

## § 2427.4

### § 2427.4 Submissions from interested parties.

Prior to issuance of a general statement of policy or guidance the Authority, as it deems appropriate, will afford an opportunity to interested parties to express their views orally or in writing.

### § 2427.5 Standards governing issuance of general statements of policy or guidance.

In deciding whether to issue a general statement of policy or guidance, the Authority shall consider:

(a) Whether the question presented can more appropriately be resolved by other means;

(b) Where other means are available, whether an Authority statement would prevent the proliferation of cases involving the same or similar question;

(c) Whether the resolution of the question presented would have general applicability under the Federal Service Labor-Management Relations Statute;

(d) Whether the question currently confronts parties in the context of a labor-management relationship;

(e) Whether the question is presented jointly by the parties involved; and

(f) Whether the issuance by the Authority of a general statement of policy or guidance on the question would promote constructive and cooperative labor-management relationships in the Federal service and would otherwise promote the purposes of the Federal Service Labor-Management Relations Statute.

## PART 2428—ENFORCEMENT OF ASSISTANT SECRETARY STANDARDS OF CONDUCT DECISIONS AND ORDERS

Sec.

2428.1 Scope.

2428.2 Petitions for enforcement.

2428.3 Authority decision.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3516, Jan. 17, 1980, unless otherwise noted.

### § 2428.1 Scope.

This part sets forth procedures under which the Authority, pursuant to 5 U.S.C. 7105(a)(2)(I), will enforce decisions and orders of the Assistant Sec-

## 5 CFR Ch. XIV (1–1–23 Edition)

retary in standards of conduct matters arising under 5 U.S.C. 7120.

### § 2428.2 Petitions for enforcement.

(a) The Assistant Secretary may petition the Authority to enforce any Assistant Secretary decision and order in a standards of conduct case arising under 5 U.S.C. 7120. The Assistant Secretary shall transfer to the Authority the record in the case, including a copy of the transcript if any, exhibits, briefs, and other documents filed with the Assistant Secretary. A copy of the petition for enforcement shall be served on the labor organization against which such order applies.

(b) An opposition to Authority enforcement of any such Assistant Secretary decision and order may be filed by the labor organization against which such order applies twenty (20) days from the date of service of the petition, unless the Authority, upon good cause shown by the Assistant Secretary, sets a shorter time for filing such opposition. A copy of the opposition to enforcement shall be served on the Assistant Secretary.

### § 2428.3 Authority decision.

(a) A decision and order of the Assistant Secretary shall be enforced unless it is arbitrary and capricious or based upon manifest disregard of the law.

(b) The Authority shall issue its decision on the case enforcing, enforcing as modified, refusing to enforce, or remanding the decision and order of the Assistant Secretary.

## PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

### Subpart A—Miscellaneous

Sec.

2429.1 [Reserved]

2429.2 Transfer and consolidation of cases.

2429.3 Transfer of record.

2429.4 Referral of policy questions to the Authority.

2429.5 Matters not previously presented; official notice.

2429.6 Oral argument.

2429.7 Subpoenas.

2429.8 [Reserved]

2429.9 Amicus curiae.

2429.10 Advisory opinions.

2429.11 Interlocutory appeals.

## Federal Labor Relations Authority

## § 2429.7

- 2429.12 Service of process and papers by the Authority.
- 2429.13 Official time for witnesses.
- 2429.14 Witness fees.
- 2429.15 Authority requests for advisory opinions.
- 2429.16 General remedial authority.
- 2429.17 Reconsideration.
- 2429.18 Service of petitions for review of final authority orders.
- 2429.19 Revocation of assignments.

### Subpart B—General Requirements

- 2429.21 How to compute the due date for filing documents with the FLRA; how the FLRA determines the date on which documents have been filed.
- 2429.22 Additional time for filing with the FLRA if you are filing in response to a document that has been served on you by first-class mail or commercial delivery.
- 2429.23 Extension; waiver.
- 2429.24 Place and method of filing; acknowledgement.
- 2429.25 Number of copies and paper size.
- 2429.26 Other documents.
- 2429.27 Service; statement of service.
- 2429.28 Petitions for amendment of regulations.
- 2429.29 Content of filings.

AUTHORITY: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2112(a).

