

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
Washington, D.C.

In re: _____)
)
FILING BY EMAIL IN ADVERSARIAL)
PROCEEDINGS AND ALTERNATIVE)
DISPUTE RESOLUTION MATTERS)

STANDING ORDER 2021-5

The Office of Dispute Resolution for Acquisition (“ODRA”), *sua sponte*, issues this standing order to: (1) establish a convenient, optional method for parties to file and serve documents by email; (2) cancel Standing Order 2013-3; and (3) raise awareness of the option to use other secure network options for filing administrative records.

IT IS ORDERED that the following requirements apply in all adjudicatory proceedings and Alternative Dispute Resolution (“ADR”) matters under 14 C.F.R. Part 17:

I. INTRODUCTION

A. Purpose and Authority

As authorized by 14 C.F.R. §§ 17.7(d) and 17.55, this standing order is issued to insure a convenient alternative means of filing documents electronically with the ODRA. This standing order may be revised from time to time and may be modified by orders entered in specific cases.

B. Scope

This standing order governs the requirements for the filing of documents electronically with the ODRA and service on parties. It supplements, but does not supersede, 49 U.S.C. § 40110(d), 49 U.S.C. § 46110, and the ODRA Procedural Regulation, 14 C.F.R. part 17.

C. Standing Order 2013-3 is canceled.

Standing Order 2013-3, issued September 9, 2013, is hereby canceled.

D. Definitions

Initial Documents means documents ordinarily filed prior to the opening of an initial status conference conducted under 14 C.F.R. § 17.17(b) (protests) or 14 C.F.R. § 17.29(f) (contract disputes). These documents include:

- Protests, Contract Disputes, and Pre-disputes;
- Attachments and exhibits included with Protests, Contract Disputes, and Pre-disputes;
- Notices of Appearance;
- Applications for Admission to Protective Orders;
- Motions to withdraw a Protest or Contract Dispute;
- Intervention Requests; and
- Other correspondence addressing preliminary matters.

ODRA Official Email Address means 9-AGC-ODRA@FAA.GOV.

II. PROCEDURES FOR FILING AND SERVICE BY EMAIL

A. Voluntary

Unless otherwise ordered, the use of email to file documents is voluntary, and other regulatory methods of filing remain valid. *See* 14 C.F.R. § 17.7.

B. Filing by Email

Parties may file initial documents by sending them to the ODRA Official Email Address without seeking permission in advance. During or following an initial status conference, the ODRA will indicate whether continued use of email filing is permitted.

C. Timeliness for Email Filing

Documents forwarded to the ODRA by email will be deemed filed under the ODRA Procedural Rules based on the date and time received at the ODRA designated email address. Documents received in the email inbox after normal ODRA business hours, or on weekends, federal holidays or other non-business days, will be deemed filed for all purposes, including timeliness, as of the next federal business day in Washington, DC. **Risk of transmission failure or delay rests with the sender.** *See Protest of JL Properties, Inc.*, 18-ODRA-00836 (Decision on Motion to Dismiss, incorporated into Order-18-835, July 16, 2018).

D. Format of Email Filings

The parties are expected to attach PDF versions (with optical character recognition (“OCR”) coding) of letters, pleadings, briefs, and motions rather than sending correspondence in the form of an email message. Failure to abide by this requirement may result in rejection of the filing or barring a party from using email for filing documents.

E. Consent to Service by Email

Any party that files a document by email implicitly accepts service by email of all subsequent documents from the ODRA and other parties. Parties are reminded that all adjudication filings must be served on all other parties in a matter. *See* 14 C.F.R. § 17.7(a), (b). The email address that a party uses to file documents is considered the appropriate address for receiving service, unless otherwise stated in a Notice of Appearance or similar filing.

F. Information Security

A party sending proprietary, competition-sensitive or other confidential information is responsible for protecting the information the in transit.

1. Parties contemplating filing via email are advised that the ODRA cannot guarantee the security of email transmissions. Thus the email filer assumes the risk that its email transmission could be intercepted or diverted before reaching the ODRA. The ODRA recommends that parties use a traditional method of filing (hand delivery, overnight express or facsimile) for initial filings containing proprietary, competition-sensitive or other confidential information.
2. The ODRA may issue protective orders addressing the treatment of protected information contained in electronically filed submissions associated with proceedings. *See* 14 C.F.R. §17.9.

G. Other Email Protocols

Using email should be a conscious effort.

1. Parties should mindfully avoid using “reply all,” or copying the ODRA on matters that the sender does not wish to be filed with the official docket.
2. Parties may not use the personal office email of any Dispute Resolution Officer/Administrative Judge for filing documents in any case. Documents will be accepted for filing only if sent to the ODRA Official Email Address.

Failure to abide by these requirements could result in an order foreclosing further use of email filing.

III. USE OF SECURED NETWORKS FOR FILING AND SERVICE

A. Overview

The Federal Aviation Administration (“FAA”) Knowledge System Network (“KSN”) is a web-based system using Microsoft Sharepoint software. The FAA and its stakeholders use the KSN in a variety of matters including the procurement process for bidding and administration of contracts under the Acquisition Management System. The ODRA uses KSN sub-sites fully established and controlled by the ODRA as an electronic repository for administrative records.

Using KSN to file administrative records in an adjudication before the ODRA is not typical. At the request of the parties and based on demonstrated need, at their discretion may grant leave to file using this method.

