Similarly, during the BRAC era we underinvested in facilities modernization because nobody wanted to waste a lot of money modernizing facilities we might be about to shut down. But now that we have made those decisions and the BRAC process is over we are going to have to put more money in modernizing and maintaining the facilities we have left.

So our challenge will be to have a budget that is slightly larger than the ones now planned, if we are going to balance the budget it is unrealistic to plan for more than a slight increase, and the budget plan in this resolution only increases the budget by about 1 percent over the levels in the administration's request—in order to have adequate funds for capital investments in weapons and facilities.

This is why I oppose this amendment which would eliminate the increase in the defense topline number that the Armed Services Committee has recommended. This increase has gone almost entirely to modernization. I think my colleagues will find that the funds the Armed Services Committee added to the modernization accounts have gone mostly, not completely, to programs the service chiefs have requested, and generally these are things the administration was already planning to buy.

In conclusion, Mr. President, many of my colleagues share my concern that we have cut the defense budget too far, too fast and that we are mortgaging our future by sacrificing the capability of our forces 10 years down the road in order to fully fund current readiness. This amendment would eliminate our ability to fund modernization programs vital to the future capability of our military forces, and I urge my colleagues to reject it.

Mr. GRASSLEY. Mr. President, I have 2½ minutes?

The PRESIDING OFFICER. The Senator is correct.

Mr. GRASSLEY. I yield myself that time.

I hope one thing that all my colleagues will remember comes out of this debate. We have heard the argument from the other side that dollars define our defense. That is an upside-down way of making national security policy and the budget that is necessary to carry it out.

The way we decide how much money we are going to spend in defense is to define our national security policies, define our needs, have policy to fit those needs, and finance those policies. The other side has not made that argument. They have only made an argument that we need x number of dollars more for defense. That is upside-down reasoning.

Now, the other point I hope my colleagues remember from this debate is that we have been promised savings because of reforms. The General Accounting Office has told us—the nonpartisan General Accounting Office—has told us those savings have not materialized. They have not gone into modernization. That is what Secretary Perry said he was going to do. They have gone into administrative overhead and things of that nature.

If we are going to be promised reforms, we should see those reforms before we give more money. Whatever money we give should be based upon a policy determination of carrying out our national security goals and our interests. The other side has not made the case for more money.

I yield the floor, and I yield back the balance of my time.

Mr. DOMENICI. Mr. President, I gather the consent agreement has already been arrived at that we will vote at 6:55?

The PRESIDING OFFICER. The Senator is correct. We will vote at 6:55.

Mr. DOMENICI. Mr. President, I thank all the Senators that came to the floor this evening and today. I think it was an excellent debate. I commend my friend, Senator GRASSLEY, but I do not believe we should adopt this amendment.

Obviously, he is consistent. From what I can tell, this is not the time to expect the President to ask for increases if they are needed. I believe that will not happen and we will get a budget that is politically motivated, not really one that the Joint Chiefs of Staff totally support. As evidence of that, they have come to the Hill, singularly and together and asked for an additional $15 billion. I do not think they did that lightly. I think that is what they need.

Clearly, we ought to go with the Budget Committee's number and in due course debate can occur on how we spend it. I believe it will be spent wisely.

I yield the floor, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUYE] is necessarily absent.

The PRESIDING OFFICER (Mrs. HUTCHISON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 113 Leg.]

YEAS—42

Akaka	Daschle	Kerrey
Baucus	Dorgan	Kerry
Biden	Exon	Kohl
Bingaman	Feingold	Lautenberg
Boxer	Glenn	Leahy
Bradley	Graham	Levin
Brown	Grassley	Mikulski
Bryan	Harkin	Moseley-Braun
Bumpers	Hatfield	Moynihan
Byrd	Jeffords	Murray
Conrad	Kennedy	Pell
Pressler	Rockefeller	Simpson
Pryor	Sarbanes	Wellstone
Reid	Simon	Wyden

NAYS—57

Abraham	Feinstein	Lugar
Ashcroft	Ford	Mack
Bennett	Frist	McCain
Bond	Gorton	McConnell
Breaux	Gramm	Murkowski
Burns	Grams	Nickles
Campbell	Gregg	Nunn
Chafee	Hatch	Robb
Coats	Heflin	Roth
Cochran	Helms	Santorum
Cohen	Hollings	Shelby
Coverdell	Hutchison	Smith
Craig	Inhofe	Snowe
D'Amato	Johnston	Specter
DeWine	Kassebaum	Stevens
Dodd	Kempthorne	Thomas
Dole	Kyl	Thompson
Domenici	Lieberman	Thurmond
Faircloth	Lott	Warner

NOT VOTING—1

Inouye

The amendment (No. 3963) was rejected.

Mr. DOMENICI. Madam President, I move to reconsider the vote by which the amendment was rejected.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, might I say to the Senators, since there are a lot of them present here tonight, Senator EXON and I have been trying to work together to see if we can move this resolution and the amendments along. We would very much appreciate it if Senators who have amendments could begin to tell us what the amendments are by noon tomorrow and perhaps begin to turn in amendments by noon tomorrow so we can begin to schedule the amendments in some kind of sequence.

Having said that, Senator EXON and I have conferred. Senator EXON is going to lay down the President's budget at 9:30 in the morning. There will be ample time to debate. There is plenty of time on the resolution. Indeed, there is time for amendments to the President's budget, and we will have some of those ready on our side.

MORNING BUSINESS

NOTICE OF PROPOSED RULEMAKING

Mr. THURMOND. Mr. President, pursuant to section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a notice of proposed rulemaking was submitted by the Office of Compliance, U.S. Congress. The notice relates to Federal service labor-management relations (Regulations under section 220(d) of the Congressional Accountability Act.)

Section 304(b) requires this notice to be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

There being no objection, the notice was ordered to be printed in the RECORD, as follows:

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS, PROTECTIONS AND RESPONSIBILITIES UNDER CHAPTER 71 OF TITLE 5, UNITED STATES CODE, RELATING TO FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS (REGULATIONS UNDER SECTION 220(d) OF THE CONGRESSIONAL ACCOUNTABILITY ACT)

NOTICE OF PROPOSED RULEMAKING

Summary: The Board of Directors of the Office of Compliance is publishing proposed regulations to implement section 220 of the Congressional Accountability Act of 1995 (''CAA'' or ''Act''), Pub. L. 104-1, 109 Stat. 3. Specifically, these regulations are published pursuant to section 220(d) of the CAA.

The provisions of section 220 are generally effective October 1, 1996. 2 U.S.C. section 1351. Section 220(d) of the Act directs the Board to issue regulations to implement section 220. The proposed regulations set forth herein are to be applied to the Senate, the House of Representatives, and the Congressional instrumentalities and employees of the Senate, the House of Representatives, and the Congressional instrumentalities. These regulations set forth the recommendations of the Deputy Executive Director for the Senate, the Deputy Executive Director for the House of Representatives and the Executive Director, Office of Compliance, as approved by the Board of Directors, Office of Compliance. A Notice of Proposed Rulemaking under section 220(e) is being published separately.

Dates: Comments are due within 30 days of publication of this Notice in the Congressional Record.

Addressess: Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, DC 20540-1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 426–1913. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM-201, Law Library of Congress, James Madison Memorial Building, Washington, DC, Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For Further Information Contact: Executive Director, Office of Compliance at (202) 724-9250. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, 202–224–2705.

SUPPLEMENTARY INFORMATION

I. Background

A. Introduction

The Congressional Accountability Act of 1995 (''CAA'' or ''Act'') was enacted into law on January 23, 1995. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered Congressional employees and employing offices. Section 220 of the CAA concerns the application of chapter 71 of title 5, United States Code (''chapter 71'') relating to Federal service labor-management relations. Section 220(a) of the CAA applies the rights, protections and responsibilities established under sections 7102, 7106, 7111 through 7117, 7119 through 7122 and 7131 of title 5, United States Code to employing offices and to covered employees and representatives of those employees.

Section 220(d) authorizes the Board of Directors of the Office of Compliance (''Board'') to issue regulations to implement section 220 and further states that, except as provided in subsection (e), such regulations ''shall be the same as substantive regulations promulgated by the Federal Labor Relations Authority [''FLRA''] to implement the statutory provisions referred to in subsection (a) except-(A) to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; or (B) as the Board deems necessary to avoid a conflict of interest or appearance of a conflict of interest.''

Section 220(e) further authorizes the Board to issue regulations on the manner and extent to which the requirements and exemptions of chapter 71 should apply to covered employees who are employed in certain specified offices, ''except . . . that the Board shall exclude from coverage under [section 220] any covered employees who are employed in [the specified offices] if the Board determines that such exclusion is required because of (i) a conflict of interest or appearance of a conflict of interest; or (ii) Congress' constitutional responsibilities.''

This Notice of Proposed Rulemaking sets forth proposed regulations under section 220(d) of the CAA. A Notice of Proposed Rulemaking with respect to regulations under section 220(e) is being published separately.

B. Advance Notice of Proposed Rulemaking

On March 6, 1996, the Board of Directors of the Office of Compliance (''Office'') issued an Advance Notice of Proposed Rulemaking (''ANPR'') that solicited comments from interested parties in order to obtain participation and information early in the rulemaking process. 142 Cong. R. S1547 (daily ed., Mar. 6, 1996). In addition to inviting comment on all relevant matters and/or specific questions arising under section 220 of the CAA, the Office sought consultation with the FLRA and the Director of the Office of Personnel Management with regard to the development of these regulations in accordance with section 304(g) of the CAA. The Office has also consulted with interested parties to further its understanding of the need for and content of appropriate regulations.

The Board received 5 comments on the ANPR: one from the Secretary of the Senate and four from various labor organizations. Based on the information gleaned from its consultations and the comments on the ANPR, the Board is publishing these proposed rules, pursuant to section 220(d) of the CAA.

1. Substantive Regulations Promulgated by the Federal Labor Relations Authority.—In the ANPR, the Board invited comment on the meaning of the term ''substantive regulations'' under sections 220 and 304 of the CAA and further asked commenters to identify which of the regulations promulgated by the FLRA should be considered substantive regulations within the meaning of section 220 of the CAA. In this regard, the Board noted that certain of the FLRA's regulations relate to processes that implement chapter 71, while others relate to principles or criteria for making decisions that implement chapter 71. The Board invited commenters to discuss whether, in their view, the term ''substantive'' as used in sections 220 and 304 of the CAA might be intended to distinguish such regulations from those that are ''procedural'' in nature or content. In addition, the Board specifically invited comment on whether and, if so, to what extent the Board should propose the adoption of the FLRA regulations set forth in 5 C.F.R. sections 2411-2416.

a. Summary of comments: Two commenters addressed the meaning of the term ''substantive regulations.'' One of these two commenters suggested that the term ''substantive regulations'' means ''only those regulations promulgated by the [FLRA] that are necessary to implement the provisions of chapter 71 made applicable'' by section 220 of the CAA. In this commenter's view, the term ''substantive regulations'' should exclude FLRA regulations that address procedural processes already provided for by the CAA. For example, because sections 405 and 406 of the CAA and the Office's procedural rules promulgated under section 303 set forth the procedures for hearings and Board review of hearing officer's decisions, in this commenter's view, provisions of the FLRA's regulations that purport to govern those matters should not be adopted by the Board. In support of its position, the commenter cited to *Batterton v. Francis*, 432 U.S. 416, 425 n.9 (1977).

This commenter further asserted that the term ''substantive regulations'' should neither include FLRA regulations that are procedural in nature, such as those addressing filing procedures, nor FLRA regulations that address processes already provided for in procedural rules issued by the Office pursuant to section 303 of the CAA, because ''their adoption is not necessary to implement the provisions of chapter 71 made applicable by the CAA.'' The commenter stated that the Board has issued regulations, pursuant to section 303, that provide procedures for submissions under Part A of the CAA; the commenter urged that, to the extent possible, the same procedures should be used for submissions under Part D (section 220) of the CAA. The commenter suggested that, if any modifications to the Office's procedural rules are required to implement section 220, the Board should issue additional procedural regulations under section 303 of the CAA, rather than adopt assertedly ''non-substantive'' regulations of the FLRA.

Based on these views, this commenter took the position that, with certain modifications, all regulations set forth in subchapters C and D of the FLRA's regulations are substantive and should be adopted by the Board. Within those subchapters, this commenter suggested the exclusion of those regulations that the commenter deemed ''purely procedural.'' Finally, this commenter opined that the regulations in subchapter B, set forth at sections 2411-2416, should not be adopted by the Board as those sections do not implement provisions of chapter 71, as applied by the CAA.

The other commenter did not propose to define the term ''substantive regulations.'' Rather, this commenter asserted that, at present, it is not necessary for the Board to decide which of the FLRA's regulations are substantive. Instead, this commenter suggested that, although the FLRA's regulations may or may not be ''substantive regulations,'' the regulations are sound procedural guides that the Board is free to follow in the exercise of its general rulemaking authority under sections 303 and 304 of the CAA. The commenter pointed to the approach to rulemaking followed by the FLRA and the National Labor Relations Board (NLRB) as models for the Board, arguing that both the FLRA's and the NLRB's regulations include the various processes by which unfair labor practice and representation cases may be brought and considered and that neither the FLRA nor the NLRB has sought to ''define substantive rights by regulation.''

Finally, one other commenter, while not addressing the meaning of the term ''substantive regulations,'' suggested that the Board should adopt all of the FLRA's regulations, including sections 2411-2416.

b. Board consideration and conclusion: The Board first examines the question of the meaning of the term ''substantive regulations'' under sections 220 and 304 of the Act. Under settled principles of administrative law, substantive regulations are regulations implementing an underlying statute that are issued by a regulatory body pursuant to its statutory authority. See Batterton v. Francis, 432 U.S. 416, 425 n.9 (1977). Such regulations are generally promulgated in accordance with the Administrative Procedure Act, which requires that substantive rulemaking generally be preceded by a general notice of proposed rulemaking at least thirty days before the effective date of the proposed rule, and further requires that the agency afford interested persons an opportunity to participate in the rulemaking by submitting written comments. Regulations issued pursuant to this process are substantive because they ''have the force and effect of law,'' id., and because, among other things, they ''grant rights, impose obligations, or produce other significant effects on private interests,'' or . . . 'effect a change in existent law or policy.''' American Hospital Assoc. v. Bowen, 834 F.2d 1037, 1044 (D.C. Cir. 1987) (citations omitted).

That regulations may arguably be procedural in content is, in the Board's view, not a legally sufficient reason for not viewing them as ''substantive regulations.'' Procedural rules can in fact be substantive regulations. Process is frequently the substance of law and regulation; indeed, in the labor laws, process is the predominate means by which substantive regulation is effectuated. Moreover, in administrative law, it is commonplace for regulations covering procedures to be considered substantive regulations; as noted above, the Administrative Procedure Act generally treats regulation of process as substantive regulation. There is no evidence that Congress intended a different approach in the context of the CAA. Thus, it is the Board's conclusion that all regulations promulgated after a notice and comment period by the FLRA to implement chapter 71 are appropriately classified as substantive regulations for the purposes of rulemaking under sections 220 and 304 of the CAA.

In light of the foregoing, the Board has considered the regulations promulgated by the FLRA in order to determine which of the regulations are ''substantive'' regulations. The regulations promulgated by the FLRA ''are designed to implement the provisions of chapter 71 of title 5 of the United States Code . . . [and] prescribe the procedures, basic principles or criteria under which the Federal Labor Relations Authority or the General Counsel'' will carry out their functions, resolve issues and otherwise administer chapter 71. 5 C.F.R. §2420.1. In addition, these regulations were issued according to the requirements of the Administrative Procedure Act, with a public notice and comment period. Therefore, it is the Board's judgment that all the regulations promulgated by the FLRA and published at 5 C.F.R. 2411–2416, 2420–2430 and 2470–2472 are ''substantive regulations'' within the meaning of sections 220 and 304 of the CAA.

A review of the FLRA's regulations demonstrates, however, that not all of the FLRA's substantive regulations are ones that the Board need adopt. Certain of the FLRA's regulations were promulgated to implement provisions of statutes other than provisions of chapter 71 made applicable by the CAA. In this regard, in the ANPR, the Board noted that sections 2411–2416 of the FLRA's regulations treat, among other things, the implementation and applicability of the Freedom of Information Act, the Privacy Act and the Sunshine Act in the FLRA's processes. Although one commenter suggested that the referenced statutes and the FLRA's implementing regulations should govern the processes of the Office of Compliance, these statutes were not incorporated in the CAA and the Board thus is not proposing the adoption of sections 2411–2416 of the FLRA regulations.

