

Subpart C—Procedures for Considering Applications

- 6.23 Filing and service of documents.
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AUTHORITY: 5 U.S.C. 504; 28 U.S.C. 2412.

SOURCE: 48 FR 1070, Jan. 10, 1983, unless otherwise noted.

Subpart A—General Provisions**§ 6.1 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 government agencies, such as the Department of Transportation or any of its operating administrations. 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 this agency will use to make them. The use of the term “Department”, in this rule, will be understood to mean the Department of Transportation or any of its operating administrations, unless otherwise specified. The term “agency counsel” will be understood to mean counsel for the Department of Transportation or any of its operating administrations.

[48 FR 1070, Jan. 10, 1983, as amended at 62 FR 19233, Apr. 21, 1997]

§ 6.3 Applicability.

Section 6.9(a) applies to any adversary adjudication pending before the Department on or after October 1, 1981. In addition, applicants for awards must also meet the standards of § 6.9(b) for any adversary adjudication commenced on or after March 29, 1996.

[62 FR 19233, Apr. 21, 1997]

§ 6.5 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Department of Transportation. These are adjudications under 5 U.S.C. 554 in which the position of the Department is represented by an attorney or other representative who enters an appearance and participates in the proceeding. Coverage of the Act begins at designation of a proceeding or issuance of a charge sheet. Any proceeding in which the Department may prescribe or establish a lawful present or future rate is 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.” For the Department of Transportation, the types of proceedings covered include, but may not be limited to: Coast Guard suspension or revocation of licenses, certificates or documents under 46 U.S.C. 7701 *et seq.*; Coast Guard class II civil penalty proceedings under the Clean Water Act, 33 U.S.C. 1321(b)(6)(B)(ii); Coast Guard class II penalty proceedings under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9609(b); suspension and revocation of Certificates of Registry proceedings for Great Lakes Pilots pursuant to 46 CFR Part 401; National Highway Traffic Safety Administration (NHTSA) automotive fuel economy enforcement under 49 U.S.C. Chapter 329 (49 CFR Part 511); Federal Highway Administration (FHWA) enforcement of motor carrier safety regulations under 49 U.S.C. 521 and 5123 (49 CFR 386); the Department’s aviation economic enforcement proceedings conducted by its Office of Aviation Enforcement and Proceedings pursuant to 49 U.S.C. Subtitle VII, 14 CFR Chapter II. Also covered are any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607), any hearing conducted under Chapter 38 of title 31, and the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.*

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage,