

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments telephonically at the hearing that previously submitted written comments by February 10, 2021, must submit an outline on the topics to be addressed and the amount of time to be devoted to each topic by March 18, 2021.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available (two days before the hearing) by emailing your request to [publichearings@irs.gov](mailto:publichearings@irs.gov). Please put "REG-101657-20 Agenda Request" in the subject line of the email.

Individuals who want to attend (by telephone) the public hearing must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG-101657-20) and the word "ATTEND". For example, the subject line may say: Request to ATTEND Hearing for REG-101657-20. The email requesting to attend the public hearing must be received by 5:00 p.m. two (2) business days before the date that the hearing is scheduled.

The telephonic hearing will be made accessible to people with disabilities. To request special assistance during the telephonic hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by telephone at (202) 317-5177 (not a toll-free number) at least three (3) days prior to the date that the telephonic hearing is scheduled.

Any questions regarding speaking at or attending a public hearing may also be emailed to [publichearings@irs.gov](mailto:publichearings@irs.gov).

#### Crystal Pemberton,

Senior Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

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## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2204

#### Rules Implementing the Equal Access to Justice Act

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Commission's procedural rules implementing the Equal Access to Justice Act to closely conform with new model rules from the Administrative Conference of the United States.

**DATES:** Comments must be received by April 7, 2021.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Email:* [ctellinghuisen@oshrc.gov](mailto:ctellinghuisen@oshrc.gov). Include "Notice of proposed rulemaking, 29 CFR part 2204" in the subject line of the message.
- *Fax:* 202-606-5417.
- *Mail or Hand Delivery/Courier:* One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.

All submissions must include your name, return address, and email address, if applicable. Please clearly label submissions as "Notice of proposed rulemaking, 29 CFR part 2204."

#### FOR FURTHER INFORMATION CONTACT:

Carter Tellinghuisen, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606-5410 ext. 211, by email at [ctellinghuisen@oshrc.gov](mailto:ctellinghuisen@oshrc.gov), or by mail at 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.

#### SUPPLEMENTARY INFORMATION:

##### I. Revisions to Part 2204

The Occupational Safety and Health Review Commission ("Commission") has established rules of procedure implementing the Equal Access to Justice Act ("EAJA"), 5 U.S.C. 504. EAJA directs Federal agencies to consult with the Administrative Conference of the United States ("ACUS") to develop procedural rules to implement the provisions of the statute. The Commission's existing rules for EAJA proceedings are based on model rules ACUS published in 1986. On August 8, 2019, ACUS published Revised Model Rules for Implementation of the Equal Access to Justice Act to reflect subsequent amendments to the law and practice, and to promote greater accuracy and clarity. 84 FR 38934 (August 8, 2019). The Commission has reviewed the Revised Model Rules and now proposes amendments to its procedural rules consistent with the amendments made by ACUS to the model rules.

ACUS summarized and explained its amendments in the preamble to the amended model rules and in Administrative Conference Recommendation 2019-4. 84 FR 38934, 38934 (August 8, 2019); 84 FR 38927,

38933 (August 8, 2019). To the extent applicable, the Commission relies upon the rationale ACUS provided in those documents as the basis for the proposed amendments to the Commission's rules.

In addition, the Commission has determined that an adjustment for increases in the cost of living is appropriate in considering an applicant's request for attorney or agent fees. Accordingly, pursuant to 5 U.S.C. 504(b)(1)(A), the Commission proposes revising §§ 2204.303 and 2204.406(c)(2) to allow an applicant to request, with supporting documentation, an increase in hourly fees to account for inflation as measured by the consumer price index in the relevant locality.

Generally, amendments to the Commission's rules of procedure are not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment, 5 U.S.C. 553(b)(3)(A). Because the Commission values the views of those who appear before it, however, public comment is invited on these proposed amendments.

##### II. Statutory and Executive Order Reviews

*Executive Orders 12866 and 13132, and the Unfunded Mandates Reform Act of 1995:* The Review Commission is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

*Regulatory Flexibility Act:* Pursuant to 5 U.S.C. 605(a), a regulatory flexibility analysis is not required because these proposed rules concern "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" under 5 U.S.C. 553(b).

*Paperwork Reduction Act of 1995:* The Review Commission has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because these proposed rules do not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB).

*Congressional Review Act:* These proposed revisions do not constitute a "rule," as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C), because they involve changes to agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

##### List of Subjects in 29 CFR Part 2204

Administrative practice and procedure, Equal access to justice.

For the reasons set forth in the preamble, the Review Commission

proposes revising 29 CFR part 2204 to read as follows:

**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 Scope of this part.

**Subpart B—Definitions**

2204.201 Definitions.

**Subpart C—EAJA Application**

2204.301 Application requirements.  
2204.302 Net worth exhibit.  
2204.303 Documentation of fees and expenses.

**Subpart D—Procedures for Considering Applications**

2204.401 Filing and service of documents.  
2204.402 Answer to application.  
2204.403 Reply.  
2204.404 Settlement.  
2204.405 Further proceedings.  
2204.406 Decision.  
2204.407 Commission review.  
2204.408 Judicial review.  
2204.409 Stay of decision concerning award.  
2204.410 Waiver.  
2204.411 Payment of award.