Similarly, the Board does not propose to adopt either section 2430 of the FLRA's regulations, which establishes procedures for applying for awards of attorney fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. 504, or section 2472, which implements provisions of section 6131 of title 5 of the United States Code. As neither 5 U.S.C. 504 nor 5 U.S.C. 6131 is applied by the CAA, sections 2430 and 2472 were not promulgated to implement statutory provisions that are applied by section 220 and, accordingly, the FLRA's regulations implementing them need not be adopted.

2. *Proposed Modification of Substantive Regulations of the FLRA.*—In the ANPR, the Board invited comment on whether and to what extent it should, pursuant to section 220(d) of the CAA, modify the substantive regulations promulgated by the FLRA. Section 220(d) provides that the Board shall issue regulations that are the same as applicable substantive regulations of the FLRA ''except to the extent that the Board may determine, for good cause shown and stated together with the regulations, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section'' (emphasis added). Section 220(d) also provides that the Board may modify the FLRA's substantive regulations ''as the Board deems necessary to avoid a conflict of interest or appearance of a conflict of interest.''

a. Summary of comments: A number of commenters urged that the FLRA's substantive regulations should be adopted without change. One of these commenters particularly stressed, in its view, the need to adopt without change the regulations that treat recourse to the Federal Service Impasses Panel and the Merit Systems Protection Board. But another commenter suggested several modifications to the substantive regulations. In addition to a variety of technical changes in nomenclature and terminology, this commenter specifically suggested the following modifications:

(1) Regulations implementing provisions of chapter 71 not made applicable by the CAA

The commenter stated that section 2423.9(b) should not be adopted on the ground that it sets forth procedures implementing 5 U.S.C. section 7123(d), a section not incorporated into the CAA.

(2) Provisions inapplicable under the CAA

The commenter further suggested that the definition of the term ''activity'' under section 2421.5 of the FLRA's regulations should be deleted on the ground that it has no applicability in the legislative branch. Further, this commenter suggested that the term ''Government-wide rule'' found throughout the regulations should be changed to ''Government-wide rule applicable to the Senate [Legislative Branch]'' because not all government-wide rules apply to the legislative branch. Similarly, this commenter proposed the deletion of section 2425.3(b) because it relates to civil service employees, of which there are none in the legislative branch. The commenter further suggested that Section 2429.2, relating to transfer and consolidation of cases, should also be deleted because it has no applicability in light of the structure of the Office of Compliance. Finally, according to the commenter, part 2428 of the FLRA's regulations, which relates to enforcement of decisions of the Assistant Secretary of Labor for Labor-Management Relations, should not be adopted because the Assistant Secretary has no authority under the CAA and neither covered employees nor employing offices are bound by the decisions of the Assistant Secretary.

(3) Regulations addressing procedures governed by 405 and 406 of CAA

The commenter also contended that section 220 of the CAA directs that all representation and unfair labor practice matters that arise under section 220 be referred ''to a hearing officer for decision pursuant to subsection (b) through (h) of section 405.'' Further, according to the commenter, sections 220(c)(1) and (2) require that decisions of the hearing officers be reviewed by the Board under section 406 of the CAA. Consequently, in this commenter's view, the Board should not adopt any FLRA regulation relating to the conduct of hearings on representation petitions or unfair labor practice allegations or relating to Board review of decisions. For example, this commenter suggested that sections 2422.18–22 of the FLRA's regulations should be omitted because they relate to the procedures for the conduct of pre-election investigatory hearings on representation petitions; according to the commenter, procedures for these hearings are governed by section 405 of the CAA and by the Board's procedural rules.

(4) Consultation Rights

The commenter additionally suggested that the threshold requirement in section 2426.1 of the FLRA's regulations that a labor organization hold exclusive recognition for 10% or more of the personnel of an employing office in order for that labor organization to obtain consultation rights be modified for good cause. Because of the small size of many employing offices in the legislative branch, the commenter expressed the concern that employing offices would be required to engage in consultation when only one or two employees are represented by a union. Such an obligation to consult would, in this commenter's view, ''interfere with the rights of unrepresented employees because it would necessarily cause delay in implementation of new terms of employment.''

(5) Posting of Materials

The commenter suggested that sections 2422.7 and 2422.23 of the FLRA's regulations be modified to prohibit the posting of any material relating to a labor organization in any area open to the public on the basis that such a display of material would create a conflict of interest ''insofar as it may appear that Congress is unduly influenced by particular labor organizations.''

b. Board Consideration and Response to Comments: Based upon the comments received and the Board's understanding of chapter 71 and the institutions to which it is being made applicable through the CAA, the Board is proposing to adopt the FLRA's regulations published at 5 C.F.R. 2420–29 and 2470–71 with only limited modifications. The Board has proposed to delete provisions of the FLRA's regulations that were promulgated to implement provisions of chapter 71 that are not applied by the CAA. In this regard, sections 2423.9(b)(c) and (d) have been deleted because they implement section 7123(d) of chapter 71, a provision that is not applied by the CAA. Similarly, section 2429.7 of the FLRA's regulations, relating to the issuance of subpoenas, has been deleted because it implements section 7132 of chapter 71, a section of chapter 71 that is not applied by the CAA. Finally, as statutory provisions in title 5 that

permit executive branch employees to have access to the Merit Systems Protection Board (MSPB) were not applied by the CAA, references to the MSPB have also been deleted. The Board finds that there is good cause to make these modifications for the reasons herein stated.

In addition, the Board has proposed to make technical changes in definitions, nomenclature and prescribed processes so that the regulations comport with the CAA and the organizational structure of the Office of Compliance. In the Boards judgment, making such changes satisfies the Act's ''good cause'' requirement. However, contrary to one commenter's suggestion that the terms ''activity'' and ''Government-wide'' rule be omitted or modified, the Board is of the view that these concepts have applicability in the context of the CAA and therefore should not be deleted or modified. Of course, the Board welcomes additional comment on these issues as part of interested parties' comments on the proposed rules.

In addition to the foregoing, the Board has concluded that there is good cause to propose certain other modifications to the FLRA's regulations. These proposed modifications are discussed below.

(1) Exercise of Investigative and Adjudicatory Responsibilities

In issuing these proposed regulations to implement section 220, the Board has had to determine how it may best exercise its investigative and other authorities and responsibilities under section 220 of the CAA. In this regard, the Board notes that section 220(c)(1) of the CAA provides that the Board shall exercise the authorities of the three member Federal Labor Relations Authority (Authority) under various provisions of chapter 71 and that any ''petition, or other submission that, under chapter 71 . . . would be submitted to the . . . Authority shall, . . . be submitted to the Board''. The Board further notes that section 220(c)(1) provides that the Board ''shall refer any matter under this paragraph to a hearing officer for decision pursuant to . . . section 405''; and yet it also states that the Board may direct that the General Counsel carry out the Board's ''investigative authorities''. Finally, the Board notes that section 220(c)(3) limits judicial review to Board actions on unfair labor practice complaints. As an initial matter, therefore, there is a question as to whether section 220(c)(1) should be read to require that *all* representation, arbitration, negotiability and unfair labor practice issues that come before the Board first be referred to hearing officers for decision under section 405, or only to require referral of those matters that require a formal adversary hearing (involving, among other things, discovery and adherence to formal rules of evidence) in order to resolve the matter in dispute and create a record for judicial review. After considerable reflection, the Board is persuaded that Congress did not intend in the CAA to require that all issues first be presented to a hearing officer under section 405.

By its terms, section 220(c)(1) of the CAA expressly contemplates a distinction between investigative issues and those issues requiring referral for an adversary hearing. Specifically, section 220 expressly acknowledges that the Board possesses and may exercise investigative authorities, and explicitly states that the Board may direct the General Counsel to carry out such investigative authorities. *A fortiori,* the Board does not have to refer matters involving these ''investigative authorities'' to a hearing officer (but rather may direct the General Counsel to carry them out or carry them out itself).

The textual reference to the Board's investigative authorities is, in fact, only one of the statutory signals that Congress did not intend to require the Board to refer all issues to a hearing officer for initial decision under Section 405. Section 220(c)(3) further specifies that there shall be judicial review of only Board actions on unfair labor practice complaints. Since one of the key purposes of the section 405 hearing process is to create a record for judicial review, this limitation of the judicial review process is another textual suggestion that Congress intended to require referral to a hearing officer of only those matters that require a hearing of the type contemplated by section 405—i.e., a formal adversary hearing that establishes a record for Board and then judicial review.

Indeed, in section 220, Congress purported to impose upon the legislative branch the labor law applicable to the executive branch. In that scheme, representation issues, negotiability of bargaining proposals, and review of arbitral awards are not subject to elaborate adversarial procedures. Rather, they are subject to different investigative and decisional process better suited to expeditious and effective resolution of the issues presented. A determination by the Board that the resolution of exceptions to arbitral awards, negotiability of bargaining proposals, and representation petitions, must first be referred to a hearing officer for an adversarial hearing under section 405 would result in an overly cumbersome system that would undermine considerably the effective implementation of Section 220. The Board would not hesitate to implement such a scheme if Congress had clearly commanded it; but, when read in context, the statutory language does not so require, and the legislative history contains no suggestion that Congress intended such a striking departure from the underlying statutory scheme that it was purporting to impose on itself. In such circumstances, the Board cannot find good cause to modify the FLRA's regulations to require formal adversarial proceedings where they are not presently required under chapter 71.

Accordingly, the Board has examined the range of investigative and adjudicatory functions carried out by the FLRA and its officials under chapter 71 and the FLRA's regulations. The Board has further examined the manner in which those functions may most effectively and appropriately be carried out by the Office under the CAA. The Board has considered the suggestions of the commenters, the differences in organizational structure between the Office of Compliance and the FLRA, and the language and underlying statutory schemes of chapter 71 and the CAA. And, having done so, the Board has concluded that, consistent with the language of section 220(c)(1) and the scheme envisioned and implemented under chapter 71, issues that are presented directly to the Authority may and should also be presented directly to the Board. Likewise, the Board has determined that issues that are submitted to administrative law judges in the chapter 71 scheme should be submitted to hearing officers in the CAA scheme. Thus, the Board will decide representation issues, negotiability issues and exceptions to arbitral awards based upon a record developed through direct submissions from the parties and, where necessary, further investigation by the Board (through the person of the Executive Director); and it will refer unfair labor practice complaints to hearing officers for initial decision under section 405 (and then review by the Board and the courts).

Contrary to one commenter's assertion, 220(c)(1) does not require that pre-election hearings on representation petitions be conducted pursuant to section 405 of the CAA. Such hearings are investigatory in nature; and they do not require formal adversarial proceedings. They are to be conducted as part of the Board's authority to investigate representation petitions pursuant to the provisions of chapter 71 that are applied by the CAA. They thus need not be conducted by hearing officers under section 405.

(2) Procedural matters

The Board has further concluded that there is good cause to modify the FLRA's substantive regulations by omitting provisions that set forth procedures which are already provided for under comparable provisions of the Office's procedural rules. There are obvious benefits to having one set of procedural rules for matters arising under the CAA. Indeed, one commenter suggested this beneficial outcome in arguing why certain rules should not be considered to be ''substantive regulations'' within the meaning of section 304. While the Board believes that the rules are in fact substantive regulations, it believes that the benefits of having one set of procedural rules provides the ''good cause'' needed to modify the FLRA's substantive regulations in this respect.

Accordingly, provisions of Part 2423 relating to the filing of complaints and the conduct of hearings on allegations of violations of section 220 have been deleted or modified, as appropriate, where there is a specific regulation on the same matters in the Office's procedural rules. Similarly, provisions of Part 2429 of the FLRA's regulations relating to such matters as service, interlocutory appeals, computation of time, and methods of filing have been deleted or modified, to the extent that they are the same as, or specifically provided for under, procedural rules already issued. Finally, section 2429.9 relating to presentations by an amicus curiae and section 2429.17, which provides procedures for seeking Board reconsideration, have also been deleted. Although these subjects are not now covered by the Office's procedural rules, they have general applicability to Board proceedings under the CAA. The Board has determined that it would be more effective for the implementation of the rights and protections under the CAA to propose and issue rules relating to amicus filings and reconsideration in all matters before the Board as part of a rulemaking under section 303 of the Act.

(3) Arbitral awards on adverse actions

The Board also agrees with the commenter who suggested the deletion of section 2425.3(b), a provision that precludes the FLRA's review of arbitration awards involving certain adverse actions. Under chapter 71, Congress generally provided for the review of arbitration awards by the FLRA. However, for awards relating to matters in which an employee has an option of either filing an appeal with the Merit Systems Protection Board (or another adjudicative body) or of filing a grievance under a negotiated grievance procedure, Congress provided for judicial review of the award under the same standards of review that would be accorded to a decision of the MSPB or another appellate body. Therefore, there is a symmetrical framework for the review of arbitration awards involving certain adverse actions in the general Federal civil service in which decisions on such matters, whether made by an arbitrator or an adjudicative body, are subject to the same judicial review. In contrast, there is no such symmetry of review under the CAA because legislative branch employees have no recourse to the MSPB or other similar administrative agencies and there is no judicial review of arbitrators' awards. If section 2425.3(b) were not deleted, employees and employing offices under the CAA would be deprived of a forum for review of arbitration awards involving certain adverse actions. Accordingly, the Board concludes that

there is good cause to modify the FLRA's regulations by deleting section 2425.3(b).

(4) Consultation rights

Under section 2426.1(a) of the FLRA's regulations, an agency or an agency's primary national subdivision shall accord national consultation rights to a labor organization that ''[h]olds exclusive recognition for either: (i) Ten percent (10%) or more of the total number of civilian personnel employed by the agency and the non-appropriated fund Federal instrumentalities under its jurisdiction, excluding foreign nationals; or (ii) 3,500 or more employees of the agency.'' The Board has determined that the 10% threshold requirement should not be modified for good cause, as one commenter suggested. The Board agrees with the commenter that the small size of many employing offices in the legislative branch must be considered. However, the FLRA considered 10% of the employees of an agency or primary national subdivision to be a significant enough proportion of the employee complement to allow for meaningful consultations, no matter the size of the agency or the number of its employees. No convincing reason has been provided by the commenter why the FLRA's judgment is not workable here, or why there should be a different threshold requirement for small legislative branch employing offices from that applicable to small executive branch agencies.

By contrast, the same concern for the small size of many employing offices has prompted the Board to conclude that good cause exists to modify the alternate threshold requirement—i.e., the requirement that a labor organization hold exclusive recognition of 3,500 or more of an agency's employees in order to be accorded national consultation rights. Although the Board has been unable through its research to determine the reasoning of the FLRA in choosing the number 3,500 as a threshold requirement, the number corresponds to the considerable size of many of the executive branch agencies. Because none of the employing offices has as many as 35,000 employees, the 3,500 employee threshold is irrelevant in light of the existence of the other threshold requirement, discussed above, of 10% of the employee complement. The Board thus finds that it is unworkable in this context and that there is good cause to delete it.

Section 2426.11(a) requires that ''[a]n agency shall accord consultation rights on Government-wide rules or regulations to a labor organization that . . . [h]olds exclusive recognition for 3,500 or more employees.'' The Board has determined that this threshold requirement should also be deleted for good cause, since many of the employing offices in the legislative branch are considerably smaller than executive branch agencies. However, once this requirement is omitted, there is no other requirement in the regulations by which to determine whether consultation rights on Government-wide rules or regulations should be granted to a labor organization. Therefore, the Board has concluded that the 10% threshold requirement should be employed in this section as well. The 10% figure is used as an alternate criterion to 3,500 in according national consultation rights, and it is an appropriate standard to use for according consultation rights on Government-wide regulations as well.

(5) Enforcement of Decisions of the Assistant Secretary of Labor

As noted above, one commenter asserted that part 2428 of the FLRA's regulations is inapplicable under the CAA and should be omitted from the Board's regulations. Part 2428 of the FLRA's regulations provides a procedure for the Assistant Secretary of Labor for Labor-Management Relations to petition the FLRA to enforce decisions and orders of the Assistant Secretary with respect to labor organization conduct.

