

Supporting Statement for Paperwork Reduction Act Submission (14 CFR Part 17)

1. Describe the circumstances that make the collection of information necessary.

Under the Department of Transportation and Related Agencies Appropriations Act of 1996, Pub. L. No. 104-50, 109 Stat. 436 (1995) (“Appropriations Act”), Congress directed the FAA to develop an acquisition system that addresses the mission and unique needs of the Agency and at a minimum, provide for more timely and cost-effective acquisition of equipment and materials. In the Appropriations Act, Congress expressly directed the FAA to create the new acquisition system without reference to existing procurement statutes and regulations. The result was the development of the FAA’s Acquisition Management System (“AMS”) and the establishment of the Office of Dispute Resolution for Acquisition (“ODRA”), which is independent of the FAA’s procurement offices and counsel. The ODRA exercises adjudicative authority pursuant to Section 224 of the Vision 100 – Century of Aviation Reauthorization Act, Pub. L. No. 108-176, 117 Stat. 2490 (2003). The ODRA’s mandate is to resolve bid protests and contract disputes in a timely and efficient manner, while emphasizing the use of alternative dispute resolution (“ADR”) techniques to the maximum extent practicable.

Whereas the AMS establishes policy and guidance for the FAA acquisition process, the ODRA’s Procedural Rule, 14 C.F.R. Part 17, sets forth regulations for the public to follow when filing protests and contract claims against the FAA. Specifically, the collection of information that is subject to the Paperwork Reduction Act under the ODRA’s Procedural Rule involves only the receipt of the initial complaint or allegations pursuant to 14 C.F.R. §17.15 and §17.27, which form the basis for the dispute. Any other information obtained by the ODRA pursuant to 14 C.F.R. Part 17 is exempt from the requirements of the Paperwork Reduction Act, as it involves the collection of information during the conduct of an administrative action involving the FAA against specific individuals or entities. See 44 U.S.C. §3518(c)(1)(B)(ii). The collection of information under 14 C.F.R. §17.15 and §17.27 supports the Department of Transportation’s strategic goal of developing transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost consistent with those and other national objectives, including the efficient use and conservation of the resources of the United States.

2. Indicate how, by whom, and for what purpose the information is to be used.

14 C.F.R. §17.15 and §17.27 provide the procedures for filing protests and contract claims with the ODRA. The regulations seek factual and legal information from protesters or claimants primarily through written submissions. The information sought by the regulations is used by the ODRA, as well as the opposing parties: (1) to gain a clear understanding as to the facts and the law underlying the dispute; and (2) to provide a basis for applying dispute resolution techniques.

3. Describe whether, and to what extent the collection of information involves the use of automated, electronic, mechanical or other technological collection techniques.

The ODRA developed a website that is accessible to the public on the Internet at <http://www.faa.gov/go/odra>. The website is user friendly and contains general information about the ODRA's filing instructions. The website also contains all ODRA decisions issued to date. This online resource serves to reduce the amount of time, level of effort, and expense associated with filing a protest or contract claim for *pro se* litigants, as well as those represented by counsel. The use of this helps reduce the burden on the public to generate paperwork with regard to protests and contract claims. 14 C.F.R. § 17.7 provides that while subsequent documents may be exchanged electronically, all initial claims must be submitted on paper. Paragraph (d) of that section, however, provides for the use of electronic filing where permitted by order of the ODRA on a case-by-case basis or pursuant to a standing Order of the ODRA permitting electronic filing. In compliance with the Government Paperwork Elimination Act, the ODRA has proposed an electronic document management system that will allow the public to file protests and contract disputes electronically. Implementation of this electronic document management system, however, is subject to funding being made available for this purpose.

4. Describe efforts to identify duplication.

The regulations are designed to balance the reporting burden on the parties with the ODRA's mission, which is to resolve disputes in a timely and fair manner. Once a dispute is filed, the regulations allow the ODRA to encourage the parties to exchange information informally so as to narrow the issues in controversy, thereby reducing the chance that duplicative and extraneous information will be requested from the parties. .

5. Describe efforts to minimize burden on small business or other small entities.

The regulations benefit small business by saving them time and money. A small business need not hire an attorney in order to be represented before the ODRA. The ODRA forum is designed to be simple and accessible. For example, the ODRA's website contains a procedural guide, which provides detailed instructions for filing a claim or protest. Attorneys and non-attorneys alike can utilize this resource. Once a claim or protest is filed, the ODRA procedures further save the resources of small business by encouraging open exchanges of information and using alternative dispute resolution techniques. In particular, these actions help resolve disputes that are based on miscommunications and misunderstandings.

