

Occupational Safety and Health Review Commission

§ 2204.304

substantiation for any fees or expenses claimed.

[46 FR 48080, Sept. 30, 1981, as amended at 52 FR 5457, Feb. 23, 1987]

Subpart C—Procedures for Considering Applications

§ 2204.301 Filing and service of documents.

An EAJA application is deemed to be filed only when received by the Commission. In all other respects, an application for an award and any other pleading or document related to an application shall be filed and served on all parties to the proceeding in accordance with §§ 2200.7 and 2200.8, except as provided in § 2204.202(b) for confidential financial information.

[62 FR 35964, July 3, 1997]

§ 2204.302 When an application may be filed.

(a) An application may be filed whenever an applicant has prevailed in a proceeding or in a discrete substantive portion of the proceeding, but in no case later than thirty days after the Commission's final disposition of the proceeding.

(b) If Commission review is sought or directed of a judge's decision as to which an application for a fee award has been filed, proceedings concerning the award of fees shall be stayed until there is a final Commission disposition of the case and the period for seeking review in a court of appeals expires.

(c) If review of a Commission decision, or any item or items contained in that decision, is sought in the court of appeals under section 11 of the OSH Act, 29 U.S.C. 660, an application for an award filed with the Commission with regard to that decision shall be dismissed under 5 U.S.C. 554(c)(1) as to the item or items of which review is sought. If the petition for review in the court of appeals is thereafter withdrawn, the applicant may reinstate its application before the Commission within thirty days of the withdrawal.

(d) For purposes of this section, the date of final disposition is:

(1) The date on which the order of the judge disposing of the case becomes

final under section 12(j) of the OSH Act, 29 U.S.C. 661(i); or

(2) The date on which the order of the Commission affirming, modifying, or vacating the Secretary's citation or proposed penalty or directing other appropriate relief becomes final under section 10(c) of the OSH Act, 29 U.S.C. 659(c).

EFFECTIVE DATE NOTE: At 70 FR 22792, May 3, 2005, § 2204.302 was amended by revising paragraph (a) and removing paragraph (d), effective Aug. 1, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 2204.302 When an application may be filed.

(a) An application may be filed whenever an applicant has prevailed in a proceeding or in a discrete substantive portion of the proceeding, but in no case later than thirty days after the period for seeking appellate review expires.

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§ 2204.303 Answer to application.

(a) Within 30 days after service of an application, the Secretary shall file an answer to the application.

(b) If the Secretary and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted upon request.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Secretary's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Secretary shall include with the answer either supporting affidavits or a request for further proceedings under § 2204.307.

§ 2204.304 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 2204.307.