SOURCE: 45 FR 3516, Jan. 17, 1980, unless otherwise noted.

### Subpart A—Miscellaneous

#### § 2429.1 [Reserved]

#### § 2429.2 Transfer and consolidation of cases.

In any matter arising pursuant to parts 2422 and 2423 of this subchapter, whenever it appears necessary in order to effectuate the purposes of the Federal Service Labor-Management Relations Statute or to avoid unnecessary costs or delay, Regional Directors may consolidate cases within their own region or may transfer such cases to any other region, for the purpose of investigation or consolidation with any proceedings which may have been instituted in, or transferred to, such region.

#### § 2429.3 Transfer of record.

In any case under part 2425 of this subchapter, upon request by the Authority, the parties jointly shall transfer the record in the case, including a copy of the transcript, if any, exhibits,

briefs and other documents filed with the arbitrator, to the Authority.

#### § 2429.4 Referral of policy questions to the Authority.

Notwithstanding the procedures set forth in this subchapter, the General Counsel, the Assistant Secretary, or the Panel may refer for review and decision or general ruling by the Authority any case involving a major policy issue that arises in a proceeding before any of them. Any such referral shall be in writing and a copy of such referral shall be served on all parties to the proceeding. Before decision or general ruling, the Authority shall obtain the views of the parties and other interested persons, orally or in writing, as it deems necessary and appropriate.

#### § 2429.5 Matters not previously presented; official notice.

The Authority will not consider any 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.

[75 FR 42292, July 21, 2010]

#### § 2429.6 Oral argument.

The Authority or the General Counsel, in their discretion, may request or permit oral argument in any matter arising under this subchapter under such circumstances and conditions as they deem appropriate.

#### § 2429.7 Subpoenas.

(a) Any member of the Authority, the General Counsel, any Administrative Law Judge appointed by the Authority under 5 U.S.C. 3105, and any Regional Director, Hearing Officer, or other employee of the Authority designated by the Authority may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency

**§ 2429.8**

**5 CFR Ch. XIV (1–1–23 Edition)**

or between an agency and the Office of Personnel Management.

(b) Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no such subpoena need be sought.

(c) A request for a subpoena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Regional Director, in proceedings arising under part 2422 of this subchapter, or with the Authority, in proceedings arising under parts 2424 and 2425 of this subchapter, not less than 10 days prior to the hearing, or with the appropriate presiding official(s) during the hearing. Requests for subpoenas made less than 10 days prior to the opening of the hearing shall be granted on sufficient explanation of why the request was not timely filed.

(d) The Authority, General Counsel, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall furnish the requester the subpoenas sought, provided the request is timely made. Requests for subpoenas may be made *ex parte*. Completion of the specific information in the subpoena and the service of the subpoena are the responsibility of the party on whose behalf the subpoena was issued. A subpoena may be served by any person who is at least 18 years old and who is not a party to the proceeding. The person who served the subpoena must certify that he or she did so:

(1) By delivering it to the witness in person,

(2) By registered or certified mail, or

(3) By delivering the subpoena to a responsible person (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued.

(e)(1) Any person served with a subpoena who does not intend to comply, shall, within 5 days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the party on whose behalf the subpoena

was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Regional Director in proceedings arising under part 2422 of this subchapter, and with the Authority, in proceedings arising under parts 2424 and 2425 of this subchapter for ruling. A petition to revoke a subpoena filed during the hearing, and a written statement of service, shall be filed with the appropriate presiding official(s).

(2) The Authority, General Counsel, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall revoke the subpoena if the person or evidence, the production of which is required, is not material and relevant to the matters under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The Authority, General Counsel, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall state the procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) Upon the failure of any person to comply with a subpoena issued and upon the request of the party on whose behalf the subpoena was issued, the Solicitor of the Authority shall institute proceedings on behalf of such party in the appropriate district court for the enforcement thereof, unless to do so would be inconsistent with law and the Federal Service Labor-Management Relations Statute.

[45 FR 3516, Jan. 17, 1980, as amended at 62 FR 40922, July 31, 1997]

**§ 2429.8 [Reserved]**

**§ 2429.9 Amicus curiae.**

Upon petition of an interested person, a copy of which petition shall be

## Federal Labor Relations Authority

## § 2429.15

served on the parties, and as the Authority deems appropriate, the Authority may grant permission for the presentation of written and/or oral argument at any stage of the proceedings by an amicus curiae and the parties shall be notified of such action by the Authority.

