



FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2429

Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: This final rule adopts, with one minor change, a proposed rule published in the *Federal Register* on September 29, 2023. The final rule specifies that, if parties wish to file documents with the Federal Labor Relations Authority's (FLRA's) Office of Case Intake and Publication (CIP) in person, then they must schedule an appointment at least one business day in advance. The final rule also makes other minor technical and formatting changes. In addition, like the proposed rule, the final rule specifies that documents filed through the FLRA's electronic-filing (eFiling) system must be filed electronically by "11:59 p.m.," rather than "midnight," on the due date. However, unlike the proposed rule, the final rule specifies that the 11:59 p.m. filing deadline is "Eastern Time."

DATES: This final rule is effective on **[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Erica Balkum, Chief, Office of Case Intake and Publication at ebalkum@flra.gov or at: (771) 444-5805.

SUPPLEMENTARY INFORMATION: On September 29, 2023, in 88 FR 67117, the FLRA's three-Member, decisional component (the Authority) proposed to amend 5 CFR 2429.24(a) to revise the rules regarding filing documents in cases before the Authority (as distinct from the FLRA's General Counsel, Regional Directors, or Administrative Law Judges). Specifically, the Authority proposed to revise 5 CFR 2429.24(a) to eliminate the references to parties being: (1) able to file documents with CIP between 9 a.m. and 5 p.m.

E.T., Monday through Friday (except federal holidays), and (2) required to file any hand-delivered documents by 5 p.m. E.T. Instead, the proposed revisions would specify that: (1) to file documents with CIP by personal delivery, parties must schedule an appointment at least one business day in advance by calling CIP; and (2) personal delivery will be accepted by appointment Monday through Friday (except federal holidays). In addition, the proposed revisions would: (1) update CIP's phone number to (771) 444-5805; (2) delete the period after "NW" in CIP's mailing address; (3) change the term "hand delivery" to "personal delivery"; (4) change the eFiling deadline from "midnight E.T." on the due date to "11:59 p.m." on the due date; and (5) in the second-to-last sentence of the regulation, change "federal legal documents" to "federal legal holidays."

The FLRA invited written comments on the proposed rule, stating that any such comments must be received by the FLRA by October 30, 2023. The FLRA received only two comments: one from an individual, and the second from a union.

The individual commenter states that it is unclear from the proposed rule whether the Authority intends for the new eFiling deadline to be 11:59 p.m. "Eastern Time." The commenter notes that the current version of 5 CFR 2429.24(a) specifies that the deadline is Eastern Time, but the proposed rule does not do so.

The proposed rule's deletion of Eastern Time in connection with eFiling was inadvertent. Therefore, the final rule revises the proposed rule to specify that the 11:59 eFiling deadline is 11:59 p.m. Eastern Time.

The union commenter opposes the proposed rule's requirement that parties who wish to file documents with CIP in person must schedule an appointment at least one business day in advance. First, the commenter notes that, in the *Federal Register* notice for the proposed rule, the Authority relied on the fact that no parties filed documents in person since in-person filing was reinstated on May 30, 2023. According to the union

commenter, the FLRA did not publicize or tell parties about the May 30, 2023 reinstatement of in-person filing, so the absence of in-person filers since that date does not support the proposed rule. Second, the union commenter claims that the National Labor Relations Board (NLRB) allows in-person filing without an appointment, and there is no justification for the FLRA having a different rule. Third, the union commenter asserts that recent Executive Branch policies and proposed federal legislation are aimed at increasing in-person services at federal agency offices, and the proposed rule would conflict with those aims.

In response to the union commenter's first assertion, even assuming parties were unaware of the resumption of in-person-filing availability on May 30, 2023 – despite the FLRA's website being updated to prominently note that resumption – that does not undercut the Authority's broader point that, even pre-pandemic, in-person filing was rare. In fact, even since the proposed rule was published in the *Federal Register* – which was also announced by a press release the same day – CIP has received only two in-person filings. As such, the alleged absence of publicity surrounding the resumption of in-person filing does not undercut the notion that in-person filing is rarely used.

