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shall be in writing and, when authorized by the Panel, 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 Panel 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 Panel shall then take whatever action it may consider appropriate or necessary to resolve the impasse.

[45 FR 3520, Jan. 17, 1980, as amended at 61 FR 41295, Aug. 8, 1996]

**§ 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 Panel 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.

[45 FR 3520, Jan. 17, 1980, as amended at 48 FR 19694, May 2, 1983]

**§ 2471.11 Final action by the Panel.**

(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 Panel may take whatever action is necessary and not inconsistent with 5 U.S.C. chapter

71 to resolve the impasse, including but not limited to, methods and procedures which the Panel considers appropriate, such as directing the parties to accept a factfinder's recommendations, ordering binding arbitration conducted according to whatever procedure the Panel deems suitable, and rendering a binding decision.

(b) In preparation for taking such final action, the Panel may hold hearings, administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in 5 U.S.C. 7132, or it may appoint or designate one or more individuals pursuant to 5 U.S.C. 7119(c)(4) 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 Panel 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.

[45 FR 3520, Jan. 17, 1980, as amended at 48 FR 19694, May 2, 1983]

**§ 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 or the procedures of the Panel shall be deemed to be superseded, unless such provisions are permitted under 5 U.S.C. 7135.

**PART 2472—IMPASSES ARISING PURSUANT TO AGENCY DETERMINATIONS NOT TO ESTABLISH OR TO TERMINATE FLEXIBLE OR COMPRESSED WORK SCHEDULES**

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AUTHORITY: 5 U.S.C. 6131.

SOURCE: 48 FR 19695, May 2, 1983, unless otherwise noted.

### Subpart A—Purpose and Definitions

#### § 2472.1 Purpose.

The regulations contained in this Part are intended to implement the provisions of section 6131 of title 5 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiations impasses arising from agency determinations not to establish or to terminate flexible and compressed work schedules.

#### § 2472.2 Definitions.

(a) The term *the Act* means the Federal Employees Flexible and Compressed Work Schedules Act of 1982, Pub. L. 97-221, 5 U.S.C. 6120 *et seq.*

(b) The term *adverse agency impact* shall have the meaning set forth in 5 U.S.C. 6131(b).

(c) The term *agency* shall have the meaning set forth in 5 U.S.C. 6121(1).

(d) The term *duly authorized delegatee* means an official who has been delegated the authority to act for the head of the agency in the matter concerned.

(e) The term *agency determination* means a determination: (1) Not to establish a flexible or compressed work schedule under 5 U.S.C. 6131(c)(2); or (2) to terminate such a schedule under 5 U.S.C. 6131(c)(3).

(f) The terms *collective bargaining agreement* and *exclusive representative* shall have the meanings set forth in 5 U.S.C. 6121(8).

(g) The term *Executive Director* means the Executive Director of the Panel.

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

(i) The term *flexible and compressed work schedules* shall have the meaning set forth in 5 U.S.C. 6121 *et seq.*

(j) The term *hearing* means a fact-finding hearing or any other hearing procedures deemed necessary to accomplish the purpose of 5 U.S.C. 6131.

(k) The term *impasse* means that point in the negotiation of flexible and compressed work schedules at which the parties are unable to reach agreement on whether a schedule has had or would have an adverse agency impact.

(l) The term *Panel* means the Federal Service Impasses Panel described in 5 U.S.C. 7119(c) or a quorum thereof.

(m) The term *party* means the agency or the exclusive representative participating in negotiations concerning flexible and compressed work schedules.

(n) The term *quorum* means a majority of the members of the Panel.

(o) The term *schedule(s)* means flexible and compressed work schedules.

[48 FR 19695, May 2, 1983, as amended at 61 FR 41295, Aug. 8, 1996]

### Subpart B—Procedures of the Panel

#### § 2472.3 Request for Panel consideration.

Either party, or the parties jointly, may request the Panel to resolve an impasse resulting from an agency determination not to establish or to terminate a flexible or compressed work schedule by filing a request as hereinafter provided. A form is available for use by the parties in filing a request with the Panel. Copies are available from the Office of the Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, DC 20424-0001. Telephone (202) 482-6670. Facsimile (202) 482-6674. Use of the form is not required provided that the request includes all of the information set forth in § 2472.4.

[61 FR 41295, Aug. 8, 1996]

#### § 2472.4 Content of request.

(a) A request from a party or parties to the Panel for consideration of an impasse arising from an agency determination not to establish or to terminate a flexible or compressed work

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schedule under section 6131 (c)(2) or (c)(3) of the Act must be in writing and shall include the following information:

(1) Identification of the parties and individuals authorized to act on their behalf, including their addresses, telephone numbers, and facsimile numbers;

(2) Description of the bargaining unit involved in the dispute and the date recognition was accorded to the exclusive representative;

(3) Number, length, and dates of negotiation sessions held;

(4) A copy of any collective bargaining agreement between the parties and any other agreements concerning flexible and compressed work schedules;

(5) A copy of the schedule or proposed schedule, if any, which is the subject of the agency's determination;

(6) A copy of the agency's written determination and the finding on which the determination is based, including, in a case where the finding is made by a duly authorized delegatee, evidence of a specific delegation of authority to make such a finding; and

(7) A summary of the position of the initiating party or parties with respect to the agency's determination.