The Board has concluded that, although the Assistant Secretary has no enforcement authority over covered employing offices or covered employees, nothing in the CAA removes the Assistant Secretary of Labor's authority to regulate the conduct of labor organizations, even those that exclusively represent legislative branch employees. Indeed, 5 U.S.C. 7120(d) authorizes the Assistant Secretary of Labor for Labor-Management Relations to regulate the conduct of labor organizations and is specifically incorporated into the CAA. Further, nothing in the CAA would preclude the Assistant Secretary from petitioning the Board to enforce a decision and order involving a labor organization under the jurisdiction of the CAA. In this regard, the FLRA promulgated part 2428 as part of its authority under section 7105 of chapter 71 to ''take such actions as are necessary and appropriate to effectively administer the provisions'' of chapter 71. Under the CAA, the Board has specifically been granted the same authority to administer the provisions of chapter 71 as applied by the CAA. Accordingly, there is not good cause for the Board to omit part 2428 in its entirety or to decline to permit the Assistant Secretary to petition the Board in accordance with the procedures set forth therein.

However, the Board proposes not to adopt section 2428.3(a), which would require the Board to enforce any decision or order of the Assistant Secretary unless it is ''arbitrary and capricious or based upon manifest disregard of the law.'' In light of section 225(f)(3) of the CAA, which states that the CAA does not authorize executive branch enforcement of the Act, the Board should not adopt a provision that would require the Board to defer to decisions of an executive branch agency. Accordingly, the Board has modified the provisions of part 2428 by omitting section 2428.3(a).

(6) Production of evidence in pre-election investigatory hearings

As noted in section I.B.2. above, section 7132 of chapter 71, which authorizes the issuance of subpoenas by various FLRA officials, was not made applicable by the CAA. Moreover, as pre-election investigatory hearings are not hearings that are conducted under section 405 of the CAA, subpoenas for documents or witnesses in such pre-election proceedings are not available under the CAA. Nonetheless, in order to properly decide disputed representation issues and effectively implement section 220 of the CAA, a complete investigatory record comparable to that developed by the FLRA under chapter 71 is necessary. Accordingly, there is good cause to modify section 2422.18 of the FLRA's regulations in order to ensure that such a record is made in the absence of the availability of subpoenas. To this end, the Board is specifically proposing the inclusion of section 2422.18(d), which provides that the parties have an obligation to produce existing documents and witnesses for the pre-election investigatory hearing in accordance with the instructions of the Executive Director; and the Board is further proposing that a willful failure to comply with such instructions may in appropriate circumstances result in an adverse inference being drawn on the issue related to the evidence sought.

(7) Selection of the unfair labor practice procedure or the negotiability procedure

The Board has determined that there is also good cause to delete the concluding sentence of sections 2423.5 and 2424.5 of the FLRA's regulations because, in the context of the CAA, they would serve improperly to deprive judicial review in certain circumstances. Generally, when an employing office asserts it has no duty to bargain over a proposal, a labor organization may seek a Board determination on the issue either through an unfair labor practice proceeding or a negotiability proceeding. However, the concluding sentences of the referenced regulations preclude a labor organization from filing an unfair labor practice charge in cases that solely involve an employing office's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and that do not involve actual or contemplated changes in conditions of employment. In such cases, those sentences of the regulations provide that a labor organization may only file a petition for review of a negotiability issue.

Unlike chapter 71, the CAA does not provide for direct judicial review of Board decisions and orders on petitions for review of negotiability issues. Rather, judicial review of Board determinations as to the negotiability of collective bargaining proposals is only available through an unfair labor practice proceeding involving a dispute over an employing office's duty to bargain. Accordingly, if sections 2423.5 and 2424.5 were not modified, a labor organization would, in certain circumstances, be precluded from electing to file an unfair labor practice charge and possibly obtaining judicial review of a Board decision. Rather, the labor organization would be required to file a petition for review of the negotiability issue and any unfavorable decision would be unreviewable. The Board concludes that it would be more effective for the implementation of the rights and protections under section 220 to delete the two specified sentences, thereby allowing a labor organization to use the unfair labor practice procedures in all circumstances.

(8) Official time

Section 2429.13 of the FLRA's regulations requires employing offices to grant ''official time'' to employees when the employees' participation in investigations or hearings is deemed necessary by hearing officers or Office officials. The Board has determined that section 2429.13 of the FLRA's regulations should be modified by striking the last sentence, which would require the payment by employing offices of transportation and per diem expenses associated with employees' participation in investigations or hearings on official time. The Board finds good cause to modify the provision in light of the decision of the United States Supreme Court in Bureau of Alcohol, Tobacco and Firearms v. Federal Labor Relations Authority, 464 U.S. 89, 104 S.Ct. 439 (1983), in which the Supreme Court held that the FLRA had exceeded its authority by requiring federal agencies to pay such per diem allowances and travel expenses. This regulatory requirement has been authoritatively and finally invalidated by the Supreme Court and thus has no applicability under the laws that have been incorporated by the CAA.

(9) The Board's exercise of the authorities of the Federal Service Impasses Panel

Section 2470 of the FLRA's regulations defines the Federal Service Impasses Panel as all members of the Panel or a quorum thereof and thus permits formal actions to be taken on behalf of the Panel by less than the Panel's full complement of members. The Federal Service Impasses Panel is composed of seven members. The Board, which will exercise the authorities of the Panel pursuant to section 220(c)(4) of the CAA, is a five-member body. It is the Board's determination that it will be more effective for the implementation of section 220(c)(4) to provide for the full Board, rather than a quorum

thereof, to carry out its authorities under that section. Section 2470 of the regulation has been modified accordingly.

(10) Conflict of Interest

As noted above, one commenter asserted that sections 2422.7 and 2422.23 of the FLRA's regulations should be modified pursuant to section 220(d)(2)(B). The two referenced sections of the FLRA's regulations provide, respectively, that an employing office may be directed to post a notice advising affected employees of the filing of a representation petition and that an employing office will post a notice of election when an election is to be conducted. In both instances the notices, which in the context of the CAA will be prepared by the Office of Compliance, must be posted in places where notices are normally posted for the affected employees or they may be distributed in a manner by which notices are normally distributed. The commenter urges that these regulatory provisions be modified to prohibit the publication of any material relating to a labor organization in any area open to the public. In support of the proposed modification, the commenter states only that display of such material in public view creates, at the very least, an appearance of a conflict of interest insofar as it may appear that Congress is unduly influenced by particular labor organizations.

In the ANPR, the Board requested commenters to fully and specifically describe the conflict of interest or appearance thereof that they believe would exist were pertinent FLRA regulations not modified and to explain the necessity for avoiding the asserted conflict or appearance of conflict. The Board further asked commenters to explain how they interpret 220(d)(2)(B) and, in doing so, identify the factual and interpretive materials upon which they are relying. The commenter has not discussed section 220(d)(2)(B) or explained why the proposed modification, a specific prohibition on posting an Office of Compliance notice in a public area, is necessary to avoid an appearance of conflict; indeed, the commenter has not explained how the posting of a notice announcing the filing of a petition or an upcoming election would create the appearance of undue influence asserted by the commenter.

In the Board's view, no appearance of conflict of interest or undue influence is created by an employing office posting a notice, prepared by the Office of Compliance, advising covered employees of a pending petition or an election under a statute that Congress has specifically applied to itself, similar provisions of which apply in the private and public sectors. Nothing in the FLRA's regulations requires that notices be posted in public areas; the referenced notices must only be posted or distributed in the manner that other information affecting employees is posted or distributed. Moreover, since the notices are prepared by the Office of Compliance, which is an independent office in the legislative branch, no reasonable person could even begin to find undue influence from the posting itself.

The Board thus concludes that, contrary to the commenter's suggestion, it is not necessary to modify sections 2422.7 and 2422.23 of the FLRA's regulations to avoid a conflict of interest or appearance of conflict of interest. The Board therefore proposes to adopt those provisions with only technical changes in nomenclature.

II. Method of Approval

The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and employees of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 14th day of May, 1996.

GLEN D. NAGER,
Chair of the Board,
Office of Compliance.

Subchapter C

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Subchapter C

PART 2420—PURPOSE AND SCOPE

§ 2420.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement the provisions of chapter 71 of title 5 of the United States Code, as applied by section 220 of the Congressional Accountability Act (CAA). They prescribe the procedures, basic principles or criteria under which the Board and the General Counsel, as applicable, will:

(a) Determine the appropriateness of units for labor organization representation under 5 U.S.C. 7112, as applied by the CAA;

(b) Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of 5 U.S.C. 7111, as applied by the CAA, relating to the according of exclusive recognition to labor organizations;

(c) Resolve issues relating to the granting of national consultation rights under 5 U.S.C. 7113, as applied by the CAA;

(d) Resolve issues relating to determining compelling need for employing office rules and regulations under 5 U.S.C. 7117(b), as applied by the CAA;

(e) Resolve issues relating to the duty to bargain in good faith under 5 U.S.C. 7117(c), as applied by the CAA;

(f) Resolve issues relating to the granting of consultation rights with respect to conditions of employment under 5 U.S.C. 7117(d), as applied by the CAA;

(g) Conduct hearings and resolve complaints of unfair labor practices under 5 U.S.C. 7118, as applied by the CAA;

(h) Resolve exceptions to arbitrators' awards under 5 U.S.C. 7122, as applied by the CAA; and

(i) Take such other actions as are necessary and appropriate effectively to administer the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA.

PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

Sec.
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2421.2 Chapter 71.
2421.3 General Definitions.
2421.4 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.
2421.5 Activity.
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§ 2421.1 Act; CAA.

The terms ''Act'' and ''CAA'' mean the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

§ 2421.2 Chapter 71.

The term ''chapter 71'' means chapter 71 of title 5 of the United States Code.

§ 2421.3 General Definitions.

(a) The term ''person'' means an individual, labor organization or employing office.

(b) Except as noted in subparagraph (3) of this subsection, the term ''employee'' means an individual—

(1) Who is a current employee, applicant for employment, or former employee of: the House of Representatives; the Senate; the Capitol Guide Service; the Capitol Police; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the Office of Compliance; or the Office of Technology Assessment; or

(2) Whose employment in an employing office has ceased because of any unfair labor practice under section 7116 of title 5 of the United States Code, as applied by the CAA, and who has not obtained any other regular and substantially equivalent employment as determined under regulations prescribed by the Board, but does not include——

(i) An alien or noncitizen of the United States who occupies a position outside of the United States;

(ii) A member of the uniformed services;

(iii) A supervisor or a management official or;

(iv) Any person who participates in a strike in violation of section 7311 of title 5 of the United States Code, as applied the CAA.

(3) For the purpose of determining the adequacy of a showing of interest or eligibility for consultation rights, except as required by law, applicants for employment and former employees are not considered employees.

(c) The term ''employing office'' means—

(1) The personal office of a Member of the House of Representatives or of a Senator;

(2) A committee of the House of Representatives or the Senate or a joint committee;

(3) Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) The Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(d) The term ''labor organization'' means an organization composed in whole or in part

of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an employing office concerning grievances and conditions of employment, but does not include—

(1) An organization which, by its constitution, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(2) An organization which advocates the overthrow of the constitutional form of government of the United States;

(3) An organization sponsored by an employing office; or

(4) An organization which participates in the conduct or a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

(e) The term ''dues'' means dues, fees, and assessments.

(f) The term ''Board'' means the Board of Directors of the Office of Compliance.

(g) The term ''collective bargaining agreement'' means an agreement entered into as a result of collective bargaining pursuant to the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA.

(h) The term ''grievance'' means any complaint—

(1) By any employee concerning any matter relating to the employment of the employee;

(2) By any labor organization concerning any matter relating to the employment of any employee; or

(3) By any employee, labor organization, or employing office concerning—

(i) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

(i) The term ''supervisor'' means an individual employed by an employing office having authority in the interest of the employing office to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term ''supervisor'' includes only those individuals who devote a preponderance of their employment time to exercising such authority.

(j) The term ''management official'' means an individual employed by an employing office in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the employing office.

(k) The term ''collective bargaining'' means the performance of the mutual obligation of the representative of an employing office and the exclusive representative of employees in an appropriate unit in the employing office to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

(l) The ''term confidential employee'' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

(m) The term ''conditions of employment'' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

(1) Relating to political activities prohibited under subchapter III of chapter 73 of title 5 of the United States Code, as applied by the CAA;

(2) Relating to the classification of any position; or

(3) To the extent such matters are specifically provided for by Federal statute.

(n) The term ''professional employee'' means—

(1) An employee engaged in the performance of work—

(i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) Requiring the consistent exercise of discretion and judgment in its performance;

(iii) Which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) Which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(2) An employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (1)(i) of this paragraph and is performing related work under appropriate direction and guidance to qualify the employee as a professional employee described in subparagraph (1) of this paragraph.

(o) The term ''exclusive representative'' means any labor organization which is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of title 5 of the United States Code, as applied by the CAA.

(p) The term ''firefighter'' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment.

(q) The term ''United States'' means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(r) The term ''General Counsel'' means the General Counsel of the Office of Compliance.

(s) The term ''Assistant Secretary'' means the Assistant Secretary of Labor for Labor-Management Relations.

§ 2421.4 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.

(a)(1) The term ''national consultation rights'' means that a labor organization that is the exclusive representative of a substantial number of the employees of the employing office, as determined in accordance with criteria prescribed by the Board, shall—

(i) Be informed of any substantive change in conditions of employment proposed by the employing office; and

(ii) Be permitted reasonable time to present its views and recommendations regarding the changes.

(2) National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Board. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Board.

(b)(1) The term ''consultation rights on Government-wide rules or regulations'' means that a labor organization which is the exclusive representative of a substantial number of employees of an employing office determined in accordance with criteria prescribed by the Board, shall be granted consultation rights by the employing office with respect to any Government-wide rule or regulation issued by the employing office effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Board. Any issue relating to a labor organizations eligibility for, or continuation of, such consultation rights shall be subject to determination by the Board.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

(i) Be informed of any substantive change in conditions of employment proposed by the employing office; and

(ii) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an employing office by any labor organization—

(i) The employing office shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(ii) The employing office shall provide the labor organization a written statement of the reasons for taking the final action.

(c) The term ''exclusive recognition'' means that a labor organization has been selected as the sole representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in an election.

(d) The term ''unfair labor practices'' means—

(1) Any of the following actions taken by an employing office—

(i) Interfering with, restraining, or coercing any employee in the exercise by the employee of any right under chapter 71, as applied by the CAA;

(ii) Encouraging or discouraging membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other condition of employment;

(iii) Sponsoring, controlling, or otherwise assisting any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(iv) Disciplining or otherwise discriminating against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under chapter 71, as applied by the CAA;

(v) Refusing to consult or negotiate in good faith with a labor organization as required by chapter 71, as applied by the CAA;

(vi) Failing or refusing to cooperate in impasse procedures and impasse decisions as required by chapter 71, as applied by the CAA;

(vii) Enforcing any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect

before the date the rule or regulation was prescribed; or

(viii) Otherwise failing or refusing to comply with any provision of chapter 71, as applied by the CAA;

(2) Any of the following actions taken by a labor organization—

(i) Interfering with, restraining, or coercing any employee in the exercise by the employee of any right under this chapter;

(ii) Causing or attempting to cause an employing office to discriminate against any employee in the exercise by the employee of any right under this chapter;

(iii) Coercing, disciplining, fining, or attempting to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the members duties as an employee;

(iv) Discriminating against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(v) Refusing to consult or negotiate in good faith with an employing office as required by chapter 71, as applied by the CAA;

(vi) Failing or refusing to cooperate in impasse procedures and impasse decisions as required by chapter 71, as applied by the CAA;

(vii)(A) Calling, or participating in, a strike, work stoppage, or slowdown, or picketing of an employing office in a labor-management dispute if such picketing interferes with an employing office's operations; or

(B) Condoning any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(viii) Otherwise failing or refusing to comply with any provision of chapter 71, as applied by the CAA;

(3) Denial of membership by an exclusive representative to any employee in the appropriate unit represented by such exclusive representative except for failure—

(i) To meet reasonable occupational standards uniformly required for admission, or

(ii) To tender dues uniformly required as a condition of acquiring and retaining membership.

§ 2421.5 Activity.

The term ''activity'' means any facility, organizational entity, or geographical subdivision or combination thereof, of any employing office.

§ 2421.6 Primary national subdivision.

''Primary national subdivision'' of an employing office means a first-level organizational segment which has functions national in scope that are implemented in field activities.

§ 2421.7 Executive Director.

''Executive Director'' means the Executive Director of the Office of Compliance.

§ 2421.8 Hearing Officer.

The term ''Hearing Officer'' means any individual designated by the Executive Director to preside over a hearing conducted pursuant to section 405 of the CAA on matters within the Office's jurisdiction, including a hearing arising in cases under 5 U.S.C. 7116, as applied by the CAA, and any other such matters as may be assigned.

