



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Revised Model Rules for Implementation of the Equal Access to Justice Act

Ad Hoc Committee

Proposed Model Rules | June 13, 2019

This document displays manager’s amendments (with no marginal notes) and an additional amendment from a Conference member (with the source shown in the margin).

The Equal Access to Justice Act (EAJA), first enacted in 1980, authorizes the award of attorneys’ fees and other expenses to eligible parties who prevail against the federal government in judicial proceedings and certain adversarial agency adjudicative proceedings, where the position of the government is not substantially justified.¹ In the case of agency adjudications, agencies must establish “uniform procedures for the submission and consideration of applications for an award of fees and other expenses” “[a]fter consultation with the Chairman of the Administrative Conference of the United States.”² In furtherance of this statutory obligation, the Conference Chairman in 1981 issued a set of model rules for agencies to use when adopting rules for the consideration of applications for EAJA awards in agency

¹ 5 U.S.C. § 504; 28 U.S.C. § 2412.

² 5 U.S.C. § 504(c)(1).



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adjudications.³ The Conference Chairman issued a revised set of rules in 1986.⁴ Many agencies have since promulgated EAJA rules that are substantially based upon these model rules.⁵

The Conference Chairman is issuing these rules to replace the 1981 and 1986 rules. They include revisions made to reflect changes in practice in the intervening thirty years and to promote greater accuracy and clarity. These rules are substantially the same as the rules accompanying Conference Recommendation 2019- __, adopted by the Assembly of the Conference. Agencies are encouraged to use these model rules when drafting or revising their EAJA rules pertaining to adjudications to promote the uniformity of procedure contemplated by EAJA.

REVISED MODEL RULES FOR IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

Subpart A — Scope of These Rules

§ 315.101 Scope of these rules.

Subpart B — Definitions

³ Admin Conf. of U.S., Equal Access to Justice Act: Agency Implementation, 46 Fed. Reg. 32,900 (June 25, 1981).

⁴ Admin. Conf. of U.S., Model Rules for Implementation of the Equal Access to Justice Act, 51 Fed. Reg. 16,659 (May 6, 1986) (previously codified at 1 C.F.R. pt. 315).

⁵ Equal Access to Justice Act Implementation Rule, 79 Fed. Reg. 7,569 (Consumer Fin. Prot. Bureau Feb. 10, 2014) (codified as amended at 12 C.F.R. pt. 1071); Equal Access to Justice Rules, 54 Fed. Reg. 53,050 (Sec. Exch. Comm'n Dec. 27, 1989) (codified as amended at 17 C.F.R. pt. 200-01); Procedural Rules Implementing Equal Access to Justice Act, 51 Fed. Reg. 36,223 (Nat'l Labor Relations Bd. Oct. 9, 1986) (codified as amended at 29 C.F.R. pt. 102); Procedural Rules; Miscellaneous Revisions and Corrections, 50 Fed. Reg. 53,302 (Fed. Trade Comm'n Dec. 31, 1985) (codified as amended at 16 C.F.R. pt. 0-5).



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Subpart A — Scope of These Rules

1 § 315.101 Scope of these rules.

2 The Equal Access to Justice Act, [5 U.S.C. § 504](#) ~~section 504 of Title V of the United~~
3 ~~States Code~~ (called “the Act” or “EAJA” in this part), provides for the award of attorney fees and
4 other expenses to eligible individuals and entities who are parties to certain administrative
5 proceedings (called “adversary adjudications”) before this agency. An eligible party may receive
6 an award when it prevails over an agency, unless the agency’s position was substantially justified
7 or special circumstances make an award unjust. Alternatively, an eligible party, [even if not a](#)
8 [prevailing party](#), may receive an award under [section 5 U.S.C. § 504\(a\)\(4\) of Title V of the](#)
9 [United States Code](#) when it [successfully](#) defends against an excessive demand made by an
10 agency.

Subpart B — Definitions

11 § 315.201 Definitions.

12 For the purposes of these rules:

13 (a) *Adjudicative officer* means the official, whether the official is designated as an
14 administrative law judge or otherwise, who presided over the hearing at the adversary
15 adjudication or the official who presides over an EAJA proceeding.

16 (b) *Adversary adjudication* means (i) an adjudication under [section 554 of Title V of the](#)
17 [United States Code 5 U.S.C. § 554](#) in which the position of the United States is represented by
18 counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate
19 or for the purpose of granting or renewing a license, (ii) any appeal of a decision made pursuant



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20 to ~~section 7103 of Title 41 of the United States Code~~ 41 U.S.C. § 7103 before an agency board of
21 contract appeals as provided in ~~41 U.S.C. § 7105~~ ~~section 7105 of Title 41 of the United States~~
22 ~~Code~~, (iii) any hearing conducted under ~~chapter 38 of Title 31 of the United States Code~~ 31
23 ~~U.S.C. § 3801 et seq.~~, and (iv) the Religious Freedom Restoration Act of 1993.

24 (c) *Demand* means the express demand of the agency which led to the adversary
25 adjudication, but does not include a recitation by the agency of the maximum statutory penalty
26 (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand
27 for a lesser amount.