### § 2429.10 Advisory opinions.

The Authority and the General Counsel will not issue advisory opinions.

### § 2429.11 Interlocutory appeals.

Except as set forth in part 2423, the Authority and the General Counsel ordinarily will not consider interlocutory appeals.

[62 FR 40923, July 31, 1997]

### § 2429.12 Service of process and papers by the Authority.

(a) *Methods of service.* Notices of hearings, decisions and orders of Regional Directors, decisions and recommended orders of Administrative Law Judges, decisions of the Authority, complaints, amended complaints, withdrawals of complaints, written rulings on motions, and all other papers required by this subchapter to be issued by the Authority, the General Counsel, Regional Directors, Hearing Officers, Administrative Law Judges, and Regional Directors when not acting as a party under part 2423 of this subchapter, shall be served personally, by first-class mail, by facsimile transmission, or by certified mail. Where facsimile equipment is available, rulings on motions; information pertaining to pre-hearing disclosure, conferences, orders, or hearing dates, and locations; information pertaining to subpoenas; and other similar or time sensitive matters may be served by facsimile transmission.

(b) *Upon whom served.* All papers required to be served under paragraph (a) of this section shall be served upon all counsel of record or other designated representative(s) of parties, and upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) *Proof of service.* Proof of service shall be verified by certificate of the

individual serving the papers describing the manner of such service. When service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail. When service is by facsimile, the date of service shall be the date the facsimile transmission is transmitted and, when necessary, verified by a dated facsimile record of transmission.

[45 FR 3516, Jan. 17, 1980, as amended at 48 FR 40194, Sept. 6, 1983; 62 FR 40923, July 31, 1997]

### § 2429.13 Official time for witnesses.

If the participation of any employee in any phase of any proceeding before the Authority, including the investigation of unfair labor practice charges and representation petitions and the participation in hearings and representation elections, is deemed necessary by the Authority, the General Counsel, any Administrative Law Judge, Regional Director, Hearing Officer, or other agent of the Authority designated by the Authority, the employee shall be granted official time for such participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status.

[62 FR 40923, July 31, 1997]

### § 2429.14 Witness fees.

(a) Witnesses, whether appearing voluntarily or pursuant to a subpoena, shall be paid the fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States. However, any witness who is employed by the Federal Government shall not be entitled to receive witness fees.

(b) Witness fees, as appropriate, as well as transportation and per diem expenses for a witness shall be paid by the party that calls the witness to testify.

[62 FR 40923, July 31, 1997]

### § 2429.15 Authority requests for advisory opinions.

(a) Whenever the Authority, pursuant to 5 U.S.C. 7105(i) requests an advisory opinion from the Director of the

## § 2429.16

Office of Personnel Management concerning the proper interpretation of rules, regulations, or policy directives issued by that Office in connection with any matter before the Authority, a copy of such request, and any response thereto, shall be served upon the parties in the matter.

(b) The parties shall have fifteen (15) days from the date of service of a copy of the response of the Office of Personnel Management to file with the Authority comments on that response which the parties wish the Authority to consider before reaching a decision in the matter. Such comments shall be in writing and copies shall be served upon the other parties in the matter and upon the Office of Personnel Management.

### § 2429.16 General remedial authority.

The Authority shall take any actions which are necessary and appropriate to administer effectively the provisions of chapter 71 of title 5 of the United States Code.

### § 2429.17 Reconsideration.

After a final decision or order of the Authority has been issued, a party to the proceeding before the Authority who can establish in its moving papers extraordinary circumstances for so doing, may move for reconsideration of such final decision or order. The motion shall be filed within ten (10) days after service of the Authority's decision or order. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Authority, unless so ordered by the Authority. A motion for reconsideration need not be filed in order to exhaust administrative remedies.