§ 2421.9 Party.

The term ''party'' means:

(a) Any labor organization, employing office or employing activity or individual filing a charge, petition, or request;

(b) Any labor organization or employing office or activity.

(1) Named as—

(i) A charged party in a charge,

(ii) A respondent in a complaint, or

(iii) An employing office or activity or an incumbent labor organization in a petition.

(2) Whose intervention in a proceeding has been permitted or directed by the Board; or

(3) Who participated as a party.

(i) In a matter that was decided by an employing office head under 5 U.S.C. 7117, as applied by the CAA, or

(ii) In a matter where the award of an arbitrator was issued; and

(c) The General Counsel, or the General Counsel's designated representative, in appropriate proceedings.

§ 2421.10 Intervenor.

The term ''intervenor'' means a party in a proceeding whose intervention has been permitted or directed by the Board, its agents or representatives.

§ 2421.11 Certification.

The term ''certification'' means the determination by the Board, its agents or representatives, of the results of an election, or the results of a petition to consolidate existing exclusively recognized units.

§ 2421.12 Appropriate unit.

The term ''appropriate unit'' means that grouping of employees found to be appropriate for purposes of exclusive recognition under 5 U.S.C. 7111, as applied by the CAA, and for purposes of allotments to representatives under 5 U.S.C. 7115(c), as applied by the CAA, and consistent with the provisions of 5 U.S.C. 7112, as applied by the CAA.

§ 2421.13 Secret ballot.

The term ''secret ballot'' means the expression by ballot, voting machine or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed, except in that instance in which any determinative challenged ballot is opened.

§ 2421.14 Showing of interest.

The term ''showing of interest'' means evidence of membership in a labor organization; employees' signed and dated authorization cards or petitions authorizing a labor organization to represent them for purposes of exclusive recognition; allotment of dues forms executed by an employee and the labor organization's authorized official; current dues records; an existing or recently expired agreement; current certification; employees' signed and dated petitions or cards indicating that they no longer desire to be represented for the purposes of exclusive recognition by the currently certified labor organization; employees' signed and dated petitions or cards indicating a desire that an election be held on a proposed consolidation of units; or other evidence approved by the Board.

§ 2421.15 Regular and substantially equivalent employment.

The term ''regular and substantially equivalent employment'' means employment that entails substantially the same amount of work, rate of pay, hours, working conditions, location of work, kind of work, and seniority rights, if any, of an employee prior to the cessation of employment in an employing office because of any unfair labor practice under 5 U.S.C. 7116, as applied by the CAA.

§ 2421.16 Petitioner.

''Petitioner'' means the party filing a petition under Part 2422 of this Subchapter.

§ 2421.17 Eligibility period.

The term ''eligibility period'' means the payroll period during which an employee must be in an employment status with an employing office or activity in order to be eligible to vote in a representation election under Part 2422 of this Subchapter.

§ 2421.18 Election agreement.

The term ''election agreement'' means an agreement under Part 2422 of this Subchapter signed by all the parties, and approved by the Board, the Executive Director, or any other individual designated by the Board, concerning the details and procedures of a representation election in an appropriate unit.

§ 2421.19 Affected by issues raised.

The phrase ''affected by issues raised'', as used in Part 2422, should be construed broadly to include parties and other labor organizations, or employing offices or activities that have a connection to employees affected by, or questions presented in, a proceeding.

§ 2421.20 Determinative challenged ballots.

''Determinative challenged ballots'' are challenges that are unresolved prior to the tally and sufficient in number after the tally to affect the results of the election.

PART 2422—REPRESENTATION PROCEEDINGS

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§ 2422.1 Purposes of a petition.

A petition may be filed for the following purposes:

(a) *Elections or Eligibility for dues allotment.* To request:

(1)(i) An election to determine if employees in an appropriate unit wish to be represented

for the purpose of collective bargaining by an exclusive representative; and/or

(ii) A determination of eligibility for dues allotment in an appropriate unit without an exclusive representative; or

(2) An election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative.

(3) Petitions under this subsection must be accompanied by an appropriate showing of interest.

(b) *Clarification or Amendment*. To clarify, and/or amend:

(1) A certification then in effect; and/or

(2) Any other matter relating to representation.

(c) *Consolidation*. To consolidate two or more units, with or without an election, in an employing office and for which a labor organization is the exclusive representative.

§ 2422.2 Standing to file a petition.

A representation petition may be filed by: an individual; a labor organization; two or more labor organizations acting as a joint-petitioner; an individual acting on behalf of any employee(s); an employing office or activity; or a combination of the above: *provided, however*, that (a) only a labor organization has standing to file a petition pursuant to section 2422.1(a)(1); (b) only an individual has standing to file a petition pursuant to section 2422.1(a)(2); and (c) only an employing office or a labor organization may file a petition pursuant to section 2422.1(b) or (c).

§ 2422.3 Contents of a petition.

(a) *What to file*. A petition must be filed on a form prescribed by the Board and contain the following information:

(1) The name and mailing address for each employing office or activity affected by issues raised in the petition, including street number, city, state and zip code.

(2) The name, mailing address and work telephone number of the contact person for each employing office or activity affected by issues raised in the petition.

(3) The name and mailing address for each labor organization affected by issues raised in the petition, including street number, city, state and zip code. If a labor organization is affiliated with a national organization, the local designation and the national affiliation should both be included. If a labor organization is an exclusive representative of any of the employees affected by issues raised in the petition, the date of the certification and the date any collective bargaining agreement covering the unit will expire or when the most recent agreement did expire should be included, if known.

(4) The name, mailing address and work telephone number of the contact person for each labor organization affected by issues raised in the petition.

(5) The name and mailing address for the petitioner, including street number, city, state and zip code. If a labor organization petitioner is affiliated with a national organization, the local designation and the national affiliation should both be included.

(6) A description of the unit(s) affected by issues raised in the petition. The description should generally indicate the geographic locations and the classifications of the employees included (or sought to be included) in, and excluded (or sought to be excluded) from, the unit.

(7) The approximate number of employees in the unit(s) affected by issues raised in the petition.

(8) A clear and concise statement of the issues raised by the petition and the results the petitioner seeks.

(9) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that the contents of the petition are true and correct to the best of the person's knowledge and belief.

(10) The signature, title, mailing address and telephone number of the person filing the petition.

(b) *Compliance with 5 U.S.C. 7111(e), as applied by the CAA*. A labor organization/petitioner complies with 5 U.S.C. 7111(e), as applied by the CAA, by submitting to the employing office or activity and to the Department of Labor a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives. By signing the petition form, the labor organization/petitioner certifies that it has submitted these documents to the employing activity or office and to the Department of Labor.

(c) *Showing of interest supporting a representation petition*. When filing a petition requiring a showing of interest, the petitioner must:

(1) So indicate on the petition form;

(2) Submit with the petition a showing of interest of not less than thirty percent (30%) of the employees in the unit involved in the petition; and

(3) Include an alphabetical list of the names constituting the showing of interest.

(d) *Petition seeking dues allotment*. When there is no exclusive representative, a petition seeking certification for dues allotment shall be accompanied by a showing of membership in the petitioner of not less than ten percent (10%) of the employees in the unit claimed to be appropriate. An alphabetical list of names constituting the showing of membership must be submitted.

§ 2422.4 Service requirements.

Every petition, motion, brief, request, challenge, written objection, or application for review shall be served on all parties affected by issues raised in the filing. The service shall include all documentation in support thereof, with the exception of a showing of interest, evidence supporting challenges to the validity of a showing of interest, and evidence supporting objections to an election. The filer must submit a written statement of service to the Executive Director.

§ 2422.5 Filing petitions.

(a) *Where to file*. Petitions must be filed with the Executive Director.

(b) *Number of copies*. An original and two (2) copies of the petition and the accompanying material must be filed with the Executive Director.

(c) *Date of filing*. A petition is filed when it is received by the Executive Director.

§ 2422.6 Notification of filing.

(a) *Notification to parties*. After a petition is filed, the Executive Director, on behalf of the Board, will notify any labor organization, employing office or employing activity that the parties have identified as being affected by issues raised by the petition, that a petition has been filed with the Office. The Executive Director, on behalf of the Board, will also make reasonable efforts to identify and notify any other party affected by the issues raised by the petition.

(b) *Contents of the notification*. The notification will inform the labor organization, employing office or employing activity of:

(1) The name of the petitioner;

(2) The description of the unit(s) or employees affected by issues raised in the petition; and,

(3) A statement that all affected parties should advise the Executive Director in writing of their interest in the issues raised in the petition.

§ 2422.7 Posting notice of filing of a petition.

(a) *Posting notice of petition*. When appropriate, the Executive Director, on behalf of the Board, after the filing of a representation petition, will direct the employing office or activity to post copies of a notice to all employees in places where notices are normally posted for the employees affected by issues raised in the petition and/or distribute copies of a notice in a manner by which notices are normally distributed.

(b) *Contents of notice*. The notice shall advise affected employees about the petition.

(c) *Duration of notice*. The notice should be conspicuously posted for a period of ten (10) days and not be altered, defaced, or covered by other material.

§ 2422.8 Intervention and cross-petitions.

(a) *Cross-petitions*. A cross-petition is a petition which involves any employees in a unit covered by a pending representation petition. Cross-petitions must be filed in accordance with this subpart.

(b) *Intervention requests and cross-petitions*. A request to intervene and a cross-petition, accompanied by any necessary showing of interest, must be submitted in writing and filed with the Executive Director before the pre-election investigatory hearing opens, unless good cause is shown for granting an extension. If no pre-election investigatory hearing is held, a request to intervene and a cross-petition must be filed prior to action being taken pursuant to § 2422.30.

(c) *Labor organization intervention requests*. Except for incumbent intervenors, a labor organization seeking to intervene shall submit a statement that it has complied with 5 U.S.C. 7111(e), as applied by the CAA, and one of the following:

(1) A showing of interest of ten percent (10%) or more of the employees in the unit covered by a petition seeking an election, with an alphabetical list of the names of the employees constituting the showing of interest; or

(2) A current or recently expired collective bargaining agreement covering any of the employees in the unit affected by issues raised in the petition; or

(3) Evidence that it is or was, prior to a reorganization, the certified exclusive representative of any of the employees affected by issues raised in the petition.

(d) *Incumbent*. An incumbent exclusive representative, without regard to the requirements of paragraph (c) of this section, will be considered a party in any representation proceeding raising issues that affect employees the incumbent represents, unless it serves the Board, through the Executive Director, with a written disclaimer of any representation interest in the claimed unit.

(e) *Employing office*. An employing office or activity will be considered a party if any of its employees are affected by issues raised in the petition.

(f) *Employing office or activity intervention*. An employing office or activity seeking to intervene in any representation proceeding must submit evidence that one or more employees of the employing office or activity may be affected by issues raised in the petition.

§ 2422.9 Adequacy of showing of interest.

(a) *Adequacy*. Adequacy of a showing of interest refers to the percentage of employees in the unit involved as required by §§ 2422.3 (c) and (d) and 2422.8(c)(1).

(b) *Executive Director investigation and action*. The Executive Director, on behalf of the Board, will conduct such investigation as deemed appropriate. The Executive Director's determination, on behalf of the Board, that the showing of interest is adequate is final and binding and not subject to collateral attack at a representation hearing or on appeal to the Board. If the Executive Director determines, on behalf of the Board, that a showing of interest is inadequate, the Executive Director will dismiss the petition, or deny a request for intervention.

§ 2422.10 Validity of showing of interest.

(a) *Validity.* Validity questions are raised by challenges to a showing of interest on grounds other than adequacy.

(b) *Validity challenge.* The Executive Director or any party may challenge the validity of a showing of interest.

(c) *When and where validity challenges may be filed.* Party challenges to the validity of a showing of interest must be in writing and filed with the Executive Director before the pre-election investigatory hearing opens, unless good cause is shown for granting an extension. If no pre-election investigatory hearing is held, challenges to the validity of a showing of interest must be filed prior to action being taken pursuant to § 2422.30.

(d) *Contents of validity challenges.* Challenges to the validity of a showing of interest must be supported with evidence.

(e) *Executive Director investigation and action.* The Executive Director, on behalf of the Board, will conduct such investigation as deemed appropriate. The Executive Director's determination, on behalf of the Board, that a showing of interest is valid is final and binding and is not subject to collateral attack or appeal to the Board. If the Executive Director finds, on behalf of the Board, that the showing of interest is not valid, the Executive Director will dismiss the petition or deny the request to intervene.

§ 2422.11 Challenge to the status of a labor organization.

(a) *Basis of challenge to labor organization status.* The only basis on which a challenge to the status of a labor organization may be made is compliance with 5 U.S.C. 7103(a)(4), as applied by the CAA.

(b) *Format and time for filing a challenge.* Any party filing a challenge to the status of a labor organization involved in the processing of a petition must do so in writing to the Executive Director before the pre-election investigatory hearing opens, unless good cause is shown for granting an extension. If no hearing is held, challenges must be filed prior to action being taken pursuant to § 2422.30.

§ 2422.12 Timeliness of petitions seeking an election.

(a) *Election bar.* Where there is no certified exclusive representative, a petition seeking an election will not be considered timely if filed within twelve (12) months of a valid election involving the same unit or a subdivision of the same unit.

(b) *Certification bar.* Where there is a certified exclusive representative of employees, a petition seeking an election will not be considered timely if filed within twelve (12) months after the certification of the exclusive representative of the employees in an appropriate unit. If a collective bargaining agreement covering the claimed unit is pending employing office head review under 5 U.S.C. 7114(c), as applied by the CAA, or is in effect, paragraphs (c), (d), or (e) of this section apply.

(c) *Bar during employing office head review.* A petition seeking an election will not be considered timely if filed during the period of employing office head review under 5 U.S.C. 7114(c), as applied by the CAA. This bar expires upon either the passage of thirty (30) days absent employing office head action, or upon the date of any timely employing office head action.

(d) *Contract bar where the contract is for three (3) years or less.* Where a collective bargaining agreement is in effect covering the claimed unit and has a term of three (3) years or less from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) and not less than sixty (60) days prior to the expiration of the agreement.

(e) *Contract bar where the contract is for more than three (3) years.* Where a collective bargaining agreement is in effect covering the claimed unit and has a term of more than three (3) years from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) and not less than sixty (60) days prior to the expiration of the initial three (3) year period, and any time after the expiration of the initial three (3) year period.

(f) *Unusual circumstances.* A petition seeking an election or a determination relating to representation matters may be filed at any time when unusual circumstances exist that substantially affect the unit or majority representation.

(g) *Premature extension.* Where a collective bargaining agreement with a term of three (3) years or less has been extended prior to sixty (60) days before its expiration date, the extension will not serve as a basis for dismissal of a petition seeking an election filed in accordance with this section.

(h) *Contract requirements.* Collective bargaining agreements, including agreements that go into effect under 5 U.S.C. 7114(c), as applied by the CAA, and those that automatically renew without further action by the parties, do not constitute a bar to a petition seeking an election under this section unless a clear and unambiguous effective date, renewal date where applicable, duration, and termination date are ascertainable from the agreement and relevant accompanying documentation.

§ 2422.13 Resolution of issues raised by a petition.

(a) *Meetings prior to filing a representation petition.* All parties affected by the representation issues that may be raised in a petition are encouraged to meet prior to the filing of the petition to discuss their interests and narrow and resolve the issues. If requested by all parties a representative of the Office will participate in these meetings.

(b) *Meetings to narrow and resolve the issues after the petition is filed.* After a petition is filed, the Executive Director may require all affected parties to meet to narrow and resolve the issues raised in the petition.

§ 2422.14 Effect of withdrawal/dismissal.

(a) *Withdrawal/dismissal less than sixty (60) days before contract expiration.* When a petition seeking an election that has been timely filed is withdrawn by the petitioner or dismissed by the Executive Director or the Board less than sixty (60) days prior to the expiration of an existing agreement between the incumbent exclusive representative and the employing office or activity or any time after the expiration of the agreement, another petition seeking an election will not be considered timely if filed within a ninety (90) day period from either:

(1) The date the withdrawal is approved; or

(2) The date the petition is dismissed by the Executive Director when no application for review is filed with the Board; or

(3) The date the Board rules on an application for review; or

(4) The date the Board issues a Decision and Order dismissing the petition.

Other pending petitions that have been timely filed under this Part will continue to be processed.

