

Implementation to the Equal Access to Justice Act

OMB #2120-0539

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

The regulation implements procedures for the applications under the Equal Access to Justice Act (“EAJA”). The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are prevailing parties in administrative proceedings before government agencies. Certain information must be obtained from the applicant in order to determine such applicant’s eligibility for the EAJA award. The collection of this information supports the Department of Transportation’s strategic goals of supporting a transportation system that sustains America’s economic growth.

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

The information will be used to determine whether the applicant is eligible to receive an award under the EAJA. FAA enforcement cases ordinarily are adjudicated by the National Transportation Safety Board (NTSB) and the FAA Decisionmaker. With respect to cases adjudicated by the NTSB, in accordance with 49 CFR Part 826, the application is submitted to the NTSB Office of Administrative Law Judges. The application is assigned to an administrative law judge (ALJ) who issues an initial decision on the application. The initial decision of the ALJ may be appealed to the full NTSB. The decision of the full NTSB is the final agency decision. For enforcement cases adjudicated before the FAA Decisionmaker, under 14 CFR Part 14, the application is submitted to the FAA Hearing Docket. The application is assigned to an ALJ who issues an initial decision on the application. The initial decision of the ALJ may be appealed to the full NTSB. The decision of the full NTSB is the final agency decision. The EAJA requires that the requested information be collected in order to determine that only qualified applicants receive EAJA awards. For Office of Dispute Resolution applications, under the regulation, the application is submitted to the FAA Office of Dispute Resolution for Acquisition (“ODRA”) and is reviewed by a dispute resolution officer, who makes findings and recommendations to the FAA Administrator (or delegatee) for a final agency decision. The EAJA requires that the requested information be collected in order to determine that only qualified applicants receive EAJA awards.

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/about/office_org/headquarters_offices/agc/pol_adjudication/agc70/. The website contains all ODRA decisions issued to date, including those pertaining to EAJA applications. Also, in compliance with the Government Paperwork Elimination Act, the ODRA is developing a pilot project, in which electronic filings will be utilized in the default adjudication process on a case-by-case basis.

4. Describe efforts to identify duplication.

There is no duplication of information collected. Only information peculiar to individual parties and specific cases is collected. No similar information is already available for use in determining eligibility for an EAJA award.

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

This regulation applies to small businesses. The burden is limited to that information which is absolutely necessary to ensure that only qualified applicants receive EAJA awards.

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

Frequency of the collection of information is determined by the applicants; not the agency.

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 collection of information is conducted in a manner consistent with the guidelines in 5 CFR §1320.5(d)(2).

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 April 14, 2014, vol. 79, no. 71, pages 20963-20964, to allow for comments from the affected public. No comments were received.

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

Not applicable.

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 may be subject to a protective order. This is a previously existing collection with no changes that affect Privacy, so no Privacy Impact Assessment is necessary.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The information referred to in this question is not required by the regulation.

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

This proposal generates a paperwork requirement upon only those respondents who apply for an award pursuant to EAJA. The actual paperwork burden and cost for an individual case varies, depending on the complexity of the subject matter. The following estimate is based upon EAJA cases filed with the ODRA since April 1, 1996. This figure is derived from estimates based on the average number of ODRA EAJA cases per year, *i.e.*, 2. Assuming that these cases are fully adjudicated, and assuming that the average paperwork burden for an average case is 40 hours, the total paperwork burden for these cases is 80 (2 x 40) hours. The NTSB estimates that approximately 15 EAJA cases are filed each year. Assuming a fully adjudicated case takes 40 hours, the total paperwork burden for these cases would be 600 (15 x 40) hours. The total EAJA burden would be 680 (80 + 600) hours. These numbers are merely estimates and the hourly burden for preparation of pleadings and responses may vary depending on the complexity of the case.

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 whether an applicant chooses to file an EAJA application. The cost burdens on a respondent for a typical dispute are outlined above in Item 12.

14. Provide estimates of annualized cost to the government.

The annualized cost to the government for the ODRA’s collection of information pursuant to this regulation is calculated based on the fact that EAJA cases comprise approximately 4% of the ODRA’s caseload. Accordingly the annualized cost to the government for collection of this information is calculated as 4% of the annualized cost of the overall ODRA program, *i.e.*, \$16,300.

Annualized cost of the *overall* ODRA program is approximately \$408,000, based on the salaries of three attorneys, the Director, Office of Dispute Resolution for Acquisition (GS-15 equivalent) and two Dispute Resolution Officers (GS-14 equivalent); and one Administrative Assistant (GS-12 equivalent), operating costs (paper, telephone costs, including facsimile, e-mail and internet costs, and the cost of research vehicles such as LEXIS), and support equipment (word processors, facsimile and copying equipment, and administrative supplies).

15. Explain the reasons for any program changes.

Cost burden has been revised to reflect inflation.

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 the Orders of the FAA Administrator and Findings and Recommendations of the Dispute Resolution Officers and Special Masters on its website. 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.

We are not seeking approval to not display the expiration date.

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

There are no exceptions.