Surface Transportation Board, DOT § 1016.105

covered by the Act. Proceedings to
grant or renew licenses are also ex-
cluded, but proceedings to modify, sus-
pend, or revoke licenses are covered if
they are otherwise “adversary adju-
dications.” Generally, the types of
Board proceedings covered by the Act
include, but are not limited to, inves-
tigation proceedings instituted under
49 U.S.C. 11701 and 49 U.S.C. 10925 and
disciplinary proceedings conducted
pursuant to 49 CFR 1106.11.

(b) The Board may also designate a
proceeding not listed in paragraph (a)
of this section as an adversary adju-
dication for purposes of the Act by so
stating in an order initiating the pro-
cceeding, 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 fil-
ing of an application by a party who
believes the proceeding is covered by
the Act; whether the proceeding is cov-
ered will then be an issue for resolution
in proceedings on the application.

(c) If a proceeding includes both mat-
ters covered by the Act and matters
specifically excluded from coverage,
any award made will include only fees
and expenses related to covered issues.

§ 1016.104 Decisionmaking authority.

Unless otherwise ordered by the
Board in a particular proceeding, each
application for an award under this part
shall be assigned for decision to the
official or decisionmaking body
that entered the decision in the adver-
sary adjudication. That official or deci-
sionmaking body is referred to in this
part as the “adjudicative officer.”

§ 1016.105 Eligibility of applicants.

(a) To be eligible for an award of at-
torney fees and other expenses under
the Act, the applicant must be a party
to the adversary adjudication for which
it seeks an award, it must have stood
in an adversary relationship to the po-
tion taken by agency counsel, and it
must have prevailed on one or more of
the issues raised by agency counsel.
The term “party” is defined in 5 U.S.C.
504(b)(1)(B). The applicant must show
that it meets all conditions of eligi-
bility set out in this subpart and in
Subpart B.

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

(1) An individual whose net worth did
not exceed $2 million at the time the
adversary adjudication was initiated;

(2) Any owner of an unincorporated
business, or any partnership, corpora-
tion, association, unit of local govern-
dment, or organization whose net worth
does not exceed $7 million and which
had no more than 500 employees at the
time the adversary adjudication was
initiated;

(3) Any organization described in sec-
tion 501(c)(3) of the Internal Revenue
from taxation under section 501(a) of
such Code, or a cooperative association
as defined in section 15(a) of the Agri-
cultural Marketing Act (12 U.S.C.
1141j(a)), may be a party regardless of
the net worth of such organization or
cooperative association.

(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) The employees of an applicant in-
clude all persons who regularly per-
form services for remuneration for the
applicant, under the applicant’s direc-
tion and control. Part-time employees
shall be included on a proportional
basis. Independent contractors under
lease to motor carriers are not employ-
ees of the carriers under these rules.
Also, agents for motor common car-
rriers of household goods are not em-
ployees of their respective principal
 carriers.

(e) The net worth and number of em-
ployees of the applicant and all of its
affiliates shall be aggregated to deter-
mine eligibility. Any individual, cor-
poration or other entity that directly
or indirectly controls or owns a major-
ity of the voting shares or other inter-
est 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 af-
fliate for purposes of this part, unless
the adjudicative officer determines
that such treatment would be unjust
and contrary to the purposes of the Act.