(b) *Withdrawal by petitioner.* A petitioner who submits a withdrawal request for a petition seeking an election that is received by the Executive Director after the notice of pre-election investigatory hearing issues or after approval of an election agreement, whichever occurs first, will be barred from filing another petition seeking an election for the same unit or any subdivision of the unit for six (6) months from the date of the approval of the withdrawal by the Executive Director.

(c) *Withdrawal by incumbent.* When an election is not held because the incumbent disclaims any representation interest in a unit, a petition by the incumbent seeking an election involving the same unit or a subdivision of the same unit will not be considered timely if filed within six (6) months of cancellation of the election.

§ 2422.15 Duty to furnish information and cooperate.

(a) *Relevant information.* After a petition is filed, all parties must, upon request of the Executive Director, furnish the Executive Director and serve all parties affected by issues raised in the petition with information concerning parties, issues, and agreements raised in or affected by the petition.

(b) *Inclusions and exclusions.* After a petition seeking an election is filed, the Executive Director, on behalf of the Board, may direct the employing office or activity to furnish the Executive Director and all parties affected by issues raised in the petition with a current alphabetized list of employees and job classifications included in and/or excluded from the existing or claimed unit affected by issues raised in the petition.

(c) *Cooperation.* All parties are required to cooperate in every aspect of the representation process. This obligation includes cooperating fully with the Executive Director, submitting all required and requested information, and participating in prehearing conferences and pre-election investigatory hearings. The failure to cooperate in the representation process may result in the Executive Director or the Board taking appropriate action, including dismissal of the petition or denial of intervention.

§ 2422.16 Election agreements or directed elections.

(a) *Election agreements.* Parties are encouraged to enter into election agreements.

(b) *Executive Director directed election.* If the parties are unable to agree on procedural matters, specifically, the eligibility period, method of election, dates, hours, or locations of the election, the Executive Director, on behalf of the Board, will decide election procedures and issue a Direction of Election, without prejudice to the rights of a party to file objections to the procedural conduct of the election.

(c) *Opportunity for an investigatory hearing.* Before directing an election, the Executive Director shall provide affected parties an opportunity for a pre-election investigatory hearing on other than procedural matters.

(d) *Challenges or objections to a directed election.* A Direction of Election issued under this section will be issued without prejudice to the right of a party to file a challenge to the eligibility of any person participating in the election and/or objections to the election.

§ 2422.17 Notice of pre-election investigatory hearing and prehearing conference.

(a) *Purpose of notice of an investigatory hearing.* The Executive Director, on behalf of the Board, may issue a notice of pre-election investigatory hearing involving any issues raised in the petition.

(b) *Contents.* The notice of hearing will advise affected parties about the pre-election investigatory hearing. The Executive Director will also notify affected parties of the issues raised in the petition and establish a date for the prehearing conference.

(c) *Prehearing conference.* A prehearing conference will be conducted by the Executive Director or her designee, either by meeting or teleconference. All parties must participate in a prehearing conference and be prepared to fully discuss, narrow and resolve

the issues set forth in the notification of the prehearing conference.

(d) *No interlocutory appeal of investigatory hearing determination.* The Executive Director's determination of whether to issue a notice of pre-election investigatory hearing is not appealable to the Board.

§ 2422.18 Pre-election investigatory hearing procedures.

(a) *Purpose of a pre-election investigatory hearing.* Representation hearings are considered investigatory and not adversarial. The purpose of the hearing is to develop a full and complete record of relevant and material facts.

(b) *Conduct of hearing.* Pre-election investigatory hearings will be open to the public unless otherwise ordered by the Executive Director or her designee. There is no burden of proof, with the exception of proceedings on objections to elections as provided for in § 2422.27(b). Formal rules of evidence do not apply.

(c) *Pre-election investigatory hearing.* Pre-election investigatory hearings will be conducted by the Executive Director or her designee.

(d) *Production of evidence.* Parties have the obligation to produce existing documents and witnesses for the investigatory hearing in accordance with the instructions of the Executive Director or her designee. If a party willfully fails to comply with such instructions, the Board may draw an inference adverse to that party on the issue related to the evidence sought.

(e) *Transcript.* An official reporter will make the official transcript of the pre-election investigatory hearing. Copies of the official transcript may be examined in the Office during normal working hours. Requests by parties to purchase copies of the official transcript should be made to the official hearing reporter.

§ 2422.19 Motions.

(a) *Purpose of a motion.* Subsequent to the issuance of a notice of pre-election investigatory hearing in a representation proceeding, a party seeking a ruling, an order, or relief must do so by filing or raising a motion stating the order or relief sought and the grounds therefor. Challenges and other filings referenced in other sections of this subpart may, in the discretion of the Executive Director or her designee, be treated as a motion.

(b) *Prehearing motions.* Prehearing motions must be filed in writing with the Executive Director. Any response must be filed with the Executive Director within five (5) days after service of the motion. The Executive Director shall rule on the motion.

(c) *Motions made at the investigatory hearing.* During the pre-election investigatory hearing, motions will be made to the Executive Director or her designee, and may be oral on the record, unless otherwise required in this subpart to be in writing. Responses may be oral on the record or in writing, but, absent permission of the Executive Director or her designee, must be provided before the hearing closes. The Executive Director or her designee will rule on motions made at the hearing.

(d) *Posthearing motions.* Motions made after the hearing closes must be filed in writing with the Board. Any response to a posthearing motion must be filed with the Board within five (5) days after service of the motion.

§ 2422.20 Rights of parties at a pre-election investigatory hearing.

(a) *Rights.* A party at a pre-election investigatory hearing will have the right:

(1) To appear in person or by a representative;

(2) To examine and cross-examine witnesses; and

(3) To introduce into the record relevant evidence.

(b) *Documentary evidence and stipulations.* Parties must submit two (2) copies of documentary evidence to the Executive Director or her designee and copies to all other parties. Stipulations of fact between/among the parties may be introduced into evidence.

(c) *Oral argument.* Parties will be entitled to a reasonable period prior to the close of the hearing for oral argument. Presentation of a closing oral argument does not preclude a party from filing a brief under paragraph (d) of this section.

(d) *Briefs.* A party will be afforded an opportunity to file a brief with the Board.

(1) An original and two (2) copies of a brief must be filed with the Board within thirty (30) days from the close of the hearing.

(2) A written request for an extension of time to file a brief must be filed with and received by the Board no later than five (5) days before the date the brief is due.

(3) No reply brief may be filed without permission of the Board.

§ 2422.21 Duties and powers of the Executive Director in the conduct of the pre-election investigatory hearing.

(a) *Duties.* The Executive Director or her designee, on behalf of the Board, will receive evidence and inquire fully into the relevant and material facts concerning the matters that are the subject of the investigatory hearing, and may make recommendations on the record to the Board.

(b) *Powers.* During the period a case is assigned to the Executive Director or her designee for pre-election investigatory hearing and prior to the close of the hearing, the Executive Director or her designee may take any action necessary to schedule, conduct, continue, control, and regulate the pre-election investigatory hearing, including ruling on motions when appropriate.

§ 2422.22 Objections to the conduct of the pre-election investigatory hearing.

(a) *Objections.* Objections are oral or written complaints concerning the conduct of a pre-election investigatory hearing.

(b) *Exceptions to rulings.* There are automatic exceptions to all adverse rulings.

§ 2422.23 Election procedures.

(a) *Executive Director conducts or supervises election.* The Executive Director, on behalf of the Board, will decide to conduct or supervise the election. In supervised elections, employing offices or activities will perform all acts as specified in the Election Agreement or Direction of Election.

(b) *Notice of election.* Prior to the election a notice of election, prepared by the Executive Director, will be posted by the employing office or activity in places where notices to employees are customarily posted and/or distributed in a manner by which notices are normally distributed. The notice of election will contain the details and procedures of the election, including the appropriate unit, the eligibility period, the date(s), hour(s) and location(s) of the election, a sample ballot, and the effect of the vote.

(c) *Sample ballot.* The reproduction of any document purporting to be a copy of the official ballot that suggests either directly or indirectly to employees that the Board endorses a particular choice in the election may constitute grounds for setting aside an election if objections are filed under § 2422.26.

(d) *Secret ballot.* All elections will be by secret ballot.

(e) *Intervenor withdrawal from ballot.* When two or more labor organizations are included as choices in an election, an intervening labor organization may, prior to the approval of an election agreement or before the direction of an election, file a written request with the Executive Director to remove its name from the ballot. If the request is not received prior to the approval of an election agreement or before the direction of an election, unless the parties and the Executive Director, on behalf of the Board, agree otherwise, the intervening labor organization will remain on the ballot. The Executive Director's decision on the request is final and not subject to the filing of an application for review with the Board.

(f) *Incumbent withdrawal from ballot in an election to decertify an incumbent representative.* When there is no intervening labor organization, an election to decertify an incumbent exclusive representative will not be held if the incumbent provides the Executive Director with a written disclaimer of any representation interest in the unit. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Executive Director.

(g) *Petitioner withdraws from ballot in an election.* When there is no intervening labor organization, an election will not be held if the petitioner provides the Executive Director with a written request to withdraw the petition. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Executive Director.

(h) *Observers.* All parties are entitled to representation at the polling location(s) by observers of their own selection subject to the Executive Director's approval.

(1) Parties desiring to name observers must file in writing with the Executive Director a request for specifically named observers at least fifteen (15) days prior to an election. The Executive Director may grant an extension of time for filing a request for specifically named observers for good cause where a party requests such an extension or on the Executive Director's own motion. The request must name and identify the observers requested.

(2) An employing office or activity may use as its observers any employees who are not eligible to vote in the election, except:

(i) Supervisors or management officials;

(ii) Employees who have any official connection with any of the labor organizations involved; or

(iii) Non-employees of the legislative branch.

(3) A labor organization may use as its observers any employees eligible to vote in the election, except:

(i) Employees on leave without pay status who are working for the labor organization involved; or

(ii) Employees who hold an elected office in the union.

(4) Objections to a request for specific observers must be filed with the Executive Director stating the reasons in support within five (5) days after service of the request.

(5) The Executive Director's ruling on requests for and objections to observers is final and binding and is not subject to the filing of an application for review with the Board.

§ 2422.24 Challenged ballots.

(a) *Filing challenges.* A party or the Executive Director may, for good cause, challenge the eligibility of any person to participate in the election prior to the employee voting.

(b) *Challenged ballot procedure.* An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the Region are unable to resolve the challenged ballot(s) prior to the tally of ballots, the unresolved

challenged ballot(s) will be impounded and preserved until a determination can be made, if necessary, by the Executive Director or the Board.

§ 2422.25 Tally of ballots.

(a) *Tallying the ballots.* When the election is concluded, the Executive Director or her designee will tally the ballots.

(b) *Service of the tally.* When the tally is completed, the Executive Director will serve the tally of ballots on the parties in accordance with the election agreement or direction of election.

(c) *Valid ballots cast.* Representation will be determined by the majority of the valid ballots cast.

§ 2422.26 Objections to the election.

(a) *Filing objections to the election.* Objections to the procedural conduct of the election or to conduct that may have improperly affected the results of the election may be filed by any party. Objections must be filed and received by the Executive Director within five (5) days after the tally of ballots has been served. Any objections must be timely regardless of whether the challenged ballots are sufficient in number to affect the results of the election. The objections must be supported by clear and concise reasons. An original and two (2) copies of the objections must be received by the Executive Director.

(b) *Supporting evidence.* The objecting party must file with the Executive Director evidence, including signed statements, documents and other materials supporting the objections within ten (10) days after the objections are filed.

§ 2422.27 Determinative challenged ballots and objections.

(a) *Investigation.* The Executive Director, on behalf of the Board, will investigate objections and/or determinative challenged ballots that are sufficient in number to affect the results of the election.

(b) *Burden of proof.* A party filing objections to the election bears the burden of proof by a preponderance of the evidence concerning those objections. However, no party bears the burden of proof on challenged ballots.

(c) *Executive Director action.* After investigation, the Executive Director will take appropriate action consistent with § 2422.30.

(d) *Consolidated hearing on objections and/or determinative challenged ballots and an unfair labor practice hearing.* When appropriate, and in accordance with § 2422.33, objections and/or determinative challenged ballots may be consolidated with an unfair labor practice hearing. Such consolidated hearings will be conducted by a Hearing Officer. Exceptions and related submissions must be filed with the Board and the Board will issue a decision in accordance with Part 2423 of this chapter and section 406 of the CAA, except for the following:

(1) Section 2423.18 of this Subchapter concerning the burden of proof is not applicable;

(2) The Hearing Officer may not recommend remedial action to be taken or notices to be posted; and,

(3) References to charge and complaint in Part 2423 of this chapter will be omitted.

§ 2422.28 Runoff elections.

(a) *When a runoff may be held.* A runoff election is required in an election involving at least three (3) choices, one of which is no union or neither, when no choice receives a majority of the valid ballots cast. However, a runoff may not be held until the objections to the election and determinative challenged ballots have been resolved.

(b) *Eligibility.* Employees who were eligible to vote in the original election and who are also eligible on the date of the runoff election may vote in the runoff election.

(c) *Ballot.* The ballot in the runoff election will provide for a selection between the two choices receiving the largest and second largest number of votes in the election.

§ 2422.29 Inconclusive elections.

(a) *Inconclusive elections.* An inconclusive election is one where challenged ballots are not sufficient to affect the outcome of the election and one of the following occurs:

(1) The ballot provides for at least three (3) choices, one of which is no union or neither and the votes are equally divided; or

(2) The ballot provides for at least three (3) choices, the choice receiving the highest number of votes does not receive a majority, and at least two other choices receive the next highest and same number of votes; or

(3) When a runoff ballot provides for a choice between two labor organizations and results in the votes being equally divided; or

(4) When the Board determines that there have been significant procedural irregularities.

(b) *Eligibility to vote in a rerun election.* A current payroll period will be used to determine eligibility to vote in a rerun election.

(c) *Ballot.* If a determination is made that the election is inconclusive, the election will be rerun with all the choices that appeared on the original ballot.

(d) *Number of reruns.* There will be only one rerun of an inconclusive election. If the rerun results in another inconclusive election, the tally of ballots will indicate a majority of valid ballots has not been cast for any choice and a certification of results will be issued. If necessary, a runoff may be held when an original election is rerun.

§ 2422.30 Executive Director investigations, notices of pre-election investigatory hearings, and actions; Board Decisions and Orders.

(a) *Executive Director investigation.* The Executive Director, on behalf of the Board, will make such investigation of the petition and any other matter as the Executive Director deems necessary.

(b) *Executive Director notice of pre-election investigatory hearing.* On behalf of the Board, the Executive Director will issue a notice of pre-election investigatory hearing to inquire into any matter about which a material issue of fact exists, where there is an issue as to whether a question concerning representation exists, and any time there is reasonable cause to believe a question exists regarding unit appropriateness.

(c) *Executive Director action.* After investigation and/or hearing, when a pre-election investigatory hearing has been ordered, the Executive Director may, on behalf of the Board, approve an election agreement, dismiss a petition or deny intervention where there is an inadequate or invalid showing of interest, or dismiss a petition where there is an undisputed bar to further processing of the petition under law, rule or regulation.

(d) *Appeal of Executive Director action.* A party may file with the Board an application for review of an Executive Director action taken pursuant to section (c) above.

(e) *Contents of the Record.* When no pre-election investigatory hearing has been conducted all material submitted to and considered by the Executive Director during the investigation becomes a part of the record. When a pre-election investigatory hearing has been conducted, the transcript and all material entered into evidence, including any posthearing briefs, become a part of the record.

(f) *Transfer of record to Board; Board Decisions and Orders.* In cases that are submitted to the Board for decision in the first instance, the Board shall decide the issues presented based upon the record developed by the Executive Director, including the transcript of the pre-election investigatory hearing, if any, documents admitted into the record and briefs and other approved submissions from the parties. The Board may direct that a secret ballot election be held, issue an order dismissing the petition, or make such other disposition of the matter as it deems appropriate.

§ 2422.31 Application for review of an Executive Director action.

(a) *Filing an application for review.* A party must file an application for review with the Board within sixty (60) days of the Executive Director's action. The sixty (60) day time limit provided for in 5 U.S.C. 7105(f), as applied by the CAA, may not be extended or waived.

(b) *Contents.* An application for review must be sufficient to enable the Board to rule on the application without recourse to the record; however, the Board may, in its discretion, examine the record in evaluating the application. An application must specify the matters and rulings to which exception(s) is taken, include a summary of evidence relating to any issue raised in the application, and make specific reference to page citations in the transcript if a hearing was held. An application may not raise any issue or rely on any facts not timely presented to the Executive Director.

