

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2425 and 2429

Review of Arbitration Awards; Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Chairman and Members of the Federal Labor Relations Authority (the Authority) seek public comment on proposed revisions to its regulations concerning review of arbitration awards and the Authority's miscellaneous and general requirements to the extent that they set forth procedural rules that apply to the review of arbitration awards. The purpose of the proposed revisions is to improve and expedite review of such awards.

DATES: Comments must be received on or before June 1, 2010.

ADDRESSES: E-mail written comments to engagetheflra@flra.gov, or deliver written comments to the Chief, Case Intake and Publication Office, Federal Labor Relations Authority, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001.

FOR FURTHER INFORMATION CONTACT: Sarah Whittle Spooner, Counsel for Regulatory and External Affairs, (202) 218-7791.

SUPPLEMENTARY INFORMATION: The Chairman and Members of the Authority established an internal workgroup to study and evaluate the policies and procedures in effect concerning the review of arbitration awards. In order to solicit the input of arbitrators and practitioners, the workgroup held several focus groups, specifically: One focus group in Washington, DC with arbitrators; two focus groups in Washington, DC with practitioners; and focus groups in Chicago, Illinois and Oakland, California with both arbitrators and practitioners. In addition, through a survey, the

Authority solicited input from parties to recent Authority decisions; the Authority also solicited general input through engagetheflra@flra.gov.

The proposed revisions are intended to improve and expedite the review of arbitration awards. The proposed revisions include:

- Changing the Authority's existing practice for calculating the date for filing timely exceptions, so that the thirty-day period begins on the day after, not the day of, service of the arbitration award;
- Clarifying how the date of service of an arbitrator's award is determined;
- Clarifying the information and documents that must be filed with exceptions and oppositions;
- Clarifying existing grounds for review of an arbitration award and the consequence of failing to raise an existing ground;
- Adding an option to request an expedited decision from the Authority in certain arbitration cases that do not involve unfair labor practices;
- Adding an option to request voluntary alternative dispute resolution services;
- Providing various methods of resolving unclear disputes or records; and
- Clarifying the issues that must be raised before an arbitrator in order to be considered by the Authority.

The Authority reproduces proposed 5 CFR part 2425 in its entirety, and amends 5 CFR 2429.5, 2429.21 and 2429.22. Sectional analyses of the proposed regulations are as follows.

Part 2425—Review of Arbitration Awards

Section 2425.1. Establishes October 1, 2010, as the effective date of the revised regulations.

Section 2425.2. Establishes who may file exceptions, the time limits for filing exceptions, and rules for determining the date of service of the arbitration award. It also refers to the procedural and other requirements for filing exceptions that are set forth in 5 CFR part 2429.

Section 2425.3. Establishes who may file an opposition to arbitration exceptions, as well as the time limits for filing an opposition. It also refers to the procedural and other requirements for filing an opposition that are set forth in 5 CFR part 2429.

Section 2425.4. Specifies the information and documentation to be filed with exceptions, and provides for the optional use of an Authority-provided form.

Section 2425.5. Specifies the information and documentation to be filed with oppositions to exceptions, and provides for the optional use of an Authority-provided form.

Section 2425.6. Establishes grounds on which the Authority may review an arbitration award, including the private-sector grounds that the Authority currently recognizes as well as a statement that a party may raise additional private-sector grounds if those grounds are supported.

- Lists the types of arbitration awards over which the Authority lacks jurisdiction.
- Provides for dismissal of exceptions that fail to raise and support an established ground or involve an award over which the Authority lacks jurisdiction.

Section 2425.7. Permits parties to jointly request an expedited, short-form Authority decision in arbitration matters that do not involve unfair labor practices.

Section 2425.8. Permits parties to jointly request assistance from the Authority's Collaboration and Alternative Dispute Resolution Program.

Section 2425.9. Provides that, when necessary, the Authority may, among other things, direct parties to provide documentary evidence, respond to requests for further information, or meet with the Authority or its representative(s).

Section 2425.10. Renumbers current § 2425.4.

Part 2429—Miscellaneous and General Requirements

Amends three existing sections of part 2429, specifically:

- § 2429.5 to clarify the types of matters that parties are required to raise in proceedings before the Regional Director, Hearing Officer, Administrative Law Judge, or arbitrator;
- § 2429.21 to delete the reference to exceptions to arbitration awards being exempt from the general rules regarding calculating filing periods; and
- § 2429.22 to specify that the rules set forth in that section are subject to the rules established in proposed new rule § 2425.2.

