

matters described in the posted notice will also be submitted for publication in the FEDERAL REGISTER.

(b) *Voting*—(1) *Requirement that vote be taken.* Action to close all or part of a meeting that is not regularly scheduled or to withhold information about a meeting that is not regularly scheduled, under any paragraph of § 2203.3(b), will be taken only when at least two Commissioners vote to take the proposed action.

(2) *Separate votes required.* A separate vote of the Commissioners will be taken with respect to each Commission meeting or each part of a meeting that is proposed to be closed under paragraph (b) of this section or with respect to any information that is proposed to be withheld under paragraph (b) of this section.

(3) *Single vote on a series of meetings.* A single vote may be taken with respect to closing all or part of a series of meetings under paragraph (b) of this section, or with respect to any information concerning a series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in the series.

(4) *Public requests to close meetings.* Any person whose interest may be directly affected by a portion of an open meeting may request that the Commission close that portion to the public for any of the reasons referred to in paragraph (b)(5), (6) or (7) of § 2203.3. Upon the motion of any Commissioner, the Commission will vote by recorded vote whether to grant the request.

(5) *Proxy votes; recording of votes.* No proxy vote will be permitted for any vote required under paragraph (b) of this section. The vote of each participating Commissioner will be recorded.

(6) *Public announcement of votes.* Within one day after any vote taken under paragraph (b) of this section, the vote of each Commissioner on the question will be made publicly available at the Commission's national office. If any part of a meeting is to be closed under paragraph (b) of this section, a full written explanation of the Commission's action, together with a list of all persons expected to attend the meeting and their affiliation, will be

made publicly available at the Commission's national office within one day after the vote to close.

#### § 2203.6 Certification by the General Counsel.

For every meeting closed under any provision of these rules, the General Counsel will be asked to certify before the meeting that in his opinion the meeting may properly be closed to the public, and to state which exemptions he has relied upon. A copy of this certification, together with a statement (from the Commissioner presiding over the meeting) setting forth the time and place of the meeting and the persons present, shall be retained by the Commission as part of the transcript, recording or minutes of the meeting described in § 2203.7.

#### § 2203.7 Transcripts, recordings and minutes of closed meetings.

(a) *Record of meeting.* The Commission will make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public. However, if all or part of a meeting is closed under paragraph (b)(8), (9)(i) or (10) of § 2203.3, the Commission shall maintain either such a transcript or recording, or a set of minutes. Such minutes will fully and clearly describe all matters discussed and will provide a full and accurate summary of any actions taken, and the reasons for the actions. The minutes will also include a description of each of the views expressed on any item and a record of any roll call vote (reflecting the vote of each Commissioner on the question). In addition, the minutes will identify all documents considered in connection with any action.

(b) *Public access to records.* The Commission will make promptly available to the public, at its national office, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines to contain information which may be withheld under § 2203.3(b). Copies of the transcript, the

minutes, or a transcription of the recording disclosing the identity of each speaker, with the deletions noted in the preceding sentence, will be furnished to any person at the actual cost of duplication or transcription. Requests to inspect or to have copies made of any transcript, electronic recording or set of minutes of any meeting, or any item(s) on the agenda of any meeting, should be made in writing to the General Counsel at the Office of the General Counsel, Occupational Safety and Health Review Commission, Room 941, One Lafayette Centre, 1120–20th Street NW., Washington, DC 20036–3457. The request should identify the time, date, and place of the meeting and briefly describe the items sought. The Commission will maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting, or closed portion of a meeting, for a period of at least two years after the meeting, or until one year after the conclusion of any Commission proceeding with respect to which all or part of the meeting was held, whichever occurs later.

[50 FR 51679, Dec. 19, 1985, as amended at 58 FR 26066, Apr. 30, 1993; 73 FR 56492, Sept. 29, 2008]

## PART 2204—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN PROCEEDINGS BEFORE THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### Subpart A—General Provisions

- Sec.
- 2204.101 Purpose of these rules.
  - 2204.102 Definitions.
  - 2204.103 When the EAJA applies.
  - 2204.104 Proceedings covered.
  - 2204.105 Eligibility of applicants.
  - 2204.106 Standards for awards.
  - 2204.107 Allowable fees and expenses.
  - 2204.108 Delegation of authority.

### Subpart B—Information Required From Applicants

- 2204.201 Contents of application.
- 2204.202 Net worth exhibit.
- 2204.203 Documentation of fees and expenses.

### Subpart C—Procedures for Considering Applications

- 2204.301 Filing and service of documents.
- 2204.302 When an application may be filed.
- 2204.303 Answer to application.
- 2204.304 Reply.
- 2204.305 Comments by other parties.
- 2204.306 Settlement.
- 2204.307 Further proceedings.
- 2204.308 Decision.
- 2204.309 Commission review.
- 2204.310 Waiver.
- 2204.311 Payment of award.

AUTHORITY: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183.

SOURCE: 46 FR 48080, Sept. 30, 1981, unless otherwise noted.

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.