[46 FR 40675, Aug. 11, 1981]

### § 2429.18 Service of petitions for review of final authority orders.

Any aggrieved person filing pursuant to 5 U.S.C. 7123(a) a petition for review of a final Authority order in an appropriate Federal circuit court of appeals within 10 days of issuance of the

## 5 CFR Ch. XIV (1–1–23 Edition)

Authority's final order must ensure that a court-stamped copy of the petition for review is received by the Solicitor of the Authority within that 10-day period in order to qualify for participation in the random selection process established in Public Law No. 100–236 for determining the appropriate court of appeals to review an agency final order when petitions for review of that order are filed in more than one court of appeals.

[55 FR 2509, Jan. 25, 1990]

### § 2429.19 Revocation of assignments.

Consistent with the exceptions in 5 U.S.C. 7115(b), after the expiration of the one-year period during which an assignment may not be revoked under 5 U.S.C. 7115(a), an employee may initiate the revocation of a previously authorized assignment at any time that the employee chooses. After the expiration of the one-year period of irrevocability under 5 U.S.C. 7115(a), upon receiving an employee's request to revoke a previously authorized dues assignment, an agency must process the revocation request as soon as administratively feasible.

[85 FR 41172, July 9, 2020]

## Subpart B—General Requirements

### § 2429.21 How to compute the due date for filing documents with the FLRA; how the FLRA determines the date on which documents have been filed.

(a) *How to compute the due date for filing documents with the FLRA.* In computing the due date for filing any document with the FLRA under this subchapter, follow these rules:

(1) *General rules.* Except in the situations discussed in paragraphs (a)(2) and (3) of this section, follow these steps in order to determine the date on which you must file any document with the FLRA.

(i) *Step 1:* Determine the act, event, or default (“the triggering event”) that you are filing in response to. The act, event, or default constitutes the triggering event even if it falls on a Saturday, Sunday, or federal legal holiday.

(ii) *Step 2*: Determine the number of days that you have to file (“the filing period”).

(iii) *Step 3*: Determine the first day of the filing period. This is the day after, not the day of, the triggering event, and constitutes the first day of the filing period even if it is a Saturday, Sunday, or federal legal holiday.

(iv) *Step 4*: Starting with the first day of the filing period, count calendar days—including Saturdays, Sundays, and federal legal holidays—until you reach the last day of the filing period (“the last day”).

(v) *Step 5*: Ask: Does the last day fall on a Saturday, Sunday, or federal legal holiday? If no, then your filing is due on that day (unless you are entitled to an additional 5 days under § 2429.22). If yes, then find the next day on the calendar that is not a Saturday, Sunday, or federal legal holiday. Your filing is due on that day (unless you are entitled to an additional 5 days under § 2429.22), even if you are filing electronically through use of the eFiling system on the FLRA’s Web site at [www.flra.gov](http://www.flra.gov) (although, as discussed in paragraph (b)(1)(v) of this section, you are permitted to file electronically on Saturdays, Sundays, or federal legal holidays). See § 2429.22 for rules regarding how to calculate your due date if you are entitled to an additional 5 days.

(2) *Agreement-bar exception*. If you are filing a petition in an agreement-bar situation under 5 CFR 2422.12(c), (d), (e), and (f), then, as discussed further in those regulations, you must file a petition no later than 60 days before the expiration date of the existing collective-bargaining agreement (“the 60-day date”). The first day (“day one”) of the period is the day before, not the day on which, the collective-bargaining agreement expires. Start with day one, and count back on the calendar from that day, including Saturdays, Sundays, and federal legal holidays. If the 60th day falls on a Saturday, Sunday, or federal legal holiday, then you must file your petition by the close of business on the last official workday that comes before, not after, that Saturday, Sunday, or federal legal holiday.

(3) *Exception for filing periods that are 7 days or less*. If your filing period is 7

days or less, then determine the act, event, or default that you are filing in response to (“the triggering event”). Find the first day after the triggering event that is not a Saturday, Sunday, or federal legal holiday. Start counting the 7-day period on (and including) that day, but exclude any Saturdays, Sundays, or federal legal holidays. The 7th day is the due date for filing.

(b) *How the FLRA determines the date on which documents have been filed*. The FLRA applies the following rules in determining the date on which a party has filed documents.

(1) *General rules*. Except in the situations discussed in paragraph (b)(2) of this section, the FLRA looks to the method by which documents have been filed in order to determine the date on which those documents have been filed. Specifically:

(i) *Documents filed with the FLRA by first-class mail*. If the mailing contains a legible postmark date, then that date is the date of filing. If the mailing does not contain a legible postmark date, then the FLRA presumes that it was filed 5 days prior to the date on which the appropriate FLRA component, officer, or agent receives it.

