§ 15.40 Scope and purpose.
(a) The purpose of this subpart is to set forth regulations relating to claims for damage to persons or property arising out of the operation of Job Corps which the Secretary of Labor finds to be a proper charge against the United States but which are not cognizable under the Federal Tort Claims Act.
(b) This subpart further amplifies the regulatory provisions set forth in 20 CFR 638.526(b) regarding such claims.

§ 15.41 Allowable claims.
(a)(1) A claim for damage to persons or property arising out of an act or omission of a student enrolled in the Job Corps may be considered pursuant to § 436(b) of the Job Training Partnership Act (29 U.S.C. 1706(b)):
(i) if the act or omission which gave rise to the claim took place at the center to which the student involved was assigned, or
(ii) if the student involved was not within the geographical limits of his hometown and was within 100 miles of the center to which he or she was assigned, or while he or she was on authorized travel to or from the center.
(b) A claim for damage to person or property hereunder may not be paid if the claim is cognizable under the Federal Tort Claims Act.
(c) A claim for damage to person or property may be adjusted and settled hereunder in an amount not exceeding $1500.

§ 15.42 Claim procedures.
(a) Claim. A claim under this subpart must be in writing and signed by the claimant or by an authorized representative. It must be received by the Office of the Solicitor within two years of the date upon which the claim accrued.
(b) Award. The Regional Solicitors and Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims filed under this subpart that arose within their respective jurisdictions.

PART 16—EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

§ 16.101 Purpose of these rules.
Section 203(a)(1) of the Equal Access to Justice Act amends section 504 of the Administrative Procedure Act to provide for the award of attorney fees and other expenses to eligible individuals and entities who are parties to
certain administrative proceedings before the Department of Labor. An eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards, the proceedings that are covered, how to apply for awards, and the standards under which awards will be granted.

§ 16.102 Definitions.
As used in this part:
(b) Adversary adjudication means an adjudication under 5 U.S.C. 554 or other proceeding required by statute to be determined on the record after an opportunity for an agency hearing, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license.
(c) Adjudicative officer means the official who presides at the adversary adjudication, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise.
(d) Department refers to the cognizant departmental component which is participating in the adversary adjudication, (e.g., Occupational Safety and Health Administration, Mine Safety and Health Administration, and Employment Standards Administration).
(e) Proceeding means an adversary adjudication as defined in paragraph (b) of this section.

§ 16.103 When the Act applies.
The Act applies to any adversary adjudication pending before the Department at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs, except that it shall not apply in any case pending on October 1, 1981 in which a decision has been issued, but final agency action has not been taken by reason of an abatement.

§ 16.104 Proceedings covered.
(a) The Act applies in adversary adjudications in which the position of the Department or another agency of the United States is presented by an attorney or other representative who enters an appearance and participates in the proceeding in an adversarial capacity. Any proceeding which prescribes a lawful present or future rate or is primarily rule-making is not covered. 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. The following types of proceedings are deemed to be adversarial adjudications which will be covered by the Act, when all other conditions in the Act and in these rules are met:
(1) Hearings conducted by the Occupational Safety and Health Review Commission under the authority of 29 U.S.C. 661 of the Occupational Safety and Health Act; and hearings conducted by the Federal Mine Safety and Health Review Commission under the authority of 30 U.S.C. 823 of the Mine Safety and Health Act. In these proceedings, the rules of the respective Commissions rather than the instant rules will be applicable.
(2) Wage and Hour Division, Employment Standards Administration:
(i) Civil money penalties under the child labor provisions of the Fair Labor Standards Act at 29 U.S.C. 216(e) and 29 CFR part 579.
(iii) Revocation, modification and suspension of licenses under the Farm Labor Contractor Registration Act at 7 U.S.C. 2045(b) and 29 CFR 500.200.
(iv) Civil money penalties under the Farm Labor Contractor Registration Act at 7 U.S.C. 2048(b)(2) and 29 CFR 40.101.
(v) Revocation and suspension of certificates under the Migrant and Seasonal Agricultural Worker Protection Act at 29 U.S.C. 1813(b) and 29 CFR 500.200.
§ 16.105 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, as that term is defined in 5 U.S.C. 551(3), to an adversary adjudication for which it seeks an award; the applicant must prevail; and must meet all the conditions of eligibility set out in this subpart and subpart B.

(b) To be eligible for an award, the applicant must be:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business which has a net worth of not more than $5 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;

(5) Any other partnership, corporation, association or public or private organization with a net worth of not more than $5 million and not more than 500 employees. A unit of state or local government is not a public organization within the meaning of this provision.

(c) For purposes of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(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 prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who perform services for remuneration for the applicant, under the applicant’s direction and control. Part-time employees shall be included.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly
or indirectly controls or owns a majority of the voting shares of another business, or controls, in any manner, the election of a majority of that business’ board of directors, trustees or other persons exercising similar functions, shall be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 16.106 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Department as a party over which the applicant has prevailed was substantially justified or if special circumstances make the award sought unjust. No presumption arises that the Department’s position was not substantially justified simply because the Department did not prevail.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding.

§ 16.107 Allowable fees and expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) Reasonable cost of any study, analysis, engineering report, test, or project necessary for the preparation of the party’s case;

(3) Reasonable attorney or agent fees;

(b) Awards will be based on the prevailing market rates for the kind and quality of services furnished not to exceed the rates set forth in paragraph (c) of this section.

(c) No award under these rules for the fee of an attorney or agent may exceed $75.00 per hour. No award to compensate an expert witness may exceed $24.09 per hour.

(d) In determining the reasonableness of the fee sought, the adjudicative officer shall consider the following:

1. The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

2. The time actually spent in the representation of the applicant;

3. The difficulty or complexity of the issues in the proceeding;

4. Such other factors as may bear on the value of the services performed.

§ 16.108 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department of Labor and the other agency takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency by the adjudicative officer for the Department of Labor.

Subpart B—Information Required From Applicants

§ 16.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant at the time the proceeding was instituted and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant’s net worth at the time the formal proceedings were instituted did not exceed $1 million (if an individual) or $5 million (for all other applicants, including