016.203 Documentation of fees and expenses.

### Subpart C—Procedures for Considering Applications

1016.301 When an application may be filed.  
1016.302 Filing and service of documents.  
1016.303 Answer to application.  
1016.304 Reply.  
1016.305 Comments by other parties.  
1016.306 Settlement.  
1016.307 Further proceedings.  
1016.308 Decision.  
1016.309 Agency review.  
1016.310 Judicial review.  
1016.311 Payment of award.

AUTHORITY: 5 U.S.C. 504(c)(1), 49 U.S.C. 721.

SOURCE: 46 FR 61660, Dec. 18, 1981, unless otherwise noted.

### Subpart A—General Provisions

#### § 1016.101 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 Surface Transportation Board. An eligible party may receive an award when it prevails over the Board or another agency of the United States participating in the Board proceeding, unless the Board’s position in the proceeding, or that of the other agency, 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 Board will use to make them.

#### § 1016.102 When the Act applies.

The Act applies to any adversary adjudication pending before the Board after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Board action has not been taken before that date, regardless of when

they were initiated or when final Board action occurs. These rules incorporate the changes made in Pub. L. No. 99–80, 99 Stat. 183, which applies generally to cases instituted after October 1, 1984. If awards are sought for cases pending on October 1, 1981 or filed between that date and September 30, 1984, the prior statutory provisions (to the extent they differ from the existing ones, and our implementing rules) apply.

[54 FR 26379, June 23, 1989]

#### § 1016.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Board under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative (hereinafter “agency counsel”) who enters an appearance and participates in the proceeding. Proceedings for the purpose of establishing or fixing a rate are not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise “adversary adjudications.” Generally, the types of Board proceedings covered by the Act include, but are not limited to, investigation proceedings instituted under 49 U.S.C. 11701 and 49 U.S.C. 10925 and disciplinary proceedings conducted pursuant to 49 CFR 1100.11.

(b) The Board 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, designating the matter for hearing or at any other time during the proceeding. The Board’s 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.