

§ 2204.101

EDITORIAL NOTE: Nomenclature changes to part 2204 appear at 62 FR 59569, Nov. 4, 1997.

Subpart A—General Provisions

§ 2204.101 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney or agent fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called “adversary adjudications”) before the Occupational Safety and Health Review Commission. An eligible party may receive an award when it prevails over the Secretary of Labor, unless the Secretary’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 proceedings that are covered. They also explain how to apply for awards and the procedures and standards that the Commission uses to make awards.

[46 FR 48080, Sept. 30, 1981, as amended at 52 FR 5456, Feb. 23, 1987]

§ 2204.102 Definitions.

For the purposes of this part,

(a) The term *agent* means any person other than an attorney who represents a party in a proceeding before the Commission pursuant to § 2200.22;

(b) The term *Commission* means the Occupational Safety and Health Review Commission;

(c) The term *EAJA* means the Equal Access to Justice Act, 5 U.S.C. 504.

(d) The term *judge* means an administrative law judge appointed by the Commission under 29 U.S.C. 661(i);

(e) The term *OSH Act* means the Occupational Safety and Health Act of 1970, 29 U.S.C. 651-678;

(f) The term *Secretary* means the Secretary of Labor.

[46 FR 48080, Sept. 30, 1981, as amended at 52 FR 5456, Feb. 23, 1987]

§ 2204.103 When the EAJA applies.

The EAJA applies to adversary adjudications before the Commission pending or commenced on or after August 5, 1985. The EAJA also applies to adversary adjudications commenced on or before October 1, 1984, and finally dis-

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posed of before August 5, 1985, if an application for an award of fees and expenses, as described in subpart B of these rules, has been filed with the Commission within 30 days after August 5, 1985.

[52 FR 5456, Feb. 23, 1987]

§ 2204.104 Proceedings covered.

The EAJA applies to adversary adjudications before the Commission. These are adjudications under 5 U.S.C. 554 and 29 U.S.C. 659(c) in which the position of the Secretary is represented by an attorney or other representative. The types of proceedings covered are the following proceedings under section 10(c), 29 U.S.C. 659(c), of the OSH Act:

(a) Contests of citations, notifications, penalties, or abatement periods by an employer;

(b) Contests of abatement periods by an affected employee or authorized employee representative; and

(c) Petitions for modification of the abatement periods by an employer.

§ 2204.105 Eligibility of applicants.

(a) To be eligible for an award of attorney or agent fees and other expenses under the EAJA, the applicant must be a party to the adversary adjudication. The term “party” is defined in 5 U.S.C. 551(3). The applicant must show that it satisfies the conditions of eligibility set out in this subpart and subpart B.

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

(1) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interest, and employs not more than 500 employees;

(2) 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;

(3) 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;

(4) Any other partnership, corporation, association, unit of local government, or public or private organization that has a net worth of not more than \$7 million and employs not more than 500 employees; and