(ii) *Documents filed with the FLRA by facsimile (“fax”)*. If the date of transmission on a fax is clear, then that date is the filing date. If the date of transmission on a fax is not clear, then the date of filing is the date on which the appropriate FLRA component, officer, or agent receives the fax.

(iii) *Documents filed with the FLRA by personal delivery*. The date of filing is the date on which the appropriate FLRA component, officer, or agent receives the filing.

(iv) *Documents filed with the FLRA by deposit with a commercial-delivery service that provides a record showing the date of deposit*. The date of filing is the date of deposit with the commercial-delivery service.

(v) *Documents filed electronically through use of the eFiling system on the FLRA’s Web site at [www.flra.gov](http://www.flra.gov)*. The date of filing is the calendar day (including Saturdays, Sundays, and federal legal holidays) on which the document is transmitted in the eFiling system. Although documents that are filed electronically may be filed on

## § 2429.22

Saturdays, Sundays, and federal legal holidays, they are not required to be filed on such days, as discussed in paragraph (a)(1)(v) of this section.

(2) *Exceptions.* The rules in paragraph (b)(1) of this section do not apply to filing an unfair labor practice charge under 5 CFR part 2423, a representation petition under 5 CFR part 2422, and a request for an extension of time under § 2429.23(a). See those provisions for more information.

(c) *Compliance with § 2429.24.* All documents filed or required to be filed with the Authority must be filed in accordance with the rules set out in § 2429.24.

[77 FR 26435, May 4, 2012]

### **§ 2429.22 Additional time for filing with the FLRA if you are filing in response to a document that has been served on you by first-class mail or commercial delivery.**

(a) *General rules.* Except as discussed in paragraphs (b), (c), (d), and (e) of this section, apply the following rules if and only if you are filing a document with the FLRA in response to a document that has been served on you by first-class mail or commercial delivery. First, look to § 2429.21(a)(1) and apply steps 1 through 5 of that section in order to determine what normally would be your due date. Second, starting with the next calendar day, which will be day one, count forward on the calendar, including Saturdays, Sundays, and federal legal holidays, until you reach day five. If day five is not a Saturday, Sunday, or federal legal holiday, then your filing is due with the FLRA on that day. If day five is a Saturday, Sunday, or federal legal holiday, then find the next calendar day that is not a Saturday, Sunday, or federal legal holiday; your filing is due with the FLRA on that day.

(b) *Rules that apply when you have been served by more than one method.* If someone has served you with a document using more than one method of service, then, as a general rule, the first method of service is controlling for purposes of determining your due date for filing with the FLRA. For example, if someone serves you with a document by first-class mail or commercial delivery on one day, and then serves you by some other method (such

## 5 CFR Ch. XIV (1–1–23 Edition)

as electronic mail) the next day, then you may add 5 days to your due date, as described in paragraph (a) of this section. But if someone serves you with a document one day by any method *other than* first-class mail or commercial delivery, and *later* serves you with the document by first-class mail or commercial delivery, then you may not add 5 days to your due date; rather, you must look to § 2429.21(a)(1) and apply steps 1 through 5 of that section in order to determine your due date. Also, if someone serves you by first-class mail or commercial delivery on one day, and by any other method on the same day, then you may not add 5 days—even if the first-class mail was postmarked or the time of deposit with the commercial-delivery service was earlier in the day than the time at which the other method of service was effected.

(c) *Exception for applications for review filed under 5 CFR 2422.31.* You do not get an additional 5 days to file an application for review of a Regional Director's Decision and Order under 5 CFR 2422.31, regardless of the method of service of that Decision and Order.

(d) *Exception where extension of time has been granted.* You do not get an additional 5 days in any instance where an extension of time already has been granted.

(e) *Rules that apply to exceptions to arbitration awards.* For specific rules that apply to filing exceptions to arbitration awards, see 5 CFR 2425.2(c).