**Authority:** 5 U.S.C. 504.

**Subpart A—General Provisions**

**§ 2204.101 Scope of this part.**

The Equal Access to Justice Act, 5 U.S.C. 504 (called “EAJA” in this part), 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. Alternatively, an eligible party, even if not a prevailing party, may receive an award under 5 U.S.C. 504(a)(4) when it successfully defends against an excessive demand made by the Secretary.

**Subpart B—Definitions**

**§ 2204.201 Definitions.**

For the purposes of this part:  
*Adversary adjudication* means an adjudication under 5 U.S.C. 554 and 29 U.S.C. 659(c) in which the position of the Secretary is represented by counsel or otherwise, subject to certain exclusions set forth in 5 U.S.C. 504(b)(1)(C).

*Agent* means any person other than an attorney who represents a party in a proceeding before the Commission pursuant to § 2200.22 of this chapter.

*Commission* means the Occupational Safety and Health Review Commission.

*Demand* means the express demand of the Secretary which led to the adversary adjudication, but does not include a recitation by the Secretary of the maximum statutory penalty:

- (1) In the administrative complaint; or
- (2) Elsewhere when accompanied by an express demand for a lesser amount.

*Excessive demand* means a demand by the Secretary, in an adversary adjudication arising from the Secretary’s action to enforce a party’s compliance with a statutory requirement that is substantially in excess of the decision of the judge or Commission and is unreasonable when compared with such decision, under the facts and circumstances of the case.

*Final disposition* means the date on which a decision or order disposing of the merits of the adversary adjudication or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, become final and unappealable, both within the agency and to the courts.

*Judge* means the Administrative Law Judge appointed under 29 U.S.C. 661(j) who presided over the adversary adjudication or presides over an EAJA proceeding.

*Party* means a party, as defined in 5 U.S.C. 551(3), who is:

- (1) An individual whose net worth did not exceed \$2,000,000 at the time the adversary adjudication was initiated; or
- (2) Any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed \$7,000,000 at the time the adversary adjudication was initiated, and which had not more than 500 employees at the time the adversary adjudication was initiated; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, may be a party regardless of the net worth of such organization or cooperative association. For purposes of 5 U.S.C. 504(a)(4), “party” also includes a small entity as defined in 5 U.S.C. 601.

*Position of the Secretary* means, in addition to the position taken by the Secretary in the adversary adjudication, the action or failure to act by the Secretary upon which the adversary

adjudication is based, except that fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which the party has unreasonably protracted the proceedings.

*Secretary* means the Secretary of Labor.

**Subpart C—EAJA Application**

**§ 2204.301 Application requirements.**

(a) A party seeking an award under EAJA shall file an application with the judge that conducted the adversarial adjudication within 30 days after the final disposition of the adversary adjudication.

(b) The application shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Secretary that the applicant alleges was not substantially justified; or, if the applicant has not prevailed, shall show that the Secretary’s demand was substantially in excess of the decision of the judge or Commission and was unreasonable when compared with that decision under the facts and circumstances of that case. The application shall also identify the Secretary’s position(s) in the proceeding that the applicant alleges was (were) not substantially justified or the Secretary’s demand that is alleged to be excessive and unreasonable. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and briefly describe the type and purpose of its organization or business.

(c) The application shall also show that the applicant meets the definition of “party” in § 2204.201(h), including adequate documentation of its net worth, as set forth in § 2204.302.

(d) The application shall state the amount of fees and expenses for which an award is sought, subject to the requirements and limitations as set forth in 5 U.S.C. 504(b)(1)(A), with adequate documentation as set forth in § 2204.303.

(e) The application shall be signed by the applicant or an authorized officer, attorney, or agent of the applicant. It shall also contain or be accompanied by a written verification under penalty of perjury that the information provided in the application is true and correct.

**§ 2204.302 Net worth exhibit.**

(a) Each applicant except a qualified tax-exempt organization, cooperative association, or, in the case of an application for an award related to an allegedly excessive demand by the

Secretary, a small entity as that term is defined by 5 U.S.C. 601(6), shall provide with its application a detailed exhibit showing the net worth of the applicant as required by § 2204.301(c) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's assets and liabilities and is sufficient to determine whether the applicant qualifies under excessive demand as defined in § 2204.201. The judge or Commission may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may request that the documents be filed under seal or otherwise be treated as confidential, pursuant to §§ 2200.8 and 2200.52 of this chapter.

**§ 2204.303 Documentation of fees and expenses.**

The application shall be accompanied by adequate documentation of the fees and other expenses incurred after the initiation of the adversary adjudication, including, but not limited to, the reasonable cost of any study, analysis, engineering report, test, or project. An application seeking an increase in fees to account for inflation pursuant to § 2200.406 of this chapter shall also include adequate documentation of the change in the consumer price index for the attorney or agent's locality. With respect to a claim for fees and expenses involving an excessive demand by the Secretary, the application shall be accompanied by adequate documentation of such fees and expenses incurred after initiation of the adversary adjudication for which an award is sought attributable to the portion of the demand alleged to be excessive and unreasonable. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The judge or Commission may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed.