28 (c) *Excessive demand* means a demand by an agency, in an adversary adjudication arising
29 from an agency action to enforce a party's compliance with a statutory requirement, that is
30 substantially in excess of the decision of the adjudicative officer and is unreasonable when
31 compared with such decision, under the facts and circumstances of the case.

32 (d) *Final disposition* means the date on which a decision or order disposing of the
33 merits of the proceeding or any other complete resolution of the proceeding, such as a settlement
34 or voluntary dismissal, become final and unappealable, both within the agency and to the courts.

35 (e) *Party* means a party, as defined in section ~~551(3) of Title V of the United States~~
36 ~~Code~~ 5 U.S.C. § 551(3), who is (i) an individual whose net worth did not exceed \$2,000,000 at
37 the time the adversary adjudication was initiated, or (ii) any owner of an unincorporated
38 business, or any partnership, corporation, association, unit of local government, or organization,
39 the net worth of which did not exceed \$7,000,000 at the time the adversary adjudication was
40 initiated, and which had not more than 500 employees at the time the adversary adjudication was

Commented [CMA1]: Comment by Senior Fellow Judge Stephen F. Williams: "It looks as if (iv) is missing a word parallel to the opening words of (i) through (iii), i.e., 'adjudication,' 'appeal,' and 'hearing.'"



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41 initiated; except that an organization described in section 501(c)(3) of the Internal Revenue Code
42 of 1986 exempt from taxation under section 501(a) of such Code, or a cooperative association as
43 defined in section 15(a) of the Agricultural Marketing Act, may be a party regardless of the net
44 worth of such organization or cooperative association. For purposes of ~~section 504(a)(4) of Title~~
45 ~~V of the United States Code~~ 5 U.S.C. § 504(a)(4), “party” also includes a small entity as defined
46 in ~~section 601 of Title V of the United States Code~~ 5 U.S.C. § 601.

47 (f) *Position of the agency* means, in addition to the position taken by the agency in the
48 adversary adjudication, the action or failure to act by the agency upon which the adversary
49 adjudication is based, except that fees and other expenses may not be awarded to a party for any
50 portion of the adversary adjudication in which the party has unreasonably protracted the
51 proceedings.

Subpart C — EAJA Applications

52 § 315.301 Application requirements.

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

56 (b) The application shall identify the applicant and the proceeding for which an award is
57 sought. The application shall show that the applicant has prevailed and identify the position of
58 the agency or agencies that the applicant alleges was not substantially justified; or, if the
59 applicant has not prevailed, shall show that the agency’s demand was substantially in excess of
60 the decision of the adjudicative officer and was unreasonable when compared with that decision



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61 under the facts and circumstances of that case. The application shall also identify the agency
62 position(s) in the proceeding that the applicant alleges was (were) not substantially justified or
63 the agency's demand that is alleged to be excessive and unreasonable. Unless the applicant is an
64 individual, the application shall also state the number of employees of the applicant and describe
65 briefly the type and purpose of its organization or business.

66 (c) The application shall also show that the applicant meets the definition of "party" in
67 ~~section 504(b)(1)(B) of Title V of the United States Code~~ 5 U.S.C. § 504(b)(1)(B), including
68 adequate documentation of its net worth, as set forth in section 315.302.

69 (d) The application shall state the amount of fees and expenses for which an award is
70 sought, subject to the requirements and limitations as set forth in ~~section 504(b)(1)(A) of Title V~~
71 ~~of the United States Code~~ 5 U.S.C. § 504(b)(1)(A), with adequate documentation as set forth in
72 section 315.303.

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

76 **§ 315.302 Net worth exhibit.**

77 (a) Each applicant except a qualified tax-exempt organization, cooperative association,
78 or, in the case of an application for an award related to an allegedly excessive demand by the
79 agency, a small entity as that term is defined by ~~section 601 of Title V of the United States~~
80 ~~Code~~ 5 U.S.C. § 601, shall provide with its application a detailed exhibit showing the net worth
81 of the applicant is as represented in the statement required by section 315.301 ~~(c)~~ when the



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82 proceeding was initiated. The exhibit may be in any form convenient to the applicant that
83 provides full disclosure of the applicant's assets and liabilities and is sufficient to determine
84 whether the applicant qualifies under the standards provided in section 315.201(e). An
85 adjudicative officer presiding over an EAJA proceeding may require an applicant to file
86 additional information to determine its eligibility for an award.

87 (b) Ordinarily, the net worth exhibit will be included in the public record of the
88 proceeding. However, an applicant that objects to public disclosure of information in any portion
89 of the exhibit and believes there are legal grounds for withholding it from disclosure may request
90 that the documents be filed under seal or otherwise be treated as confidential, pursuant to [insert
91 cross-reference to appropriate agency rules governing such requests].

92 § 315.303 Documentation of fees and expenses.