[77 FR 26436, May 4, 2012]

### **§ 2429.23 Extension; waiver.**

(a) Except as provided in paragraph (d) of this section, and notwithstanding § 2429.21(b) of this subchapter, the Authority or General Counsel, or their designated representatives, as appropriate, may extend any time limit provided in this subchapter for good cause shown, and shall notify the parties of any such extension. Requests for extensions of time shall be in writing and received by the appropriate official not later than five (5) days before the established time limit for filing, shall state the position of the other parties on the request for extension, and shall be served on the other parties.

## Federal Labor Relations Authority

## § 2429.24

(b) Except as provided in paragraph (d) of this section, the Authority or General Counsel, or their designated representatives, as appropriate, may waive any expired time limit in this subchapter in extraordinary circumstances. Request for a waiver of time limits shall state the position of the other parties and shall be served on the other parties.

(c) The time limits established in this subchapter may not be extended or waived in any manner other than that described in this subchapter.

(d) Time limits established in 5 U.S.C. 7105(f), 7117(c)(2) and 7122(b) may not be extended or waived under this section.

[45 FR 3516, Jan. 17, 1980, as amended at 48 FR 40194, Sept. 6, 1983; 51 FR 45752, Dec. 22, 1986]

### § 2429.24 Place and method of filing; acknowledgement.

(a) Except for documents that are filed electronically through use of the eFiling system on the FLRA's Web site at *www.flra.gov*, anyone who files a document with the Authority (as distinguished from the General Counsel, a Regional Director, or an Administrative Law Judge) must file that document with the Chief, Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street NW., Washington, DC 20424-0001 (telephone: (202) 218-7740) between 9 a.m. and 5 p.m. Eastern Time ("E.T."), Monday through Friday (except federal holidays). If you file documents by hand delivery, then you must present those documents in the Docket Room no later than 5 p.m. E.T., if you want the Authority to accept those documents for filing on that day. If you file documents electronically through use of the FLRA's eFiling system, then you may file those documents on any calendar day—including Saturdays, Sundays, and federal legal holidays—and the Authority will consider those documents filed on a particular day if you file them no later than midnight E.T. on that day. Note, however, that although you may eFile documents on Saturdays, Sundays, and federal legal holidays, you are not required to do so. Also note that you may *not* file doc-

uments with the Authority by electronic mail ("email").

(b) A document submitted to the General Counsel pursuant to this subchapter shall be filed with the General Counsel at the address set forth in the appendix.

(c) A document submitted to a Regional Director pursuant to this subchapter shall be filed with the appropriate regional office, as set forth in the appendix.

(d) Unless electronically filed pursuant to paragraph (f)(15) of this section, a document filed with the Office of Administrative Law Judges pursuant to this subchapter shall be submitted to the address for the Chief Administrative Law Judge, as set forth in the appendix.

(e) Except as discussed in paragraphs (f) and (g) of this section, if you are filing documents with the FLRA, then you must file them in person, by commercial delivery, by first-class mail, or by certified mail.

(f) As an alternative to the filing methods discussed in paragraph (e) of this section, you may file the following documents, and only the following documents, electronically through use of the eFiling system on the FLRA's Web site at *www.flra.gov*:

(1) Applications for review under 5 CFR 2422.31(a) through (c);

(2) Oppositions to applications for review under 5 CFR 2422.31(d);

(3) Exceptions to Administrative Law Judges' decisions under 5 CFR 2423.40(a);

(4) Oppositions to exceptions to Administrative Law Judges' decisions under 5 CFR 2423.40(b);

(5) Cross-exceptions under 5 CFR 2423.40(b);

(6) Exclusive representatives' petitions for review under 5 CFR 2424.22;

(7) Agency statements of position under 5 CFR 2424.24;

(8) Exclusive representatives' responses under 5 CFR 2424.25;

(9) Agency replies under 5 CFR 2424.26;

(10) Exceptions to arbitration awards under 5 CFR part 2425; and

(11) Oppositions to exceptions to arbitration awards under 5 CFR part 2425.

(12) Petitions under 5 CFR part 2422.

**§ 2429.25**

(13) Cross-petitions under 5 CFR part 2422.

(14) Charges under 5 CFR part 2423.

(15) Documents submitted to the Office of Administrative Law Judges under 5 CFR part 2423, including answers to complaints, motions, briefs, pre-hearing disclosures, stipulations, and any other documents as permitted by the eFiling system for the Office of Administrative Law Judges.