Executive Order 12866

The Authority is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

Executive Order 13132

The Authority is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Authority has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies only to Federal employees, Federal agencies, and labor organizations representing Federal employees.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Parts 2425 and 2429

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons stated in the preamble, the Authority proposes to amend 5 CFR chapter XIV as follows:

1. Revise part 2425 to read as follows:

PART 2425—REVIEW OF ARBITRATION AWARDS

Sec.

- 2425.1 Applicability of this part.
 2425.2 Exceptions—who may file; time limits for filing, including determining date of service of arbitration award for the purpose of calculating time limits; procedural and other requirements for filing.
 2425.3 Oppositions—who may file; time limits for filing; procedural and other requirements for filing.
 2425.4 Content and format of exceptions.
 2425.5 Content and format of opposition.
 2425.6 Grounds for review; potential dismissal for failure to raise grounds.
 2425.7 Requests for expedited, short-form decisions in certain arbitration matters that do not involve unfair labor practices.
 2425.8 Collaboration and Alternative Dispute Resolution Program.
 2425.9 Means of clarifying records or disputes.
 2425.10 Authority decision.

Authority: 5 U.S.C. 7134.

§ 2425.1 Applicability of this part.

This part is applicable to all arbitration cases in which exceptions are filed with the Authority, pursuant to 5 U.S.C. 7122, on or after October 1, 2010.

§ 2425.2 Exceptions—who may file; time limits for filing, including determining date of service of arbitration award for the purpose of calculating time limits; procedural and other requirements for filing.

(a) *Who may file.* Either party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an exception to an arbitrator's award rendered pursuant to the arbitration.

(b) *Timeliness requirements—general.* The time limit for filing an exception to an arbitration award is thirty (30) days. This thirty (30)-day time limit may not be extended or waived. In computing the thirty (30)-day period, the first day counted is the day after, not the day of, service of the arbitration award. Example: If an award is served on May 1, then May 2 is counted as day 1, and May 31 is day 30; an exception filed on May 31 would be timely, and an exception filed on June 1 would be untimely. In order to determine the date of service of the award, see the rules set forth in paragraph (c) of this section, and for additional rules regarding computing the filing date, see 5 CFR 2429.21 and 2429.22.

(c) *Methods of service of arbitration award; determining date of service of arbitration award for purposes of*

calculating time limits for exceptions. If the parties have reached an agreement as to what is an appropriate method(s) of service of the arbitration award, then that agreement—whether expressed in a collective bargaining agreement or otherwise—is controlling for purposes of calculating the time limit for filing exceptions. If the parties have not reached such an agreement, then the arbitrator may use any commonly used method—including, but not limited to, electronic mail (hereinafter “e-mail”), facsimile transmission (hereinafter “fax”), regular mail, commercial delivery, or personal delivery—and the arbitrator's selected method is controlling for purposes of calculating the time limit for filing exceptions. The following rules apply to determine the date of service for purposes of calculating the time limits for filing exceptions, and assume that the method(s) of service discussed are either consistent with the parties' agreement or chosen by the arbitrator absent such an agreement:

(1) If the award is served by regular mail, then the date of service is the postmark date, and the excepting party will receive an additional five days for filing the exceptions under 5 CFR 2492.22.

(2) If the award is served by commercial delivery, then the date of service is the date on which the award was deposited with the commercial delivery service, and the excepting party will receive an additional five days for filing the exceptions under 5 CFR 2429.22.

(3) If the award is served by e-mail or fax, then the date of service is the date of transmission, and the excepting party will not receive an additional five days for filing the exceptions.

(4) If the award is served by personal delivery, then the date of personal delivery is the date of service, and the excepting party will not receive an additional five days for filing the exceptions.

(5) If the award is served by more than one method, then the first method of service is controlling when determining the date of service for purposes of calculating the time limits for filing exceptions. However, if the award is served by e-mail, fax, or personal delivery on one day, and by mail or commercial delivery on the same day, the excepting party will not receive an additional five days for filing the exceptions, even if the award was postmarked or deposited with the commercial delivery service before the e-mail or fax was transmitted.

(d) *Procedural and other requirements for filing.* Exceptions must comply with

the requirements set forth in 5 CFR 2429.24 (Place and method of filing; acknowledgment), 2429.25 (Number of copies and paper size), 2429.27 (Service; statement of service), and 2429.29 (Content of filings).