93 The application shall be accompanied by adequate documentation of the fees and other
94 expenses incurred after initiation of the adversary adjudication, including, but not limited to, the
95 reasonable cost of any study, analysis, engineering report, test, or project. With respect to a claim
96 for fees and expenses involving an excessive demand by the agency, the application shall be
97 accompanied by adequate documentation of such fees and expenses incurred after initiation of the
98 adversary adjudication for which an award is sought attributable to the portion of the demand
99 alleged to be excessive and unreasonable. A separate itemized statement shall be submitted for
100 each professional firm or individual whose services are covered by the application, showing the
101 hours spent in connection with the proceeding by each individual, a description of the specific
102 services performed, the rate at which each fee has been computed, any expenses for which



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103 reimbursement is sought, the total amount claimed, and the total amount paid or payable by the
104 applicant or by any other person or entity for the services provided. An adjudicative officer
105 presiding over an EAJA proceeding may require the applicant to provide vouchers, receipts, or
106 other substantiation for any expenses claimed.

Subpart D — Procedures for Considering Applications

107 **§ 315.401 Filing and service of documents.**

108 Any application for an award, or any accompanying documentation related to an
109 application, shall be filed and served on all parties to the proceeding in the same manner as other
110 pleadings in the proceeding, except, as provided in section 315.302(b), for confidential financial
111 information.

112 **§ 315.402 Answer to application.**

113 (a) Within 30 days after service of an application, counsel representing the agency against
114 which an award is sought may file an answer to the application. Unless agency counsel requests
115 an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of
116 this section, failure to file an answer within the 30-day period may be treated as a consent to the
117 award requested.

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



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121 extensions may be granted by the adjudicative officer presiding over an EAJA proceeding upon
122 request by agency counsel and the applicant.

123 (c) The answer shall explain in detail any objections to the award requested and identify the facts
124 relied upon in support of agency counsel's position. If the answer is based on any alleged facts
125 not already in the record of the proceeding, agency counsel shall include with the answer either
126 supporting affidavits or a request for further proceedings under section 315.405.

127

128 **§ 315.403 Reply.**

129 Within 15 days after service of an answer, the applicant may file a reply. If the reply is
130 based on any alleged facts not already in the record of the proceeding, the applicant shall include
131 with the reply either supporting affidavits or a request for further proceedings under section
132 315.405.

133 **§ 315.404 Settlement.**

134 The applicant and agency counsel may agree on a proposed settlement of the award
135 before final action on the application, either in connection with a settlement of the underlying
136 adversary adjudication, or after the adversary adjudication has been concluded, in accordance
137 with the agency's standard settlement procedure. If a prevailing party and agency counsel agree
138 on a proposed settlement of an award before an application has been filed, the application shall
139 be filed with the proposed settlement. If a proposed settlement of an underlying proceeding
140 provides that each side shall bear its own expenses and the settlement is accepted, no application
141 may be filed.



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142 **§ 315.405 Further proceedings.**

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

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

157 **§ 315.406 Decision.**

158 The adjudicative officer presiding over an EAJA proceeding shall issue an [initial or
159 recommended]⁶ decision on the application within [60 days] after the time for filing a reply, or
160 when further proceedings are held, within [60 days] after completion of such proceedings.

⁶ Brackets such as these indicate that an agency is to use its discretion to determine what language or time frame is most appropriate.



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

167 (b) *For an application involving an allegedly excessive agency demand.* The decision on
168 the application shall include written findings and conclusions on the applicant's eligibility and an
169 explanation of the reasons why the agency's demand was or was not determined to be
170 substantially in excess of the underlying decision of the adjudicative officer and was or was not
171 unreasonable when compared with that decision. That determination shall be based upon all the
172 facts and circumstances of the case. The decision on the application shall also include, if at issue,
173 findings on whether the applicant has committed a willful violation of law or otherwise acted in
174 bad faith, or whether special circumstances make an award unjust.

175 (c) *Awards.* An adjudicative officer presiding over an EAJA proceeding may reduce the
176 amount to be awarded, or deny any award, to the extent that the party during the course of the
177 proceedings engaged in conduct which unduly and unreasonably protracted the final resolution
178 of the matter in controversy.



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179 **§ 315.407 Agency review.**

180 Either the applicant or agency counsel may seek review of the decision of the adjudicative officer on the
181 fee application, or the agency may decide to review the decision on its own initiative, in accordance with
182 [insert cross-reference to agency’s regular review procedures].

183 **§ 315.408 Judicial review.**

184 Judicial review of final agency decisions on awards may be sought as provided in [section](#)
185 [504\(e\)\(2\) of Title V of the United States Code 5 U.S.C. § 504\(e\)\(2\)](#).

186 **§ 315.409 Stay of decision concerning award.**

187 Any proceedings on an application for fees under these rules shall be automatically
188 stayed until the agency’s final disposition of the decision on which the application is based and
189 either the time period for seeking judicial review expires, or if review has been sought, until final
190 disposition is made by a court and no further judicial review is available.

191 **§ 315.410 Payment of award.**

192 An applicant seeking payment of an award shall submit to the [comptroller or other
193 disbursing official] of the paying agency a copy of the agency’s final decision granting the
194 award, accompanied by a certification that the applicant will not seek review of the decision in
195 the United States courts. [Include here address for submissions at specific agency.] The agency
196 will pay the amount awarded to the applicant within [60 days].