(g) As another alternative to the methods of filing described in paragraph (e) of this section, you may file the following documents by facsimile (“fax”), so long as fax equipment is available and your entire, individual filing does not exceed 10 pages in total length, with normal margins and font sizes. You may file only the following documents by fax under this paragraph (g):

(1) Motions;

(2) Information pertaining to pre-hearing disclosure, conferences, orders, or hearing dates, times, and locations;

(3) Information pertaining to subpoenas;

(4) Appeals of a dismissal of an unfair labor practice charge; and

(5) Other matters that are similar to those in paragraphs (g)(1) through (3) of this section.

(h) You must legibly print, type, or otherwise duplicate any documents that you file under this section. For purposes of documents that are filed electronically through use of the FLRA’s eFiling system under paragraph (f) of this section, “legibly \* \* \* duplicated” means that documents that you upload as attachments into the eFiling system must be legible.

(i) Documents, including correspondence, in any proceedings under this subchapter must show the title of the proceeding and the case number, if any.

(j) Except for documents that are filed electronically through use of the FLRA’s eFiling system, the original of each document required to be filed under this subchapter must be signed by either the filing party or that party’s attorney, other representative of record, or officer, and also must contain the address and telephone number of the person who signs the document. Documents that are filed electronically using the FLRA’s eFiling system must

**5 CFR Ch. XIV (1–1–23 Edition)**

contain the mailing address, email address, and telephone number of the individual who files the document, but not that individual’s signature.

(k) A return postal receipt may serve as acknowledgement that the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer has received a filed document. Otherwise, the FLRA will acknowledge receipt of filed documents only if the filing party:

(1) Asks the receiving FLRA officer to do so;

(2) Includes an extra copy of the document or the letter to which the document is attached, which the receiving FLRA office will date-stamp and return to the filing party; and

(3) For returns that are to be sent by mail, includes a self-addressed, stamped envelope.

[45 FR 3516, Jan. 17, 1980, as amended at 51 FR 45752, Dec. 22, 1986; 58 FR 53105, Oct. 14, 1993; 62 FR 40924, July 31, 1997; 68 FR 10953, Mar. 7, 2003; 68 FR 23885, May 6, 2003; 73 FR 27459, May 13, 2008; 77 FR 26436, May 4, 2012; 77 FR 37762, June 25, 2012; 80 FR 9190, Feb. 20, 2015]

**§ 2429.25 Number of copies and paper size.**

(a) *General rule.* Except as discussed in paragraph (b) of this section, and unless you use an FLRA-prescribed form, any document that you file with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, including any attachments, must be on 8½ by 11 inch size paper, using normal margins and font sizes. You must file an original as well as four (4) legible copies of each document, for a total of five (5) documents. You may substitute for the original document a clean copy of that document, so long as the copy is capable of being used as an original for purposes such as further reproduction.

(b) *Exceptions.* You are not required to comply with paragraph (a) of this section if and only if:

(1) You file documents by facsimile transmission under §2429.24(g), in which case you are required to file only one (1) legible copy that is capable of being reproduced;

## Federal Labor Relations Authority

## § 2429.29

(2) You file documents electronically through use of the FLRA's eFiling system;

(3) The Authority or the General Counsel, or their designated representatives, allow you not to comply; or

(4) Another provision of this subchapter allows you not to comply.

[77 FR 26437, May 4, 2012]

### § 2429.26 Other documents.

(a) The Authority or the General Counsel, or their designated representatives, as appropriate, may in their discretion grant leave to file other documents as they deem appropriate.

(b) A copy of such other documents shall be served on the other parties.

### § 2429.27 Service; statement of service.

(a) Except as provided in § 2423.10(c) and (d), any party filing a document as provided in this subchapter is responsible for serving a copy upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any interested person who has been granted permission by the Authority pursuant to § 2429.9 to present written and/or oral argument as *amicus curiae*. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(b) If you are serving a document under paragraph (a) of this section, then you must use one of the following methods of service:

- (1) Certified mail;
- (2) First-class mail;
- (3) Commercial delivery;
- (4) In-person delivery;
- (5) Facsimile ("fax") service, but only for the types of documents listed in § 2429.24(g) and only where fax equipment is available; or
- (6) Electronic mail ("email"), but only when the receiving party has agreed to be served by email.