§ 2425.3 Oppositions—who may file; time limits for filing; procedural and other requirements for filing.

(a) *Who may file.* Any party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an opposition to an exception that has been filed under § 2425.2 of this part.

(b) *Timeliness requirements.* Any opposition must be filed within thirty (30) days after the date the exception is served on the opposing party. For additional rules regarding computing the filing date, see 5 CFR 2425.8, 2429.21, and 2429.22.

(c) *Procedural requirements.* Oppositions must comply with the requirements set forth in 5 CFR 2429.24 (Place and method of filing; acknowledgment), 2429.25 (Number of copies and paper size), 2429.27 (Service; statement of service), and 2429.29 (Content of filings).

§ 2425.4 Content and format of exceptions.

(a) *What is required.* An exception must be dated, self-contained, and set forth in full:

(1) A statement of the grounds on which review is requested, as discussed in § 2425.6 of this part;

(2) Arguments in support of the stated grounds, including specific references to the record, citations of authorities, and any other relevant documentation;

(3) Legible copies of any documents referenced in the arguments discussed in paragraph (a)(2) of this section, except as provided in paragraph (b) of this section;

(4) A legible copy of the award of the arbitrator; and

(5) The arbitrator's name, mailing address, and, if available and authorized for use by the arbitrator, the arbitrator's e-mail address or facsimile number.

(b) *What is not required.* Notwithstanding paragraph (a)(3) of this section, exceptions are not required to include actual copies of documents that are readily accessible to the Authority, such as Authority decisions, decisions of Federal courts, current provisions of the United States Code, and current provisions of the Code of Federal Regulations.

(c) *What is prohibited.* Consistent with 5 CFR 2429.5, an exception may not rely on any material evidence, factual assertions, arguments (including affirmative defenses), requested

remedies, or challenges to an awarded remedy that could have been, but were not, presented to the arbitrator.

(d) *Format.* The exception may be filed on an optional form provided by the Authority, or in any other format that is consistent with paragraphs (a) and (c) of this section. A party's failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing an exception.

§ 2425.5 Content and format of opposition.

If a party chooses to file an opposition, then the party should address any assertions from the exceptions that the opposing party disputes, including any assertions that any material evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy were raised before the arbitrator. The party filing the opposition must provide copies of any documents upon which it relies unless the documents were provided with the exceptions. The opposition may be filed on an optional form provided by the Authority, or in any other format that is consistent with this section. A party's failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing an opposition.

§ 2425.6 Grounds for review; potential dismissal for failure to raise grounds.

(a) The Authority will review an arbitrator's award to which an exception has been filed to determine whether the award is deficient—

(1) Because it is contrary to any law, rule or regulation; or

(2) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

(b) If a party argues that an award is deficient on private-sector grounds under paragraph (a)(2) of this section, then the excepting party must explain how, under standards set forth in the decisional law of the Authority or Federal courts:

(1) The arbitrator:

(i) Exceeded his or her authority; or

(ii) Was biased; or

(iii) Denied the excepting party a fair hearing; or

(2) The award:

(i) Fails to draw its essence from the parties' collective bargaining agreement; or

(ii) Is based on a nonfact; or

(iii) Is incomplete, ambiguous, or contradictory; or

(iv) Is contrary to public policy; or

(v) Is deficient on the basis of a private-sector ground not listed in

paragraphs (b)(1)(i) through (iv) of this section.

(c) If a party argues that the award is deficient on a private-sector ground raised under paragraph (b)(2)(v) of this section, the party must provide sufficient citation to legal authority that establishes the grounds upon which the party filed its exceptions.

(d) The Authority does not have jurisdiction over an award relating to:

(1) An action based on unacceptable performance covered under 5 U.S.C. 4303;

(2) A removal, suspension for more than fourteen (14) days, reduction in grade, reduction in pay, or furlough of thirty (30) days or less covered under 5 U.S.C. 7512; or

(3) Matters similar to those covered under 5 U.S.C. 4303 and 5 U.S.C. 7512 which arise under other personnel systems.

(e) An exception may be subject to dismissal if:

(1) The excepting party fails to raise and support a ground as required in paragraphs (a) through (c) of this section, or otherwise fails to demonstrate a legally recognized basis for setting aside the award; or

(2) The exception concerns an award described in paragraph (d) of this section.