**Subpart D—Procedures for Considering Applications**

**§ 2204.401 Filing and service of documents.**

Any application for an award, or any accompanying documentation related to an application shall be filed and served on all parties to the proceeding in accordance with §§ 2200.7 and 2200.8 of this chapter, except as provided in § 2204.302(b) for confidential financial information.

**§ 2204.402 Answer to application.**

(a) Within 30 days after service of an application, the Secretary shall file an answer to the application. Unless the Secretary requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(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 by the judge 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 § 2204.405.

**§ 2204.403 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 § 2204.405.

**§ 2204.404 Settlement.**

The applicant and the Secretary may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying adversary adjudication, or after the adversary adjudication has been concluded, in accordance with the Commission's standard settlement procedures as set forth in § 2200.120 of this chapter. If a prevailing party and the Secretary agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the

proposed settlement. If a proposed settlement of an underlying proceeding provides that each side shall bear its own expenses and the settlement is accepted, no application may be filed.

**§ 2204.405 Further proceedings.**

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or the Secretary, or on his or her own initiative, the judge presiding over an EAJA proceeding may, if necessary for a full and fair decision on the application, order the filing of additional written submissions; hold oral argument; or allow for discovery or hold an evidentiary hearing, but only as to issues other than whether the agency's position was substantially justified (such as those involving the applicant's eligibility or substantiation of fees and expenses). Any written submissions shall be made, oral argument held, discovery conducted, and evidentiary hearing held as promptly as possible so as not to delay a decision on the application for fees. Whether or not the position of the Secretary was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request for further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

**§ 2204.406 Decision.**

The preparation and issuance of decision on the fee application shall be in accordance with § 2200.90 of this chapter.

(a) *For an application involving a prevailing party.* The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if applicable, findings on whether the Secretary's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

(b) *For an application involving an allegedly excessive agency demand.* The decision shall include written findings and conclusions on the applicant's eligibility and an explanation of the reasons why the agency's demand was or was not determined to be

substantially in excess of the underlying decision in the matter and whether the Secretary's demand was or was not unreasonable. That determination shall be based upon all the facts and circumstances of the case.

(c) *Awards.* The judge presiding over an EAJA proceeding or the Commission on review may reduce the amount to be awarded, or deny any award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(1) Awards shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(2) An award for the fee of an attorney or agent under this part shall not exceed the hourly rate specified in 5 U.S.C. 504(b)(1)(A), except to account for inflation since the last update of the statute's maximum award upon the request of the applicant as documented in the application pursuant to § 2204.303. An award to compensate an expert witness shall not exceed the highest rate at which the Secretary pays expert witnesses. However, an award may include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(3) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the following shall be considered:

(i) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(ii) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily perform services;

(iii) The time actually spent in the representation of the applicant;

(iv) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(v) Such other factors as may bear on the value of the services provided.

(4) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of the party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

#### § 2204.407 Commission review.

Either the applicant or the Secretary may seek review of the judge's decision on the fee application, and the Commission may grant such a petition for review or direct review of the decision on the Commission's own initiative. Review by the Commission shall be in accordance with §§ 2200.91 and 2200.92 of this chapter.

#### § 2204.408 Judicial review.

Judicial review of final decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

#### § 2204.409 Stay of decision concerning award.

Any proceedings on an application for fees under this part shall be automatically stayed until the adversary adjudication has become a final disposition.

#### § 2204.410 Waiver.

After reasonable notice to the parties, the judge or the Commission may waive, for good cause shown, any provision contained in this part as long as the waiver is consistent with the terms and purpose of the EAJA.

#### § 2204.411 Payment of award.

An applicant seeking payment of an award shall submit to the officer designated by the Secretary a copy of the Commission's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts.

**Cynthia L. Attwood,**

*Chair.*

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BILLING CODE 7600-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2020-0596; FRL10019-52-Region 3]

#### Air Plan Approval; Virginia; Revised RACT Permit for Roanoke Electric Steel/Steel Dynamics, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. The revision consists of amendments to a federally enforceable state operating permit (FESOP) which

was previously incorporated into the Virginia SIP in order to implement reasonably available control technology (RACT) for nitrogen oxide (NO<sub>x</sub>) emissions from Steel Dynamics, Inc. (hereafter "SDI," formerly Roanoke Electric Steel). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before April 7, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2020-0596 at <https://www.regulations.gov>, or via email to [gordon.mike@epa.gov](mailto:gordon.mike@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** David Talley, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The telephone number is (215) 814-2117. Mr. Talley can also be reached via electronic mail at [talley.david@epa.gov](mailto:talley.david@epa.gov).  
**SUPPLEMENTARY INFORMATION:** On April 14, 2020, the Virginia Department of Environmental Quality (VADEQ), on behalf of the Commonwealth of Virginia, formally submitted the amended permit as a revision to the Virginia SIP.

### I. Background

Prior to the establishment of nonattainment areas for the 1997 8-hour ozone national ambient air quality standards (NAAQS), EPA developed a