

## Federal Labor Relations Authority

## § 2429.1

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 Secretary 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.

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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 Transfer of cases to the Authority.

(a) In any unfair labor practice case under part 2423 of this subchapter in which, after the issuance of a complaint, the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists, the Regional Director may upon agreement of all parties transfer the case to the Authority; and the Authority may decide the case on the basis of the formal documents alone. Briefs in the case must be filed with the Authority within thirty (30) days from the date of the Regional Director's order transferring the case to the Authority. The Authority may also remand any such case to the Regional Director for

further processing. Orders of transfer and remand shall be served on all parties.

(b) In any case under part 2423 of this subchapter in which it appears to the Regional Director that the proceedings raise questions which should be decided by the Authority, the Regional Director may, at any time, issue an order transferring the case to the Authority for decision or other appropriate action. Such an order shall be served on the parties.

[48 FR 40194, Sept. 6, 1983]

**§ 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 evidence offered by a party, or any issue, which was 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.

**§ 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 Subpenas.**

(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 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 parts 2422 and 2423 of this subchapter, or filed with the Authority, in proceedings arising under parts 2424 and 2425 of this subchapter, not less than fifteen (15) days prior to the opening of a hearing, or with the appropriate presiding official(s) during the hearing.

(d) All requests shall name and identify the witnesses or documents sought, and state the reasons therefor. The Authority, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other

employee of the Authority designated by the Authority, as appropriate, shall grant the request upon the determination that the testimony or documents appear to be necessary to the matters under investigation and the request describes with sufficient particularity the documents sought. Service of an approved subpoena is the responsibility of the party on whose behalf the subpoena was issued. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued.

(e) Any person served with a subpoena who does not intend to comply, shall, within five (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, who may refer the petition to the Authority, General Counsel, Administrative Law Judge, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, 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). The Regional Director, or the appropriate presiding official(s) will, as a matter of course, cause a copy of the petition to revoke to be served on the party on whose behalf the subpoena was issued, but shall not be deemed to assume responsibility for such service. The Authority, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall revoke the subpoena if the evidence the production of which is required does not relate to any matter 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, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee

of the Authority designated by the Authority, as appropriate, shall make a simple statement of 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, upon the request of the party on whose behalf the subpoena was issued, the General Counsel shall, on behalf of such party, institute proceedings in the appropriate district court for the enforcement thereof, unless, in the judgment of the General Counsel, the enforcement of such subpoena would be inconsistent with law and the policies of the Federal Service Labor-Management Relations Statute. The General Counsel shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court thereafter.

**§ 2429.8 [Reserved]**

**§ 2429.9 Amicus curiae.**

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

The Authority and the General Counsel ordinarily will not consider interlocutory appeals.

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

(a) *Methods of service.* Notices of hearings, Decisions and Orders of Regional Directors, decisions of Administrative Law Judges, complaints, written rulings on motions, decisions and orders, and all other papers required by this

subchapter to be issued by the Authority, the General Counsel, Regional Directors, Hearing Officers and Administrative Law Judges, shall be served personally or be certified mail or by telegraph.

(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 the verified return by the individual serving the papers setting forth the manner of such service, the return post office receipt, or the return telegraph receipt. When service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail.

[45 FR 3516, Jan. 17, 1980, as amended at 48 FR 40194, Sept. 6, 1983]

**§ 2429.13 Official time.**

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, such 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. In addition, necessary transportation and per diem expenses shall be paid by the employing activity or agency.

**§ 2429.14 Witness fees.**

(a) Witnesses (whether appearing voluntarily, or under a subpoena) shall be paid the fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States: *Provided*, That any witness who is employed by the Federal Government

shall not be entitled to receive witness fees in addition to compensation received pursuant to § 2429.13.

(b) Witness fees and mileage allowances shall be paid by the party at whose instance the witnesses appear, except when the witness receives compensation pursuant to § 2429.13.

**§ 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 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

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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 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]

## Subpart B—General Requirements

### **§ 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, and except as to the filing of exceptions to an arbitrator's award under § 2425.1 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 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.

(b) Except when filing an unfair labor practice charge pursuant to § 2423.6 of this subchapter, a representation petition pursuant to Part 2422 of this subchapter, and a request for an extension of time pursuant to § 2429.23(a) of this part, when this subchapter requires the filing of any paper with the Authority, the General Counsel, a Regional Director, or an Administrative Law Judge, the date of filing shall be determined by the date of mailing indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If the filing is by personal delivery, it shall be considered filed on the date it is received by the Authority or the officer or agent designated to receive such matter.

(c) All documents filed or required to be filed with the Authority shall be filed in accordance with § 2429.24(a) of this subchapter.

[51 FR 45751, Dec. 22, 1986, as amended at 60 FR 67298, Dec. 29, 1995]

### **§ 2429.22 Additional time after service by mail.**

Except as to the filing of an application for review to a Regional Director's Decision and Order under § 2422.31 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, five (5) days shall be added to the prescribed period: *Provided, however,* That five (5) days shall not be added in any instance where an extension of time has been granted.

[60 FR 67298, Dec. 29, 1995]

### **§ 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.

(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) All documents filed or required to be filed with the Authority pursuant to this subchapter shall be filed with the Director, Case Control Office, Federal Labor Relations Authority, Docket Room, suite 415, 607 14th Street, NW., Washington, DC 20424-0001 (telephone: FTS or Commercial (202) 482-6540) between 9 a.m. and 5 p.m., Monday through Friday (except Federal holidays). Documents hand-delivered for filing must be presented in the Docket Room not later than 5 p.m. to be accepted for filing on that day.

(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) A document submitted to an Administrative Law Judge pursuant to this subchapter shall be filed with the

appropriate Administrative Law Judge, as set forth in the appendix.

(e) All documents filed pursuant to this section shall be filed in person or by mail.

(f) All matters filed under paragraphs (a), (b), (c) and (d) of this section shall be printed, typed, or otherwise legibly duplicated: Carbon copies of type-written matter will be accepted if they are clearly legible.

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

(h) The original of each document required to be filed under this subchapter shall be signed by the party or by an attorney or representative of record for the party, or by an officer of the party, and shall contain the address and telephone number of the person signing it.

(i) A return postal receipt may serve as acknowledgement of receipt by the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate. The receiving officer will otherwise acknowledge receipt of documents filed only when the filing party so requests and includes an extra copy of the document or its transmittal letter which the receiving office will date stamp upon receipt and return. If return is to be made by mail, the filing party shall include a self-addressed, stamped envelope for the purpose.

[45 FR 3516, Jan. 17, 1980, as amended at 51 FR 45752, Dec. 22, 1986; 58 FR 53105, Oct. 14, 1993]

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

Unless otherwise provided by the Authority or the General Counsel, or their designated representatives, as appropriate, or under this subchapter, and with the exception of any prescribed forms, any document or paper filed with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate, under this subchapter, together with any enclosure filed therewith, shall be submitted on 8½ × 11 inch size paper in an original and four (4) legible copies. A clean copy capable of being used as an original for

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purposes such as further reproduction may be substituted for the original.

[47 FR 55379, Dec. 9, 1982]

### § 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) Service of any document or paper under this subchapter, by any party, including documents and papers served by one party on another, shall be made by certified mail or in person. A return post office receipt or other written receipt executed by the party or person served shall be proof of service.

(c) A signed and dated statement of service shall be submitted at the time of filing. The statement of service shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail or is delivered in person.

### § 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.

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

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2430.14 Payment of award.

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)), as extended and amended, Pub. L. 99-80, 99 Stat. 183 (1985).

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]