If the ODRA grants the request, access is limited to only case-specific information, consistent with applicable laws, policies, and ODRA Protective Orders. Representatives of the parties will be granted access only after the signing and filing of a KSN User Filing Agreement (attached). Only those individuals with an executed User Agreement may access the KSN.

B. KSN Participation Requirements

Electronic filing through use of the KSN must be agreed to by all parties in writing and approved in advance by the ODRA pursuant to 14 C.F.R. § 17.7.

In an adjudication, only an attorney admitted to the bar may access the KSN after executing and filing with the ODRA a User Filing Agreement. By signing a User Filing Agreement, an attorney consents to using the ODRA’s electronic filing system for electronic service of all filings.

C. KSN Timeliness

Except for routinely scheduled maintenance and unanticipated breaks in service, the KSN is continuously available. This allows users to file documents outside of the ODRA’s business hours. In these instances, the KSN records the date and time of posting. This feature does not abrogate the filing deadlines found in 14 C.F.R. § 17.7, or other deadlines as established by the ODRA.

1. Documents submitted during the ODRA’s normal business hours, from 8:30 a.m. to 5:00 p.m. Eastern Time, are deemed filed on the date indicated by the KSN date stamp.

2. Documents submitted at the time indicated by the KSN date stamp not within the ODRA's normal business hours are deemed filed on the next business day.

If the KSN is not available, parties must timely file using traditional filing methods or, if authorized by the ODRA, email filing.

D. Filing Procedures

The ODRA must approve the use of KSN filings in Adjudications and Alternative Dispute Resolution matters. Once approved, filings must be made via the KSN unless exceptional circumstances prevent a party from filing electronically (14 C.F.R. § 17.7 (d)). Notice of such filing must be sent via the ODRA email address (9-AGC-ODRA) unless granted leave by the ODRA otherwise. Such email must indicate that a filing has been submitted into the KSN and all relevant parties must be copied. The ODRA retains the discretion to discontinue the use of the KSN in a case for any reason.

As necessary, additional procedures for electronic filing may be established by the ODRA Director or the appointed Dispute Resolution Officer/Administrative Judge in charge of the case.

The ODRA may still direct either or both parties to provide a courtesy paper copy or CD of filings and/or documents to the ODRA.

Electronic files, as submitted, must contain searchable text (i.e., in native format or portable document format ("PDF") with optical character recognition ("OCR") coding) that is compatible with ODRA software, which includes Microsoft Office 2016, and Adobe Acrobat 2017.

E. Technical Failure

If a filing is deemed untimely as the result of a technical failure on the part of the KSN or the ODRA email system, a party may seek appropriate relief from the ODRA. *See* 14 C.F.R. § 17.7 (d).

F. Privacy

If need be, parties may file electronic documents containing redacted information, subject to the terms of any ODRA Protective Order. While parties are free to choose their method of redaction, the ODRA suggests using commercially-available software products with tools that remove metadata and other hidden information from the document. Nothing in this standing order, however, shall be interpreted as permitting the alteration, including the removal of metadata, of evidentiary documents once a matter has been filed with the ODRA.

It is the sole responsibility of counsel and the parties to protect any information included in a filing.

G. Personally Identifiable Information (PII) and Sensitive Personally Identifiable Information (SPII)

1. All KSN users must ensure that all documents containing PII/SPII are encrypted per FIPS 140-2 methodology in accordance with [FAA Order 1370.121A, FAA Information Security and Privacy Program & Policy](#), as amended or superseded.
2. Ensure proper handling of PII/SPII as outlined in OMB guidance, *M-03-22. OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, September 26, 2003*, as amended or superseded.

H. Sensitive Unclassified Information (SUI)

Classified information must not be filed on the KSN. In the case of Sensitive Unclassified Information (SUI), all KSN users must:

1. Ensure all SUI is marked and stored in accordance with [FAA Order 1600.75, Protecting Sensitive Unclassified Information](#), as amended or superseded; and
2. Review the [CIOP-Privacy Risk Management-1351.18-Policy](#), as amended or superseded.

IT IS FURTHER ORDERED that failure to comply with this Order and/or procedures identified herein, may result in the imposition of appropriate sanctions pursuant to 14 C.F.R. § 17.49.

Effective Date: June 29, 2021

John A. Dietrich
Director and Chief Administrative Judge
FAA Office of Dispute Resolution
for Acquisition

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
Washington, D.C.

**KSN USER FILING
AGREEMENT**

By submitting this User Agreement, Participant agrees to abide by the rules established in ODR Standing Order 2021-5 and as follows:

1. Filing by means of the Knowledge Sharing Network (“KSN”) is for use only in cases approved by the Director of the Office of Dispute Resolution for Acquisition (“ODRA”) or the presiding Dispute Resolution Officer/Administrative Judge and with full consent of the parties.
2. A “User Filer” is an individual with permission from the ODRA to access and post documents on the case specific KSN subsite.
3. A User Filer will receive a password from the case specific KSN subsite upon receiving access. Accordingly, the User Filer must protect and secure the password. If there is any reason to suspect the password has been compromised in any way, such as resignation or reassignment of the person with authority to use the password, it is the duty and responsibility of the User Filer to immediately notify the ODRA. The ODRA will delete the password from the electronic filing system.
4. Pursuant to the ODRA Procedural Regulation, where applicable, every pleading, motion and other formal filing must be signed by the attorney of record or, if not represented by an attorney, the party. The user log-in and password required to submit documents to the system does not serve as the User Filer’s signature on documents filed with the ODRA via KSN.

Signature: _____

Name: _____

Office/Firm: _____

E-Mail: _____

Client: _____

Date: _____