With regard to the assertions concerning the NLRB, as an initial matter, it is not clear that the filing practices of the FLRA should necessarily mirror those of the NLRB – a much larger agency, with far more staff and regulated parties, than the FLRA. In any event, the NLRB's filing regulations do not set forth standard hours when parties may file in person – and, in fact, they generally require parties to eFile documents. *See* 29 CFR 102.5(c) (specifying that, “[u]nless otherwise permitted under this section, all documents filed in cases before the Agency must be filed electronically (‘E-Filed’) on the Agency’s Web site”). In this regard, NLRB guidance provides that in-person filing is permitted “only if the filer does not have access to the means for filing electronically or filing electronically would impose an undue burden.” NLRB, Guide to Board Procedures 3

(2023), <https://www.nlr.gov/sites/default/files/attachments/pages/node-174/guide-to-board-procedures-2023.pdf>. The FLRA’s proposed requirement to schedule in-person filing in advance – which does not in any way limit which parties may engage in such filing – is arguably even less restrictive than the NLRB’s requirements.

Finally, we acknowledge that there recently has been an increased focus on the resumption of certain in-person services at federal agency offices. However, nothing in the proposed rule would eliminate in-person filing; it would simply require one business day’s advance notice in order to engage in such filing. Further, the resumption of certain in-person services does not undercut agencies’ and courts’ general trend of favoring eFiling over in-person filing, based on eFiling’s numerous advantages for both parties and agencies. *See*, for example, IRS, Exempt Organizations e-file: Benefits of e-file, available at <https://www.irs.gov/charities-non-profits/exempt-organizations-e-file-benefits-of-e-file>.

In addition, as discussed in greater detail in the *Federal Register* notice for the proposed rule, there are multiple reasons for this proposed change. Specifically: even before the COVID-19 pandemic, it was rare for parties to file with CIP in person; there are multiple other, easily accessible methods of filing documents with CIP; the FLRA desires to strongly encourage parties to use eFiling whenever possible; and CIP has limited staffing, which could become even more limited if budgetary or other considerations preclude the FLRA from filling positions as they become vacant.

For these reasons, the Authority has not modified the proposed rule’s requirement for parties to schedule in-person filing at least one business day in advance. Therefore, with the one minor modification discussed above – adding “Eastern Time” to the eFiling deadline – the Authority adopts the rule as originally proposed.

Regulatory Flexibility Act Certification

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

Executive Order 12866, Regulatory Review

The FLRA is an independent regulatory agency and thus is not subject to the requirements of E.O. 12866 (58 FR 51735, Sept. 30, 1993).

Executive Order 13132, Federalism

The FLRA is an independent regulatory agency and thus is not subject to the requirements of E.O. 13132 (64 FR 43255, Aug. 4, 1999).

Unfunded Mandates Reform Act of 1995

This rule would 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 would 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 would 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 rule contains no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq.

List of Subjects in 5 CFR Part 2429

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

For the reasons stated in the preamble, the FLRA amends 5 CFR part 2429 as follows:

PART 2429-MISCELLANEOUS AND GENERAL REQUIREMENTS

1. 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. 2112(a).

2. Amend § 2429.24 by revising paragraph (a) to read as follows:

§ 2429.24 Place and method of filing; acknowledgment.

(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: (771) 444-5805). To file documents by personal delivery, you must schedule an appointment at least one business day in advance by calling the telephone number in the previous sentence. Personal delivery is accepted by appointment Monday through Friday (except federal holidays). 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 11:59 p.m. Eastern Time 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 documents with the Authority by electronic mail ("email").

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Approved: November 13, 2023.

Thomas Tso,

Solicitor and Federal Register Liaison,

Federal Labor Relations Authority.

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