§ 2425.7 Requests for expedited, short-form decisions in certain arbitration matters that do not involve unfair labor practices.

Where an arbitration matter before the Authority does not involve allegations of unfair labor practices under 5 U.S.C. 7116, and the parties wish to receive an expedited Authority decision, the parties may jointly request the Authority to issue a decision (hereinafter a "short-form decision") that briefly resolves the parties' arguments without a full explanation of the background, arbitration award, parties' arguments, and analysis of those arguments. Such request must be signed by the designated representative of each party and filed by either party with the Authority within thirty (30) days after the exception is filed. In determining whether a short-form decision is appropriate, the Authority will consider all of the circumstances of the case, including, but not limited to, its complexity, potential for precedential value, and similarity to other, fully detailed decisions involving the same or similar issues. Even absent the parties' joint request, the Authority may issue short-form decisions in appropriate cases.

§ 2425.8 Collaboration and Alternative Dispute Resolution Program.

The parties may request assistance from the Collaboration and Alternative Dispute Resolution Program (CADR) to attempt to resolve the dispute before or after an opposition is filed. Upon request, and as agreed to by the parties, CADR representatives will attempt to assist the parties to resolve these disputes. If the parties have agreed to CADR assistance, and the time for filing an opposition has not expired, then the Authority will toll the time limit for filing an opposition until the CADR process is completed. Parties seeking information or assistance under this part may call or write the CADR Office at 1400 K Street NW., Washington, DC, 20424. A brief summary of CADR activities is available on the Internet at <http://www.fra.gov>.

§ 2425.9 Means of clarifying records or disputes.

When required to clarify a record or when it would otherwise aid in disposition of the matter, the Authority, or its designated representative, may, as appropriate:

(a) Direct the parties to provide specific documentary evidence, including the arbitration record as discussed in 5 CFR 2429.3;

(b) Direct the parties to respond to requests for further information;

(c) Meet with parties, either in person or via telephone or other electronic communications systems, to attempt to clarify the dispute or matters in the record;

(d) Direct the parties to provide oral argument; or

(e) Take any other appropriate action.

§ 2425.10 Authority decision.

The Authority shall issue its decision and order taking such action and making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

2. The authority citation for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2122(a).

3. Revise § 2429.5 to read as follows:

§ 2429.5 Matters not previously presented; official notice.

The Authority will not consider any material evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy that

could have been, but were not, presented in the proceedings before the Regional Director, Hearing Officer, Administrative Law Judge, or arbitrator. The Authority may, however, take official notice of such matters as would be proper.

4. In § 2429.21, revise paragraph (a) to read as follows:

§ 2429.21 Computation of time for filing papers.

(a) In computing any period of time prescribed by or allowed by this subchapter, except in agreement bar situations described in § 2422.12(c), (d), (e), and (f) of this subchapter, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. *Provided, however,* in agreement bar situations described in § 2422.12(c), (d), (e), and (f), if the 60th day prior to the expiration date of an agreement falls on a Saturday, Sunday, or a Federal legal holiday, a petition, to be timely, must be filed by the close of business on the last official workday preceding the 60th day. When the period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations.

* * * * *

5. Revise § 2429.22 to read as follows:

§ 2429.22 Additional time after service by mail or commercial delivery.

Except as to the filing of an application for review of a Regional Director's Decision and Order under § 2422.31 of this subchapter, and subject to the rules set forth in § 2425.2 of this subchapter, whenever a party has the right or is required to do some act pursuant to this subchapter within a prescribed period after service of a notice or other paper upon such party, and the notice or paper is served on such party by mail or commercial delivery, 5 days shall be added to the proscribed period: *Provided, however,* that 5 days shall not be added in any instance where an extension of time has been granted.

Dated: April 26, 2010.

Carol Waller Pope,
Chairman.

[FR Doc. 2010-9996 Filed 4-28-10; 8:45 am]

BILLING CODE 6727-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2010-0457; Directorate Identifier 2010-CE-019-AD]

RIN 2120-AA64

Airworthiness Directives; Aircraft Industries a.s. Model L 23 Super Blanik Gliders

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Cracks on the stabilizer elevator inner hinges of seven L 23 SUPERBLANIK sailplanes have been detected during an inspection.

This condition, if not corrected, could result in no longer retaining the elevator in place and in jamming of the Pilot's elevator control system, and subsequent loss of elevator control.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 14, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9