

Initial determination concerning:	Petitions for review due:	Response to petitions due:	Commission deadline for determining whether to review the initial determination:
2. Forfeiture of respondent's bond § 210.50(d)(3).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
3. Forfeiture of complainant's temporary relief bond § 210.70(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
4. Summary initial determination that would terminate the investigation if it became the Commission's final determination § 210.42(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
5. Other matters § 210.42(c) ...	5 business days from service of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination on private parties.
6. Formal enforcement proceedings § 210.75(b).	By order of the Commission ..	By order of the Commission ..	90 days from service of the initial determination on private parties.

[73 FR 38327, July 7, 2008]

**PART 212—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT**

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AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 9391, Mar. 5, 1982, unless otherwise noted.

**Subpart A—General Provisions**

**§ 212.01 Purpose.**

(a) 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 an agency. Under the Act 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 and the Commission proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

**§ 212.02 When the Act applies.**

The Act applies to any adversary adjudication pending before the Commission at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final Commission action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Commission action occurs.

**§ 212.03 Proceedings covered.**

(a) The Act applies to adversary adjudications conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the

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Commission is presented by an attorney or other representative who enters an appearance and participates in the proceeding. The Commission proceedings covered are those conducted under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. No award shall be made, however, for fees and expenses related to those portions of the proceedings conducted for the consideration of relief, the public interest, and bonding pursuant to subsections 337 (d), (e), and (f) of the Tariff Act of 1930 and 19 CFR 210.14.

(b) An award may be made against the Commission only in connection with a proceeding brought by the Commission upon its own complaint.

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

### §212.04 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 to the adversary adjudication for which it seeks an award. The term *party* is defined in 5 U.S.C. 551(3) and 19 CFR 210.04. The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

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

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

(2) The sole owner of an unincorporated business who 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. 1144j(a)) with not more than 500 employees; and

(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.

(c) For the purpose of eligibility, the net worth and number of employees of

an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered to be 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 regularly perform services for remuneration for the applicant under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(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 or other interest 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 affiliate for purposes of this part, unless the presiding 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 presiding 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.

### §212.05 Standards for awards.

(a) The determination whether an applicant is a prevailing party shall be made on a case-by-case basis.

(b) A prevailing applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication, or in a significant and discrete substantive portion of the adversary adjudication, unless the position of the Commission investigative