(c) *Review.* The Board may, in its discretion, grant an application for review when the application demonstrates that review is warranted on one or more of the following grounds:

(1) The decision raises an issue for which there is an absence of precedent;

(2) Established law or policy warrants reconsideration; or,

(3) There is a genuine issue over whether the Executive Director has:

(i) Failed to apply established law;

(ii) Committed a prejudicial procedural error;

(iii) Committed a clear and prejudicial error concerning a substantial factual matter.

(d) *Opposition.* A party may file with the Board an opposition to an application for review within ten (10) days after the party is served with the application. A copy must be served on the Executive Director and all other parties and a statement of service must be filed with the Board.

(e) *Executive Director action becomes the Board's action.* An action of the Executive Director becomes the action of the Board when:

(1) No application for review is filed with the Board within sixty (60) days after the date of the Executive Director's action; or

(2) A timely application for review is filed with the Board and the Board does not undertake to grant review of the Executive Director's action within sixty (60) days of the filing of the application; or

(3) The Board denies an application for review of the Executive Director's action.

(f) *Board grant of review and stay.* The Board may rule on the issue(s) in an application for review in its order granting the application for review. Neither filing nor granting an application for review shall stay any action ordered by the Executive Director unless specifically ordered by the Board.

(g) *Briefs if review is granted.* If the Board does not rule on the issue(s) in the application for review in its order granting review, the Board may, in its discretion, afford the parties an opportunity to file briefs. The briefs will be limited to the issue(s) referenced in the Board's order granting review.

§ 2422.32 Certifications and revocations.

(a) *Certifications.* The Executive Director, on behalf of the Board, will issue an appropriate certification when:

(1) After an election, runoff, or rerun,

(i) No objections are filed or challenged ballots are not determinative, or

(ii) Objections and determinative challenged ballots are decided and resolved; or

(2) The Executive Director takes an action requiring a certification and that action becomes the action of the Board under §2422.31(e) or the Board otherwise directs the issuance of a certification.

(b) *Revocations.* Without prejudice to any rights and obligations which may exist under the CAA, the Executive Director, on behalf of the Board, will revoke a recognition or certification, as appropriate, and provide a written statement of reasons when an incumbent exclusive representative files, during a representation proceeding, a disclaimer of any representational interest in the unit.

§2422.33 Relief obtainable under Part 2423.

Remedial relief that was or could have been obtained as a result of a motion, objection, or challenge filed or raised under this subpart, may not be the basis for similar relief if filed or raised as an unfair labor practice under Part 2423 of this Chapter: *provided, however*, that related matters may be consolidated for hearing as noted in §2422.27(d) of this subpart.

§2422.34 Rights and obligations during the pendency of representation proceedings.

(a) *Existing recognitions, agreements, and obligations under the CAA.* During the pendency of any representation proceeding, parties are obligated to maintain existing recognitions, adhere to the terms and conditions of existing collective bargaining agreements, and fulfill all other representational and bargaining responsibilities under the CAA.

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, pursuant to 5 U.S.C. 7103(a)(2), 7112(b) and (c), as applied by the CAA: *provided, however*, that its actions may be challenged, reviewed, and remedied where appropriate.

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

Sec.
2423.1 Applicability of this part.
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2423.30 Compliance with decisions and orders of the Board.
2423.31 Backpay proceedings.

§2423.1 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices occurring on or after October 1, 1996.

§2423.2 Informal proceedings.

(a) The purposes and policies of chapter 71, as applied by the CAA, can best be achieved by the cooperative efforts of all persons covered by the program. To this end, it shall be the policy of the Board and the General Counsel to encourage all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters prior to the filing of unfair labor practice charges.

(b) In furtherance of the policy referred to in paragraph (a) of this section, and noting the 180 day period of limitation set forth in section 220(c)(2) of the CAA, it shall be the policy of the Board and the General Counsel to encourage the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the filing of a complaint by the General Counsel.

(c) In order to afford the parties an opportunity to implement the policy referred to in paragraphs (a) and (b) of this section, the investigation of an unfair labor practice charge by the General Counsel will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed fifteen (15) days from the filing of the charge, during which period the parties are urged to attempt to informally resolve the unfair labor practice allegation.

§2423.3 Who may file charges.

An employing office, employing activity, or labor organization may be charged by any person with having engaged in or engaging in any unfair labor practice prohibited under 5 U.S.C. 7116, as applied by the CAA.

§2423.4 Contents of the charge; supporting evidence and documents.

(a) A charge alleging a violation of 5 U.S.C. 7116, as applied by the CAA, shall be submitted on forms prescribed by the General Counsel and shall contain the following:

(1) The name, address and telephone number of the person(s) making the charge;

(2) The name, address and telephone number of the employing office or activity, or labor organization against whom the charge is made;

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the section(s) and subsection(s) of chapter 71 of title 5 of the United States Code made applicable by the CAA alleged to have been violated, and the date and place of occurrence of the particular acts; and

(4) A statement of any other procedure invoked involving the subject matter of the charge and the results, if any, including whether the subject matter raised in the charge (i) has been raised previously in a grievance procedure; (ii) has been referred to the Board under Part 2471 of these regulations, or the Federal Mediation and Conciliation Service, or (iii) involves a negotiability issue raised by the charging party in a petition pending before the Board pursuant to Part 2424 of this subchapter.

(b) Such charge shall be in writing and signed and shall contain a declaration by the person signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief.

(c) When filing a charge, the charging party shall submit to the General Counsel any supporting evidence and documents.

§2423.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to this part which involves a negotiability issue, and the labor organization also files pursuant to part 2424 of this subchapter a petition for review of the same negotiability issue, the Board and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Board, the General Counsel and all parties to both the unfair labor practice case and the negotiability case.

§2423.6 Filing and service of copies.

(a) An original and four (4) copies of the charge together with one copy for each additional charged party named shall be filed with the General Counsel.

(b) Upon the filing of a charge, the charging party shall be responsible for the service of a copy of the charge (without the supporting evidence and documents) upon the person(s) against whom the charge is made, and for filing a written statement of such service with the General Counsel. The General Counsel will, as a matter of course, cause a copy of such charge to be served on the person(s) against whom the charge is made, but shall not be deemed to assume responsibility for such service.

(c) A charge will be deemed to be filed when it is received by the General Counsel in accordance with the requirements in paragraph (a) of this section.

§2423.7 Investigation of charges.

(a) The General Counsel shall conduct such investigation of the charge as the General Counsel deems necessary. Consistent with the policy set forth in §2423.2, the investigation will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed fifteen (15) days from the filing of the charge, to informally resolve the unfair labor practice allegation.

(b) During the course of the investigation all parties involved will have an opportunity to present their evidence and views to the General Counsel.

(c) In connection with the investigation of charges, all persons are expected to cooperate fully with the General Counsel.

(d) The purposes and policies of chapter 71, as applied by the CAA, can best be achieved by the full cooperation of all parties involved and the voluntary submission of all potentially relevant information from all potential sources during the course of the investigation. To this end, it shall be the policy of the Board and the General Counsel to protect the identity of individuals and the substance of the statements and information they submit or which is obtained during the investigation as a means of assuring the Board's and the General Counsel's continuing ability to obtain all relevant information.

§2423.8 Amendment of charges.

Prior to the issuance of a complaint, the charging party may amend the charge in accordance with the requirements set forth in §2423.6.

§2423.9 Action by the General Counsel.

(a) The General Counsel shall take action which may consist of the following, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Refuse to file a complaint;

(3) Approve a written settlement and recommend that the Executive Director approve a written settlement agreement in accordance with the provisions of section 414 of the CAA;

(4) File a complaint;

(5) Upon agreement of all parties, transfer to the Board for decision, after filing of a complaint, a stipulation of facts in accordance with the provisions of §2429.1(a) of this subchapter; or

(6) Withdraw a complaint.

§ 2423.10 Determination not to file complaint.

(a) If the General Counsel determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the General Counsel may request the charging party to withdraw the charge, and in the absence of such withdrawal within a reasonable time, decline to file a complaint.

(b) The charging party may not obtain a review of the General Counsel's decision not to file a complaint.

§ 2423.11 Settlement or adjustment of issues.

(a) At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit to the Executive Director or General Counsel, as appropriate, for consideration, all facts and arguments concerning offers of settlement, or proposals of adjustment.

Precomplaint settlements

(b)(1) Prior to the filing of any complaint or the taking of other formal action, the General Counsel will afford the charging party and the respondent a reasonable period of time in which to enter into a settlement agreement to be submitted to and approved by the General Counsel and the Executive Director. Upon approval by the General Counsel and Executive Director and compliance with the terms of the settlement agreement, no further action shall be taken in the case. If the respondent fails to perform its obligations under the settlement agreement, the General Counsel may determine to institute further proceedings.

(2) In the event that the charging party fails or refuses to become a party to a settlement agreement offered by the respondent, if the General Counsel concludes that the offered settlement will effectuate the policies of chapter 71, as applied by the CAA, the agreement shall be between the respondent and the General Counsel and the latter shall decline to file a complaint.

Post complaint settlement policy

(c) Consistent with the policy reflected in paragraph (a) of this section, even after the filing of a complaint, the Board favors the settlement of issues. Such settlements may be accomplished as provided in paragraph (b) of this section. The parties may, as part of the settlement, agree to waive their right to a hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily such a settlement agreement will also contain the respondent's consent to the Board's application for the entry of a decree by the United States Court of Appeals for the Federal Circuit enforcing the Board's order.

Post complaint prehearing settlements

(d)(1) If, after the filing of a complaint, the charging party and the respondent enter into a settlement agreement, and such agreement is accepted by the General Counsel, the settlement agreement shall be submitted to the Executive Director for approval.

(2) If, after the filing of a complaint, the charging party fails or refuses to become a party to a settlement agreement offered by the respondent, and the General Counsel concludes that the offered settlement will effectuate the policies of chapter 71, as applied by the CAA, the agreement shall be between the respondent and the General Counsel. The charging party will be so informed and provided a brief written statement by the General Counsel of the reasons therefor. The settlement agreement together with the charging party's objections, if any, and the General Counsel's written statements, shall be submitted to the Executive Director for approval. The Executive Director may approve or disapprove any settlement agreement.

(3) After the filing of a complaint, if the General Counsel concludes that it will effectuate the policies of chapter 71, as applied by the CAA, the General Counsel may withdraw the complaint.

Settlements after the opening of the hearing

(e)(1) After filing of a complaint and after opening of the hearing, if the General Counsel concludes that it will effectuate the policies of chapter 71, as applied by the CAA, the General Counsel may request the Hearing Officer for permission to withdraw the complaint and, having been granted such permission to withdraw the complaint, may approve a settlement and recommend that the Executive Director approve the settlement pursuant to paragraph (b) of this section.

(2) If, after filing of a complaint and after opening of the hearing, the parties enter into a settlement agreement that contains the respondent's consent to the Board's application for the entry of a decree by the United States Court of Appeals for the Federal Circuit enforcing the Board's order, the General Counsel may request the Hearing Officer and the Executive Director to approve such settlement agreement, and upon such approval, to transmit the agreement to the Board for approval.

(3) If the charging party fails or refuses to become a party to a settlement agreement, offered by the respondent, that contains the respondent's consent to the Board's application for the entry of a decree by the United States Court of Appeals for the Federal Circuit enforcing the Board's order, and the General Counsel concludes that the offered settlement will effectuate the policies of chapter 71, as applied to the CAA, the agreement shall be between the respondent and the General Counsel. After the charging party is given an opportunity to state on the record or in writing the reasons for opposing the settlement, the General Counsel may request the Hearing Officer and the Executive Director to approve such settlement agreement, and upon such approval, to transmit the agreement to the Board for approval. The Board may approve or disapprove any such settlement agreement or return the case to the Hearing Officer for other appropriate action.

§ 2423.12 Filing and contents of the complaint.

(a) After a charge is filed, if it appears to the General Counsel that formal proceedings in respect thereto should be instituted, the General Counsel shall file a formal complaint: *Provided, however*, That a determination by the General Counsel to file a complaint shall not be subject to review.

(b) The complaint shall include:

(1) Notice of the charge;

(2) Any information required pursuant to the Procedural Rules of the Office.

(c) Any such complaint may be withdrawn before the hearing by the General Counsel.

§ 2423.13 Answer to the complaint.

A respondent shall file an answer to a complaint in accordance with the requirements of the Procedural Rules of the Office.

§ 2423.14 Prehearing disclosure; conduct of hearing.

The procedures for prehearing discovery and the conduct of the hearing are set forth in the Procedural Rules of the Office.

§ 2423.15 Intervention.

Any person involved and desiring to intervene in any proceeding pursuant to this part shall file a motion in accordance with the procedures set forth in the Procedural Rules of the Office. The motion shall state the grounds upon which such person claims involvement.

§ 423.16 [Reserved]

§ 423.17 [Reserved]

§ 423.18 Burden of proof before the Hearing Officer.

The General Counsel shall have the responsibility of presenting the evidence in support of the complaint and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

2423.19 Duties and powers of the Hearing Officer.

It shall be the duty of the Hearing Officer to inquire fully into the facts as they relate to the matter before such Hearing Officer, subject to the rules and regulations of the Office and the Board.

§ 2423.20 [Reserved]

§ 2423.21 [Reserved]

§ 2423.22 [Reserved]

§ 2423.23 [Reserved]

§ 2423.24 [Reserved]

§ 2423.25 [Reserved]

§ 2423.26 Hearing Officer decisions; entry in records of the Office.

In accordance with the Procedural Rules of the Office, the Hearing Officer shall issue a written decision and that decision will be entered into the records of the Office.

§ 2423.27 Appeal to the Board.

An aggrieved party may seek review of a decision and order of the Hearing Officer in accordance with the Procedural Rules of the Office.

§ 2423.28 [Reserved]

§ 2423.29 Action by the Board.

(a) If an appeal is filed, the Board shall review the decision of the Hearing Officer in accordance with section 406 of the CAA, and the Procedural Rules of the Office.

(b) Upon finding a violation, the Board shall issue an order:

(1) To cease and desist from any such unfair labor practice in which the employing office or labor organization is engaged;

(2) Requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) Requiring reinstatement of an employee with backpay in accordance with 5 U.S.C. 5596; or

(4) Including any combination of the actions described in paragraphs (1) through (3) of this paragraph (b), or such other action as will carry out the purpose of the chapter 71, as applied by the CAA.

(c) Upon finding no violation, the Board shall dismiss the complaint.

§ 2423.30 Compliance with decisions and orders of the Board.

When remedial action is ordered, the respondent shall report to the Office within a specified period that the required remedial action has been effected. When the General Counsel or the Executive Director finds that the required remedial action has not been effected, the General Counsel or the Executive Director shall take such action as may be appropriate, including referral to the Board for enforcement.

§ 2423.31 Backpay proceedings.

After the entry of a Board order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the General Counsel that a controversy exists which cannot be resolved without a formal proceeding, the General Counsel may issue and serve on all parties a backpay specification accompanied by a request for hearing or a request for hearing without a specification. Upon receipt of the request for hearing, the Executive Director will appoint an independent Hearing Officer. The respondent shall, within twenty (20) days after the service of a backpay specification, file an answer thereto in accordance with the Office's Procedural Rules. No answer need be filed by the respondent to a notice of hearing issued without a specification. After the issuance of a notice of hearing, with or without a backpay specification, the hearing procedures provided in the Procedural Rules of the Office shall be followed insofar as applicable.

PART 2424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

Subpart A—Instituting an Appeal

Sec.
2424.1 Conditions governing review.
2424.2 Who may file a petition.
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2424.4 Content of petition; service.
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2424.10 Board decision and order; compliance.

Subpart B—Criteria for Determining Compelling Need for Employing Office Rules and Regulations

2424.11 Illustrative criteria.

Subpart A—Instituting an Appeal

§ 2424.1 Conditions governing review.

The Board will consider a negotiability issue under the conditions prescribed by 5 U.S.C. 7117 (b) and (c), as applied by the CAA, namely: If an employing office involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter proposed to be bargained because, as proposed, the matter is inconsistent with law, rule or regulation, the exclusive representative may appeal the allegation to the Board when——

(a) It disagrees with the employing office's allegation that the matter as proposed to be bargained is inconsistent with any Federal law or any Government-wide rule or regulation; or

(b) It alleges, with regard to any employing office rule or regulation asserted by the employing office as a bar to negotiations on the matter, as proposed, that:

(1) The rule or regulation violates applicable law, or rule or regulation of appropriate authority outside the employing office;

(2) The rule or regulation was not issued by the employing office or by any primary national subdivision of the employing office, or otherwise is not applicable to bar negotiations with the exclusive representative, under 5 U.S.C. 7117(a)(3), as applied by the CAA; or

(3) No compelling need exists for the rule or regulation to bar negotiations on the matter, as proposed, because the rule or regulation does not meet the criteria established in subpart B of this part.

