

Subpart A—General Provisions

§ 2610.101 Definitions.

(a) *Act* means the Equal Access to Justice Act, 5 U.S.C. 504, as amended.

(b) *Adjudicative officer* means the official, without regard to whether the official is designated as a hearing examiner, administrative law judge, administrative judge, or otherwise, who presided at the adversary adjudication.

(c) *Adversary adjudication* means:

(1) An adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but not including an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license; and

(2) An appeal of a decision of a contracting officer made pursuant to section 6 of the Contracts Disputes Act of 1978 (41 U.S.C. 605) as provided in section 8 of that statute (41 U.S.C. 607).

(d) *Agency counsel* means:

(1) When the position of the Office is being represented, the attorney or attorneys designated by the Office's General Counsel to represent the Office in a proceeding covered by this part; and

(2) When the position of another agency of the United States is being represented, the representative or representatives as designated by that agency.

(e) *Office* means the United States Office of Government Ethics, or the organizational unit within the Office responsible for conducting an adversary adjudication subject to this part.

(f) *Proceeding* means an adversary adjudication as defined above.

(g) *Director* means the Director of the United States Office of Government Ethics.

§ 2610.102 Purpose.

The Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings ("adversary adjudications") before the Office of Government Ethics. An eligible party may receive an award when it prevails over the Office, unless the Office's position in the proceeding was substantially justified or special circumstances make an award unjust. An eligible party may also re-

ceive an award when the demand of the Office is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith 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 Office will use to make them.

[57 FR 33268, July 28, 1992, as amended at 63 FR 13116, Mar. 18, 1998]

§ 2610.103 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Office of Government Ethics on or after October 1, 1989, which is the date the Office became a separate executive agency. Prior to October 1, 1989, the Office was part of the Office of Personnel Management. Any adversary adjudication pending or commenced before October 1, 1989, and not finally disposed of by that date, is governed by the rules and policies implementing the Equal Access to Justice Act as adopted by the Office of Personnel Management.

§ 2610.104 Proceedings covered.

(a) This part applies to adversary administrative adjudications conducted by the Office of Government Ethics. When all other conditions in the Act and in these rules are met, the types of proceedings to which this part applies are adversary administrative adjudications conducted by the Office under:

(1) The Debt Collection Act of 1982, 5 U.S.C. 5514;

(2) The Contract Disputes Act of 1978, 41 U.S.C. 605, 607;

(3) The Ethics in Government Act of 1978, section 402(f)(2), 5 U.S.C. app., and subpart E of part 2638 of this chapter.

(b) The Office's failure to identify a type of 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