

Subpart C—Claims Arising Out of the Operation of the Job Corps

§ 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.

(2) The claim may be paid if the deciding official, in his or her discretion, finds the claim to be a proper charge against the United States resulting from an act or omission of a student enrolled in the Job Corps.

(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 (28 U.S.C. 2677).

(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, ad-

just, determine, compromise and settle claims filed under this subpart that arose within their respective jurisdictions.

(c) *Notification.* The determination upon the claim shall be provided to the claimant in writing by the deciding official.

(d) *Reconsideration.* Reconsideration of a determination under this subpart shall be available pursuant to the procedures and limitations set forth in § 15.29.

PART 16—EQUAL ACCESS TO JUSTICE ACT

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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

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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:

(a) *The Act* means section 504 of title 5 U.S.C., as amended by section 203(a)(1) of the Equal Access to Justice Act, Public Law No. 96-481.

(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

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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.

(ii) Violations and debarment in Federal contracts under the Walsh-Healey Act at 41 U.S.C. 39 and 41 CFR 50-203.1.

(iii) Revocation, modification and suspension of licenses under the Farm Labor Contractor Registration Act at 7 U.S.C. 2045(b) and 29 CFR 40.101.

(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.