§ 2424.2 Who may file a petition.

A petition for review of a negotiability issue may be filed by an exclusive representative which is a party to the negotiations.

§ 2424.3 Time limits for filing.

The time limit for filing a petition for review is fifteen (15) days after the date the employing office's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained is served on the exclusive representative. The exclusive representative shall request such allegation in writing and the employing office shall make the allegation in writing and serve a copy on the exclusive representative: provided, however, that review of a negotiability issue may be requested by an exclusive representative under this subpart without a prior written allegation by the employing office if the employing office has not served such allegation upon the exclusive representative within ten (10) days after the date of the receipt by any employing office bargaining representative at the negotiations of a written request for such allegation.

§ 2424.4 Content of petition; service.

(a) A petition for review shall be dated and shall contain the following:

(1) A statement setting forth the express language of the proposal sought to be negotiated as submitted to the employing office;

(2) An explicit statement of the meaning attributed to the proposal by the exclusive representative including:

(i) Explanation of terms of art, acronyms, technical language, or any other aspect of the language of the proposal which is not in common usage; and

(ii) Where the proposal is concerned with a particular work situation, or other particular circumstances, a description of the situation or circumstances which will enable the Board to understand the context in which the proposal is intended to apply;

(3) A copy of all pertinent material, including the employing office's allegation in writing that the matter, as proposed, is not within the duty to bargain in good faith, and other relevant documentary material; and

(4) Notification by the petitioning labor organization whether the negotiability issue is also involved in an unfair labor practice charge filed by such labor organization under part 2423 of this subchapter and pending before the General Counsel.

(b) A copy of the petition including all attachments thereto shall be served on the employing office head and on the principal employing office bargaining representative at the negotiations.

(c)(1) Filing an incomplete petition for review will result in the exclusive representative being asked to provide the missing or incomplete information. Noncompliance with a request to complete the record may result in dismissal of the petition.

(2) The processing priority accorded to an incomplete petition, relative to other pending negotiability appeals, will be based upon the date when the petition is completed not the date it was originally filed.

§ 2424.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to part 2423 of this subchapter which involves a negotiability issue, and the labor organization also files pursuant to this part a petition for review of the same negotiability issue, the Board and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Board, the General Counsel and all parties to both the unfair labor practice case and the negotiability case.

§ 2424.6 Position of the employing office; time limits for filing; service.

(a) Within thirty (30) days after the date of the receipt by the head of an employing office of a copy of a petition for review of a negotiability issue the employing office shall file a statement

(1) Withdrawing the allegation that the duty to bargain in good faith does not extend to the matter proposed to be negotiated; or

(2) Setting forth in full its position on any matters relevant to the petition which it wishes the Board to consider in reaching its decision, including a full and detailed statement of its reasons supporting the allegation. The statement shall cite the section of any law, rule or regulation relied upon as a basis for the allegation and shall contain a copy of any internal employing office rule or regulation so relied upon. The statement shall include:

(i) Explanation of the meaning the employing office attributes to the proposal as a whole, including any terms of art, acronyms, technical language or any other aspect of the language of the proposal which is not in common usage; and

(ii) Description of a particular work situation, or other particular circumstance the employing office views the proposal to concern, which will enable the Board to understand the context in which the proposal is considered to apply by the employing office.

(b) A copy of the employing office's statement of position, including all attachments thereto shall be served on the exclusive representative.

§ 2424.7 Response of the exclusive representative; time limits for filing; service.

(a) Within fifteen (15) days after the date of the receipt by an exclusive representative of a copy of an employing office's statement of position the exclusive representative shall file a full and detailed response stating its position and reasons for:

(1) Disagreeing with the employing office's allegation that the matter, as proposed to be negotiated, is inconsistent with any Federal law or Government-wide rule or regulation; or

(2) Alleging that the employing office's rules or regulations violate applicable law, or rule or regulation or appropriate authority outside the employing office; that the rules or regulations were not issued by the employing office or by any primary national subdivision of the employing office, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3), as applied by the CAA; or that no compelling need exists for the rules or regulations to bar negotiations.

(b) The response shall cite the particular section of any law, rule or regulation alleged to be violated by the employing office's rules or regulations; or shall explain the grounds for contending the employing office rules or regulations are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3), as applied by the CAA, or fail to meet the criteria established in subpart B of this part, or were not issued at the employing office headquarters level or at the level of a primary national subdivision.

(c) A copy of the response of the exclusive representative including all attachments thereto shall be served on the employing office head and on the employing office's representative of record in the proceeding before the Board.

§ 2424.8 Additional submissions to the Board.

The Board will not consider any submission filed by any party, whether supplemental or responsive in nature, other than those authorized under §§ 2424.2 through 2424.7 unless such submission is requested by the Board; or unless, upon written request by any party, a copy of which is served on all other parties, the Board in its discretion grants permission to file suchsubmission.

§ 2424.9 Hearing.

A hearing may be held, in the discretion of the Board, before a determination is made under 5 U.S.C. 7117(b) or (c), as applied by the CAA. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

§ 2424.10 Board decision and order; compliance.

(a) Subject to the requirements of this subpart the Board shall expedite proceedings under this part to the extent practicable and shall issue to the exclusive representative and to the employing office a written decision on the allegation and specific reasons therefor at the earliest practicable date.

(b) If the Board finds that the duty to bargain extends to the matter proposed to be bargained, the decision of the Board shall include an order that the employing office shall upon request (or as otherwise agreed to by the parties) bargain concerning such matter. If the Board finds that the duty to bargain does not extend to the matter proposed to be negotiated, the Board shall so state and issue an order dismissing the petition for review of the negotiability issue. If the Board finds that the duty to bargain extends to the matter proposed to be bargained only at the election of the employing office, the Board shall so state and issue an order dismissing the petition for review of the negotiability issue.

(c) When an order is issued as provided in paragraph (b) of this section, the employing office or exclusive representative shall report to the Executive Director within a specified period failure to comply with an order that the employing office shall upon request (or as otherwise agreed to by the parties) bargain concerning the disputed matter.

Subpart B—Criteria for Determining Compelling Need for Employing Office Rules and Regulations

§ 2424.11 Illustrative criteria.

A compelling need exists for an employing office rule or regulation concerning any condition of employment when the employing office demonstrates that the rule or regulation meets one or more of the following illustrative criteria:

(a) The rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the employing office or primary national subdivision in a manner which is consistent with the requirements of an effective and efficient government.

(b) The rule or regulation is necessary to insure the maintenance of basic merit principles.

(c) The rule or regulation implements a mandate to the employing office or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature.

PART 2425—REVIEW OF ARBITRATION AWARDS

Sec.
2425.1 Who may file an exception; time limits for filing; opposition; service.
2425.2 Content of exception.
2425.3 Grounds for review.
2425.4 Board decision.

§ 2425.1 Who may file an exception; time limits for filing; opposition; service.

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

(b) The time limit for filing an exception to an arbitration award is thirty (30) days beginning on the date the award is served on the filing party.

(c) An opposition to the exception may be filed by a party within thirty (30) days after the date of service of the exception.

(d) A copy of the exception and any opposition shall be served on the other party.

§ 2425.2 Content of exception.

An exception must be a dated, self-contained document which sets forth in full:

(a) A statement of the grounds on which review is requested;

(b) Evidence or rulings bearing on the issues before the Board;

(c) Arguments in support of the stated grounds, together with specific reference to the pertinent documents and citations of authorities; and

(d) A legible copy of the award of the arbitrator and legible copies of other pertinent documents; and

(e) The name and address of the arbitrator.

§ 2425.3 Grounds for review.

The Board will review an arbitrator's award to which an exception has been filed to determine if the award is deficient—

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

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

§ 2425.4 Board decision.

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

PART 2426—NATIONAL CONSULTATION RIGHTS AND CONSULTATION RIGHTS ON GOVERNMENT-WIDE RULES OR REGULATIONS

Subpart A—National Consultation Rights

Sec.
2426.1 Requesting; granting; criteria.
2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.
2426.3 Obligation to consult.

Subpart B—Consultation Rights on Government-wide Rules or Regulations

2426.11 Requesting; granting; criteria.
2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.
2426.13 Obligation to consult.

Subpart A—National Consultation Rights

§ 2426.1 Requesting; granting; criteria.

(a) An employing office shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the employing office level; and

(2) Holds exclusive recognition for ten percent (10%) or more of the total number of personnel employed by the employing office.

(b) An employing office's primary national subdivision which has authority to formulate conditions of employment shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the primary national subdivision level; and

(2) Holds exclusive recognition for ten percent (10%) or more of the total number of personnel employed by the primary national subdivision.

(c) In determining whether a labor organization meets the requirements as prescribed in paragraphs (a)(2) and (b)(2) of this section, the following will not be counted:

(1) At the employing office level, employees represented by the labor organization under national exclusive recognition granted at the employing office level.

(2) At the primary national subdivision level, employees represented by the labor organization under national exclusive recognition granted at the agency level or at that primary national subdivision level.

(d) An employing office or a primary national subdivision of an employing office shall not grant national consultation rights to any labor organization that does not meet the criteria prescribed in paragraphs (a), (b) and (c) of this section.

§ 2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.

(a) Requests by labor organizations for national consultation rights shall be submitted in writing to the headquarters of the employing office or the employing office's primary national subdivision, as appropriate, which headquarters shall have fifteen (15) days from the date of service of such request to respond thereto in writing.

(b) Issues relating to a labor organization's eligibility for, or continuation of, national consultation rights shall be referred to the Board for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for national consultation rights under criteria set forth in § 2426.1 may be filed by a labor organization.

(2) A petition for determination of eligibility for national consultation rights shall be submitted on a form prescribed by the Board and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the employing office or the primary national subdivision and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number;

(v) The name, address, and telephone number of the employing office or primary national subdivision in which the petitioner seeks to obtain or retain national consultation rights, and the persons to contact and their titles, if known;

(vi) A showing that petitioner holds adequate exclusive recognition as required by § 2426.1; and

(vii) A statement as appropriate:

(A) That such showing has been made to and rejected by the employing office or primary national subdivision, together with a statement of the reasons for rejection, if any, offered by that employing office or primary national subdivision;

(B) That the employing office or primary national subdivision has served notice of its intent to terminate existing national consultation rights, together with a statement of the reasons for termination; or

(C) That the employing office or primary national subdivision has failed to respond in writing to a request for national consultation rights made under § 2426.2(a) within fifteen (15) days after the date the request is

served on the employing office or primary national subdivision.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for national consultation rights shall be filed with the Executive Director.

(ii) An original and four (4) copies of a petition shall be filed, qtogether with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on all known interested parties, and a written statement of such service shall be filed with the Executive Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the employing office or primary national subdivision of its refusal to accord national consultation rights pursuant to a request under §2426.2(a) or its intention to terminate existing national consultation rights. If an employing office or primary national subdivision fails to respond in writing to a request for national consultation rights made under §2426.2(a) within fifteen (15) days after the date the request is served on the employing office or primary national subdivision, a petition shall be filed within thirty (30) days after the expiration of such fifteen (15) day period.

(v) If an employing office or primary national subdivision wishes to terminate national consultation rights, notice of its intention to do so shall include a statement of its reasons and shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the employing office or primary national subdivision pending disposition of the petition. If no petition has been filed within the provided time period, an employing office or primary national subdivision may terminate national consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the employing office or primary national subdivision shall file a response thereto with the Executive Director raising any matter which is relevant to the petition.

(vii) The Executive Director, on behalf of the Board, shall make such investigations as the Executive Director deems necessary and thereafter shall issue and serve on the parties a determination with respect to the eligibility for national consultation rights which shall be final: *provided, however,* that an application for review of the Executive Director's determination may be filed with the Board in accordance with the procedure set forth in §2422.31 of this subchapter. A determination by the Executive Director to issue a notice of hearing shall not be subject to the filing of an application for review.On behalf of the Board, the Executive Director, if appropriate, may cause a notice of hearing to be issued to all interested parties where substantial factual issues exist warranting an investigatory hearing. Investigatory hearings shall be conducted by the Executive Director or her designee in accordance with §2422.17 through §2422.22 of this subchapter and after the close of the investigatory hearing a Decision and Order shall be issued by the Board in accordance with §2422.30 of this subchapter.

2426.3 Obligation to consult.

(a) When a labor organization has been accorded national consultation rights, the employing office or the primary national subdivision which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed substantive change in conditions of employment; and

(2) Reasonable time to present its views and recommendations regarding the change.

(b) If a labor organization presents any views or recommendations regarding any proposed substantive change in conditions of employment to an employing office or a primary national subdivision, that employing office or primary national subdivision shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this subpart shall be construed to limit the right of any employing office or exclusive representative to engage in collective bargaining.

Subpart B—Consultation Rights on Government-wide Rules or Regulations

2426.11 Requesting; granting; criteria.

(a) An employing office shall accord consultation rights on Government-wide rules or regulations to a labor organization that:

(1) Requests consultation rights on Government-wide rules or regulations from an employing office; and

(2) Holds exclusive recognition for ten percent (10%) or more of the total number of employees employed by the employing office.

(b) An employing office shall not grant consultation rights on Government-wide rules or regulations to any labor organization that does not meet the criteria prescribed in paragraph (a) of this section.

2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.

(a) Requests by labor organizations for consultation rights on Government-wide rules or regulations shall be submitted in writing to the headquarters of the employing office, which headquarters shall have fifteen (15) days from the date of service of such request to respond thereto in writing.

(b) Issues relating to a labor organization's eligibility for, or continuation of, consultation rights on Government-wide rules or regulations shall be referred to the Board for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for consultation rights under criteria set forth in §2426.11 may be filed by a labor organization.

(2) A petition for determination of eligibility for consultation rights shall be submitted on a form prescribed by the Board and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the employing office and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number;

(v) The name, address, and telephone number of the employing office in which the petitioner seeks to obtain or retain consultation rights on Government-wide rules or regulations, and the persons to contact and their titles, if known;

(vi) A showing that petitioner meets the criteria as required by §2426.11; and

(vii) A statement, as appropriate:

(A) That such showing has been made to and rejected by the employing office, together with a statement of the reasons for rejection, if any, offered by that employing office;

(B) That the employing office has served notice of its intent to terminate existing consultation rights on Government-wide rules or regulations, together with a statement of the reasons for termination; or

(C) That the employing office has failed to respond in writing to a request for consultation rights on Government-wide rules or regulations made under §2426.12(a) within fifteen (15) days after the date the request is served on the employing office.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for consultation rights on Government-wide rules or regulations shall be filed with the Executive Director.

(ii) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on the employing office, and a written statement of such service shall be filed with the Executive Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the employing office of its refusal to accord consultation rights on Government-wide rules or regulations pursuant to a request under §2426.12(a) or its intention to terminate such existing consultation rights. If an employing office fails to respond in writing to a request for consultation rights on Government-wide rules or regulations made under §2426.12(a) within fifteen (15) days after the date the request is served on the employing office, a petition shall be filed within thirty (30) days after the expiration of such fifteen (15) day period.

(v) If an employing office wishes to terminate consultation rights on Government-wide rules or regulations, notice of its intention to do so shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the employing office pending disposition of the petition. If no petition has been filed within the provided time period, an employing office may terminate such consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the employing office shall file a response thereto with the Executive Director raising any matter which is relevant to the petition.

(vii) The Executive Director, on behalf of the Board, shall make such investigation as the Executive Director deems necessary and thereafter shall issue and serve on the parties a determination with respect to the eligibility for consultation rights which shall be final: *Provided, however,* that an application for review of the Executive Director's determination may be filed with the Board in accordance with the procedure set forth in §2422.31 of this subchapter. A determination by the Executive Director to issue a notice of investigatory hearing shall not be subject to the filing of an application for review. On behalf of the Board, the Executive Director,

if appropriate, may cause a notice of investigatory hearing to be issued where substantial factual issues exist warranting a hearing. Investigatory hearings shall be conducted by the Executive Director or her designee in accordance with §2422.17 through §2422.22 of this chapter and after the close of the investigatory hearing a Decision and Order shall be issued by the Board in accordance with §2422.30 of this subchapter.