(c) If you serve a document under this section, then you must file, with the appropriate FLRA office, a statement indicating that the party has served that document (a "statement of service"). If you are filing documents electronically using the FLRA's eFiling system, then you must certify, in the FLRA's eFiling system and at

the time of filing, that you have served copies of the filing and any supporting documents on the appropriate individual(s) specified in paragraph (a) of this section. Regardless of how you file a statement of service with the FLRA, you must ensure that your statement of service includes the names of the parties and persons that you served, their addresses, the date on which you served them, the nature of the document(s) that you served, and the manner in which you served the parties or persons that you served. You must also sign and date the statement of service, unless you are using the FLRA's eFiling system.

(d) *Date of service.* For any documents that you serve under this section, the date of service depends on the manner in which you serve the documents. Specifically, the date of service shall be the date on which you have: deposited the served documents in the U.S. mail; delivered them in person; deposited them with a commercial-delivery service that will provide a record showing the date on which the document was tendered to the delivery service; transmitted them by fax (where allowed under paragraph (b)(5) of this section); or transmitted them by email (where allowed under paragraph (b)(6) of this section).

[45 FR 3516, Jan. 17, 1980, as amended at 62 FR 40924, July 31, 1997; 74 FR 51745, Oct. 8, 2009; 77 FR 26437, May 4, 2012]

### § 2429.28 Petitions for amendment of regulations.

Any interested person may petition the Authority or General Counsel in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.

### § 2429.29 Content of filings.

With one exception, if you file any document with the Authority or the Office of Administrative Law Judges in a proceeding covered by this subchapter—including any briefs that you upload into the FLRA's eFiling system as attachments—and that document exceeds 10 double-spaced pages in

length, then you must ensure that the document includes a table of contents. The one exception is that, if you use the fillable forms in the FLRA's eFiling system, then you are not required to submit a table of contents to accompany the fillable forms.

[77 FR 26437, May 4, 2012]

## PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES

Sec.

2430.1 Purpose.

2430.2 Proceedings affected; eligibility for award.

2430.3 Standards for awards.

2430.4 Allowable fees and expenses.

2430.5 Rulemaking on maximum rates for attorney fees.

2430.6 Contents of application; net worth exhibit; documentation of fees and expenses.

2430.7 When an application may be filed; referral to Administrative Law Judge; stay of proceeding.

2430.8 Filing and service of documents.

2430.9 Answer to application; reply to answer; comments by other parties; extensions of time to file documents.

2430.10 Settlement.

2430.11 Further proceedings.

2430.12 Administrative Law Judge's decision; contents; service; transfer of case to the Authority; contents of record in case.

2430.13 Exceptions to Administrative Law Judge's decision; briefs; action of Authority.

2430.14 Payment of award.

AUTHORITY: 5 U.S.C. 504.

SOURCE: 46 FR 48623, Oct. 2, 1981, unless otherwise noted.

### § 2430.1 Purpose.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney, agent, or witness fees and other expenses to eligible individuals and entities who are parties to Authority adversary adjudications. An eligible party may receive an award when it prevails over the General Counsel, unless the General Counsel's position in the proceeding was substantially justified, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards, and the Authority proceeding that is covered. They also set forth the procedures for applying for such awards, and

the procedures by which the Authority will rule on such applications.

[51 FR 33837, Sept. 23, 1986]

### § 2430.2 Proceedings affected; eligibility for award.

(a) The provisions of this part apply to unfair labor practice proceedings pending on complaint against a labor organization at any time since October 1, 1981.

(b) A respondent in an unfair labor proceeding which has prevailed in the proceeding, or in a significant and discrete portion of the proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of attorneys fees and other expenses allowable under the provisions of § 2430.4 of these rules.

(1) Applicants eligible to receive an award in proceedings conducted by the Authority are any partnership, corporation, association, or public or private organization with a net worth of not more than \$5 million (\$7 million in cases involving adversary adjudications pending on or commenced on or after August 5, 1985) and not more than 500 employees.

(2) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the complaint was issued.

(3) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(4) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[46 FR 48623, Oct. 2, 1981, as amended at 51 FR 33837, Sept. 23, 1986]

### § 2430.3 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete portion of the proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an