6. Describe the consequences to Federal program or policy activities if the collection is not made.

The regulations set forth procedures for the orderly, fair and efficient submission of information to the ODRA. If the collection is not made, the ODRA's ability to carry out its mission to resolve acquisition related disputes in a timely and fair manner would be seriously impaired. The ODRA's ability to conduct ADR and adjudicate acquisition-

related disputes is dependent on the initial collection of supporting facts and legal arguments from protesters and claimants.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with 5 C.F.R. §1320.5(d)(2)(i)-(viii).

The information collected is not inconsistent with 5 CFR §1320.5(d)(2)(i)-(viii).

8. If applicable, provide a copy and identify the date and page number in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB.

A notice was published in the Federal Register on March 10, 2011, vol. 76, no. 47, page 13264-13265, to allow for comments from the affected public. However, no comments were received.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There is no payment or gift to respondents contemplated in the regulations. To the extent that there is an advantage gained by respondents as a result of these regulations, that advantage would lie in the timely and fair resolution of their disputes by the ODRA.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The regulations set forth requirements for information that becomes part of the public record, with the sole exception of commercially sensitive information, which is covered by a protective order. Confidentiality as part of the ODRA's ADR process is provided for in 14 C.F.R. §17.39 and in accordance with the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §574. As this is an existing collection with no changes that affect privacy, no Privacy Impact Assessment is required.

11. Provide additional justification for any questions of a sensitive nature.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

This proposal generates a paperwork requirement upon only those respondents who pursue protests or contract disputes. The actual paperwork burden and cost for an individual case filing varies with the complexity of the dispute, which is estimated to range from 1 to 40 hours. In this analysis, the annual paperwork burden for all respondents would be approximately 923 hours, based on the average of the estimated time per filing, *i.e.*, 20.5 hours. This approximate figure is derived from estimates based on the average number of ODRA cases per year, *e.g.*, 45. Of course, the hourly cost for

preparation of the initial filing varies, depending upon whether a respondent hires a law firm, pursues the matter with in-house counsel, or chooses to proceed *pro se*, without the services of a lawyer. As of August 2010, approximately 50% of respondents proceeded on a *pro se* basis.

13. Provide an estimate of the total annual cost burden to respondents.

As explained previously, there is no “annual” cost burden to respondents associated with the regulations. The extent of any cost burden is dependent on the nature of the protest or contract claim filed before the ODRA. The cost burdens on a respondent for a typical dispute are outlined above in Item 12. As indicated above, the cost burden on respondents varies depending on how the initial filing is prepared. An estimate of the annual cost burden to respondents of initial filings is \$115,375. This number is derived by multiplying the annual paperwork burden of 923 hours with \$125, *i.e.*, the statutory hourly rate for attorney fees under 5 U.S.C. §504.

14. Provide estimates of annualized cost to the government.

When a protest or contract claim is filed initially with the ODRA, it is date-stamped, copied, docketed and placed in a file for the record. This process takes approximately 1 hour of time and is performed by a Paralegal (GS-12 equivalent) at an approximate cost of \$54.15 per hour (inclusive of costs of computer, facsimile and copying equipment, and administrative supplies). Thus, based on the average number of cases per year, the annualized cost to the government for collection of information is estimated to be \$2,436.84.

15. Explain the reasons for any program changes.

Except for the slight increase from 40 to 45 average number of ODRA cases per year, there are no changes to the actual cost burden associated with this collection set forth in paragraph 13 above. The annualized cost to the government for collection of the information, set forth in paragraph 14 above, changed as a result of incorporating the GS-12, step 5 hourly wage rate from the OPM 2010 salary table with an overhead rate of 12%.

16. For collection of information whose results will be published, outline plans for tabulation and publication.

The information received as a result of protests and contract disputes will not be published in the form that it is collected. The ODRA publishes on its website the Orders of the FAA Administrator (or her delegee) and the Findings and Recommendations of the Dispute Resolution Officers and Special Masters. These documents also are published on LEXIS. These publications contain non-protected information that is presented to the ODRA pursuant to a protest or contract dispute. Any commercially sensitive information covered by a protective order would not be published.

17. If seeking approval to not display the expiration for OMB, explain the reasons.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19.

There are no exceptions to the certification statement identified in Item 19 of OMB Form 83-1.