§2426.13 Obligation to consult.

(a) When a labor organization has been accorded consultation rights on Government-wide rules or regulations, the employing office which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed Government-wide rule or regulation issued by the employing office affecting any substantive change in any condition of employment; and

(2) Reasonable time to present its views and recommendations regarding the change.

(b) If a labor organization presents any views or recommendations regarding any proposed substantive change in any condition of employment to an employing office, that employing office shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

PART 2427—GENERAL STATEMENTS OF POLICY OR GUIDANCE

Sec.
2427.1 Scope.
2427.2 Requests for general statements of policy or guidance.
2427.3 Content of request.
2427.4 Submissions from interested parties.
2427.5 Standards governing issuance of general statements of policy or guidance.

§2427.1 Scope.

This part sets forth procedures under which requests may be submitted to the Board seeking the issuance of general statements of policy or guidance under 5 U.S.C. 7105(a)(1), as applied by the CAA.

§2427.2 Requests for general statements of policy or guidance.

(a) The head of an employing office (or designee), the national president of a labor organization (or designee), or the president of a labor organization not affiliated with a national organization (or designee) may separately or jointly ask the Board for a general statement of policy or guidance. The head of any lawful association not qualified as a labor organization may also ask the Board for such a statement provided the request is not in conflict with the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA, or other law.

(b) The Board ordinarily will not consider a request related to any matter pending before the Board or General Counsel.

§2427.3 Content of request.

(a) A request for a general statement of policy or guidance shall be in writing and must contain:

(1) A concise statement of the question with respect to which a general statement of policy or guidance is requested together with background information necessary to an understanding of the question;

(2) A statement of the standards under §2427.5 upon which the request is based;

(3) A full and detailed statement of the position or positions of the requesting party or parties;

(4) Identification of any cases or other proceedings known to bear on the question which are pending under the CAA; and

(5) Identification of other known interested parties.

(b) A copy of each document also shall be served on all known interested parties, including the General Counsel, where appropriate.

§2427.4 Submissions from interested parties.

Prior to issuance of a general statement of policy or guidance the Board, 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 Board shall consider:

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

(b) Where other means are available, whether a Board 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 chapter 71, as applied by the CAA;

(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 Board of a general statement of policy or guidance on the question would promote constructive and cooperative labor-management relationships in the legislative branch and would otherwise promote the purposes of chapter 71, as applied by the CAA.

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

Sec.
2428.1 Scope.
2428.2 Petitions for enforcement.
2428.3 Board decision.

§2428.1 Scope.

This part sets forth procedures under which the Board, pursuant to 5 U.S.C. 7105(a)(2)(I), as applied by the CAA, will enforce decisions and orders of the Assistant Secretary in standards of conduct matters arising under 5 U.S.C. 7120, as applied by the CAA.

§2428.2 Petitions for enforcement.

(a) The Assistant Secretary may petition the Board to enforce any Assistant Secretary decision and order in a standards of conduct case arising under 5 U.S.C. 7120, as applied by the CAA. The Assistant Secretary shall transfer to the Board 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 Board 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 Board, 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 Board decision.

The Board shall issue its decision on the case enforcing, enforcing as modified, or refusing to enforce, the decision and order of the Assistant Secretary.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

Subpart A—Miscellaneous

Sec.
2429.1 Transfer of cases to the Board.
2429.2 [Reserved]
2429.3 Transfer of record.
2429.4 Referral of policy questions to the Board.
2429.5 Matters not previously presented; official notice.
2429.6 Oral argument.
2429.7 [Reserved]
2429.8 [Reserved]
2429.9 [Reserved]
2429.10 Advisory opinions.
2429.11 [Reserved]
2429.12 [Reserved]
2429.13 Official time.
2429.14 Witness fees.
2429.15 Board requests for advisory opinions.
2429.16 General remedial authority.
2429.17 [Reserved]
2429.18 [Reserved]

Subpart B—General Requirements

2429.21 [Reserved]
2429.22 [Reserved]
2429.23 Extension; waiver.
2429.24 [Reserved]
2429.25 [Reserved]
2429.26 [Reserved]
2429.27 [Reserved]
2429.28 Petitions for amendment of regulations.

Subpart A—Miscellaneous

§2429.1 Transfer of cases to the Board.

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

§2429.2 [Reserved]

§2429.3 Transfer of record.

In any case under part 2425 of this subchapter, upon request by the Board, 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 Board.

§2429.4 Referral of policy questions to the Board.

Notwithstanding the procedures set forth in this subchapter, the General Counsel, or the Assistant Secretary, may refer for review and decision or general ruling by the Board 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 Board shall obtain the views of the parties and other interested persons, orally or in writing, as it deems necessary and appropriate. The Board may decline a referral.

§2429.5 Matters not previously presented; official notice.

The Board will not consider evidence offered by a party, or any issue, which was not presented in the proceedings before the Executive Director, Hearing Officer, or arbitrator. The Board may, however, take official notice of such matters as would be proper.

§2429.6 Oral argument.

The Board 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 [Reserved]
§ 2429.8 [Reserved]
§ 2429.9 [Reserved]
§ 2429.10 Advisory opinions.

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

§ 2429.11 [Reserved]
§ 2429.12 [Reserved]
§ 2429.13 Official time.

If the participation of any employee in any phase of any proceeding before the Board under section 220 of the CAA, including the investigation of unfair labor practice charges and representation petitions and the participation in hearings and representation elections, is deemed necessary by the Board, the Executive Director, the General Counsel, any Hearing Officer, or other agent of the Board designated by the Board, 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.

§ 2429.14 Witness fees.

(a) Witnesses (whether appearing voluntarily, or under a subpena) shall be paid the fee and mileage allowances which are paid subpenaed 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 Board requests for advisory opinions.

(a) Whenever the Board, pursuant to 5 U.S.C. 7105(i), as applied by the CAA, 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 Board, 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 Board comments on that response which the parties wish the Board 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 Board 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, as applied by the CAA.

§ 2429.17 [Reserved]
§ 2429.18 [Reserved]

Subpart B—General Requirements

§ 2429.21 [Reserved]
§ 2429.22 [Reserved]
§ 2429.23 Extension; waiver.

(a) Except as provided in paragraph (d) of this section, the Board 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 Board 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), as applied by the CAA, may not be extended or waived under this section.

§ 2429.24 [Reserved]
§ 2429.25 [Reserved]
§ 2429.26 [Reserved]
§ 2429.27 [Reserved]
§ 2429.28 Petitions for amendment of regulations.

Any interested person may petition the Board 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.

SUBCHAPTER D IMPASSES

PART 2470—GENERAL

Subpart A— Purpose

Sec.
2470.1 Purpose.

Subpart B—Definitions

2470.2 Definitions.

Subpart A—Purpose

§ 2470.1 Purpose.

The regulations contained in this subchapter are intended to implement the provisions of section 7119 of title 5 of the United States Code, as applied by the CAA. They prescribe procedures and methods which the Board may utilize in the resolution of negotiation impasses when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve the disputes.

Subpart B—Definitions

§ 2470.2 Definitions.

(a) The terms Executive Director, employing office, labor organization, and conditions of employment as used herein shall have the meaning set forth in Part 2421 of these rules.

(b) The terms designated representative or designee of the Board means a Board member, a staff member, or other individual designated by the Board to act on its behalf.

(c) The term hearing means a factfinding hearing, arbitration hearing, or any other hearing procedure deemed necessary to accomplish the purposes of 5 U.S.C. 7119, as applied by the CAA.

(d) The term impasse means that point in the negotiation of conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement.

(e) The term Board means the Board of Directors of the Office of Compliance.

(f) The term party means the agency or the labor organization participating in the negotiation of conditions of employment.

(g) The term voluntary arrangements means any method adopted by the parties for the purpose of assisting them in their resolution of a negotiation dispute which is not inconsistent with the provisions of 5 U.S.C. 7119, as applied by the CAA.

PART 2471—PROCEDURES OF THE BOARD IN IMPASSE PROCEEDINGS

Sec.
2471.1 Request for Board consideration; request for Board approval of binding arbitration.
2471.2 Request form.
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2471.4 Where to file.
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2471.6 Investigation of request; Board recommendation and assistance; approval of binding arbitration.
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2471.8 Conduct of hearing and prehearing conference.
2471.9 Report and recommendations.
2471.10 Duties of each party following receipt of recommendations.
2471.11 Final action by the Board.
2471.12 Inconsistent labor agreement provisions.

§ 2471.1 Request for Board consideration; request for Board approval of binding arbitration.

If voluntary arrangements, including the services of the Federal Mediation and Conciliation Services or any other third-party mediation, fail to resolve a negotiation impasse:

(a) Either party, or the parties jointly, may request the Board to consider the matter by filing a request as hereinafter provided; or the Board may, pursuant to 5 U.S.C. 7119(c)(1), as applied by the CAA, undertake consideration of the matter upon request of (i) the Federal Mediation and Conciliation Service, or (ii) the Executive Director; or

(b) The parties may jointly request the Board to approve any procedure, which they have agreed to adopt, for binding arbitration of the negotiation impasse by filing a request as hereinafter provided.

§ 2471.2 Request form.

A form has been prepared for use by the parties in filing a request with the Board for consideration of an impasse or approval of a binding arbitration procedure. Copies are available from the Executive Director, Office of Compliance.

§ 2471.3 Content of request.

(a) A request from a party or parties to the Board for consideration of an impasse must be in writing and include the following information:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Statement of issues at impasse and the summary positions of the initiating party or parties with respect to those issues; and

(3) Number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized.

(b) A request for approval of a binding arbitration procedure must be in writing, jointly filed by the parties, and include the following information about the pending impasse:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Brief description of the impasse including the issues to be submitted to the arbitrator;

(3) Number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized;

(4) Statement that the proposals to be submitted to the arbitrator contain no questions concerning the duty to bargain; and

(5) Statement of the arbitration procedures to be used, including the type of arbitration, the method of selecting the arbitrator, and the arrangement for paying for the proceedings or, in the alternative, those provisions of the parties' labor agreement which contain this information.

§ 2471.4 Where to file.

Requests to the Board provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be addressed to the Executive Director, Office of Compliance.

§ 2471.5 Copies and service.

(a) Any party submitting a request for Board consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Board and shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any mediation service which may have been utilized. When the Board acts on a request from the Federal Mediation and Conciliation Service or acts on a request from the Executive Director, it will notify the parties to the dispute, their counsel of record or designated representatives, if any, and any mediation service which may have been utilized. A clean copy capable of being used as an original for purposes such as further reproduction may be submitted for the original. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(b) Any party submitting a response to or other document in connection with a request for Board consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Board and shall serve a copy of the document upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. A clean copy capable of being used as an original for purposes such as further reproduction may be submitted for the original. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) A signed and dated statement of service shall accompany each document submitted to the Board. 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.

(e) Unless otherwise provided by the Board or its designated representatives, any document or paper filed with the Board under these rules, together with any enclosure filed therewith, shall be submitted on 8 1/2″ x 11 inch size paper.

§ 2471.6 Investigation of request; Board recommendation and assistance; approval of binding arbitration.

(a) Upon receipt of a request for consideration of an impasse, the Board or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Board shall either:

(1) Decline to assert jurisdiction in the event that it finds that no impasse exists or that there is other good cause for not asserting jurisdiction, in whole or in part, and so advise the parties in writing, stating its reasons; or

(2) Recommend to the parties procedures, including but not limited to arbitration, for the resolution of the impasse and/or assist them in resolving the impasse through whatever methods and procedures the Board considers appropriate.

(b) Upon receipt of a request for approval of a binding arbitration procedure, the Board or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Board shall either approve or disapprove the request; *provided, however,* that when the request is made pursuant to an agreed-upon procedure for arbitration contained in an applicable, previously negotiated agreement, the Board may use an expedited procedure and promptly approve or disapprove the request, normally within five (5) workdays.

§ 2471.7 Preliminary hearing procedures.

When the Board determines that a hearing is necessary under § 2471.6, it will:

(a) Appoint one or more of its designees to conduct such hearing; and

(b) issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The notice will state: (1) The names of the parties to the dispute; (2) the date, time, place, type, and purpose of the hearing; (3) the date, time, place, and purpose of the prehearing conference, if any; (4) the name of the designated representatives appointed by the Board; (5) the issues to be resolved; and (6) the method, if any, by which the hearing shall be recorded.

§ 2471.8 Conduct of hearing and prehearing conference.

(a) A designated representative of the Board, when so appointed to conduct a hearing, shall have the authority on behalf of the Board to:

(1) Administer oaths, take the testimony or deposition of any person under oath, receive other evidence, and issue subpenas;

(2) Conduct the hearing in open, or in closed session at the discretion of the designated representative for good cause shown;

(3) Rule on motions and requests for appearance of witnesses and the production of records;

(4) Designate the date on which posthearing briefs, if any, shall be submitted;

(5) Determine all procedural matters concerning the hearing, including the length of sessions, conduct of persons in attendance, recesses, continuances, and adjournments; and take any other appropriate procedural action which, in the judgment of the designated representative, will promote the purpose and objectives of the hearing.

(b) A prehearing conference may be conducted by the designated representative of the Board in order to:

(1) Inform the parties of the purpose of the hearing and the procedures under which it will take place;

(2) Explore the possibilities of obtaining stipulations of fact;

(3) Clarify the positions of the parties with respect to the issues to be heard; and

(4) Discuss any other relevant matters which will assist the parties in the resolution of the dispute.

§ 2471.9 Report and recommendations.

(a) When a report is issued after a hearing conducted pursuant to § 2471.7 and 2471.8, it normally shall be in writing and, when authorized by the Board, shall contain recommendations.

(b) A report of the designated representative containing recommendations shall be submitted to the parties, with two (2) copies to the Executive Director, within a period normally not to exceed thirty (30) calendar days after receipt of the transcript or briefs, if any.

(c) A report of the designated representative not containing recommendations shall be submitted to the Board with a copy to each party within a period normally not to exceed thirty (30) calendar days after receipt of the transcript or briefs, if any. The Board shall then take whatever action it may consider appropriate or necessary to resolve the impasse.

§ 2471.10 Duties of each party following receipt of recommendations.

(a) Within thirty (30) calendar days after receipt of a report containing recommendations of the Board or its designated representative, each party shall, after conferring with the other, either:

(1) Accept the recommendations and so notify the Executive Director; or

(2) Reach a settlement of all unresolved issues and submit a written settlement statement to the Executive Director; or

(3) Submit a written statement to the Executive Director setting forth the reasons for not accepting the recommendations and for not reaching a settlement of all unresolved issues.

(b) A reasonable extension of time may be authorized by the Executive Director for good cause shown when requested in writing by either party prior to the expiration of the time limits.

§ 2471.11 Final action by the Board.

(a) If the parties do not arrive at a settlement as a result of or during actions taken under § 2471.6(a)(2), 2471.7, 2471.8, 2471.9, and 2471.10, the Board may take whatever action is necessary and not inconsistent with 5 U.S.C. chapter 71, as applied by the CAA, to resolve the impasse, including but not limited to, methods and procedures which the Board considers appropriate, such as directing the parties to accept a factfinder's recommendations, ordering binding arbitration conducted according to whatever procedure the Board deems suitable, and rendering a binding decision.

(b) In preparation for taking such final action, the Board may hold hearings, administer oaths, and take the testimony or deposition of any person under oath, or it may appoint or designate one or more individuals pursuant to 5 U.S.C. 7119(c)(4), as applied by the CAA, to exercise such authority on its behalf.

(c) When the exercise of authority under this section requires the holding of a hearing, the procedure contained in § 2471.8 shall apply.

(d) Notice of any final action of the Board shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless they agree otherwise.

2471.12 Inconsistent labor agreement provisions.

Any provisions of the parties' labor agreements relating to impasse resolution which are inconsistent with the provisions of either 5 U.S.C. 7119, as applied by the CAA, or the procedures of the Board shall be deemed to be superseded.

UNITED STATES/UNITED KINGDOM AVIATION RELATIONS

Mr. PRESSLER. Madam President, I rise today to express my great frustration with the current state of aviation relations between the United States and the United Kingdom.

At a great cost to the United States economy, the highly restrictive United States/United Kingdom bilateral aviation agreement continues to be an enormous barrier to free and fair trade between our countries. It is a barrier British negotiators have carefully crafted over the years that, as intended, quite effectively limits competition in the United States/United Kingdom air service market. Simply