[48 FR 19695, May 2, 1983, as amended at 61 FR 41295, Aug. 8, 1996]

### § 2472.5 Where to file.

Requests to the Panel provided for in these rules, and inquiries or correspondence on the status of impasses or other related matters, should be directed to the Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, DC 20424-0001. Telephone (202) 482-6670. Facsimile (202) 482-6674.

[61 FR 41295, Aug. 8, 1996]

### § 2472.6 Filing and service.

(a) *Filing and service of request.* (1) Any party submitting a request for Panel consideration of an impasse filed pursuant to § 2472.3 of these rules shall file an original and one copy with the Panel. A clean copy may be submitted for the original. Requests may be submitted in person or by registered mail, certified mail, regular mail, or private delivery service. Requests will also be

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accepted by the Panel if transmitted to the facsimile machine of its office. A party submitting a request by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

(2) The party submitting the request shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, and upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a request may be made in person or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the request, service may be made by facsimile transmission or by any other agreed-upon method.

(b) *Filing and service of other documents.* (1) Any party submitting a response to, or other document in connection with, a request for Panel consideration of an impasse filed pursuant to § 2472.3 shall file an original and one copy with the Panel. A clean copy may be submitted for the original. Documents may be submitted to the Panel in person or by registered mail, certified mail, regular mail, or private delivery service. Documents may also be accepted by the Panel if transmitted to the facsimile machine of its office, but only with advance permission, which may be obtained by telephone. A party submitting a document by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the submission, if otherwise proper.

(2) The party submitting the document shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a document may be made in person or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the

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document, service may be made by facsimile transmission or by any other agreed-upon method.

(c) A signed and dated statement of service shall accompany each document submitted to the Panel. 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, if properly addressed, is deposited in the U.S. mail, is delivered in person, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service. Where service is made by facsimile transmission, the date of service shall be the date on which transmission is received.

(e) Unless otherwise provided by the Panel or its designated representatives, any document or paper filed with the Panel under this part, together with any enclosure filed therewith, shall be typewritten on 8½×11 inch plain white paper, shall have margins no less than 1 inch on each side, shall be in typeface no smaller than 10 characters per inch, and shall be numbered consecutively. Nonconforming papers may, at the Panel's discretion, be rejected.

(f) An impasse arising pursuant to section 6131(c) (2) or (3) of the Act will not be considered to be filed, and no Panel action will be taken, until the party initiating the request has complied with § 2472.4, 2472.5, and 2472.6 of these regulations.

[48 FR 19695, May 2, 1983. Redesignated and amended at 61 FR 41295, Aug. 8, 1996]

### § 2472.7 Investigation of request; Panel assistance.

(a) Upon receipt of a request for consideration of an impasse filed in accordance with these rules, the Panel or its designee shall promptly conduct an investigation, consulting when necessary with the parties. After due consideration, the Panel shall determine the procedures by which the impasse shall be resolved and shall notify the parties of its determination.

(b) The procedures utilized by the Panel shall afford the parties an opportunity to present their positions, including supporting evidence and arguments orally and/or in writing. They include, but are not limited to: informal conferences with a Panel designee; factfinding (by a Panel designee or a private factfinder); written submissions; show cause orders; and oral presentations to the Panel.

[48 FR 19695, May 2, 1983. Redesignated and amended at 61 FR 41295, 41296, Aug. 8, 1996]

### § 2472.8 Preliminary hearing procedures.

When the Panel determines that a hearing shall be held, and it appoints one or more of its designees to conduct such a hearing, it will issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The notice will state:

(a) The names of the parties to the dispute;

(b) The date, time, place, type, and purpose of the hearing;

(c) The date, time, place, and purpose of the prehearing conference, if any;

(d) The name of the designated representative(s) appointed by the Panel;

(e) The issue(s) to be resolved; and

(f) The method, if any, by which the hearing shall be transcribed.

[61 FR 41296, Aug. 8, 1996]

### § 2472.9 Conduct of hearing and prehearing conference.

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

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

(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; and

(5) Determine all procedural matters concerning the hearing, including the length of sessions, conduct of persons

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in attendance, recesses, continuances, and adjournments; and take any other 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 Panel 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.

[48 FR 19695, May 2, 1983. Redesignated at 61 FR 41295, Aug. 8, 1996]

### § 2472.10 Reports.

When a report is issued after a hearing conducted pursuant to § 2472.8 and 2472.9, it normally shall be in writing and shall be submitted to the Panel, with a copy to each party, within a period normally not to exceed 30 calendar days after the close of the hearing and receipt of briefs, if any.

[61 FR 41296, Aug. 8, 1996]

### § 2472.11 Final action by the Panel.

(a) After due consideration of the parties' positions, evidence, and arguments, including any report submitted in accordance with § 2472.10, the Panel shall take final action in favor of the agency's determination if:

(1) The finding on which a determination under 5 U.S.C. 6131(c)(2) not to establish a flexible or compressed work schedule is based is supported by evidence that the schedule is likely to cause an adverse agency impact; or

(2) The finding on which a determination under 5 U.S.C. 6131(c)(3) to terminate a flexible or compressed work schedule is based is supported by evidence that the schedule has caused an adverse agency impact.

(b) If the finding on which an agency determination under 5 U.S.C. 6131(c)(2) or (c)(3) is based is not supported by evidence that the schedule is likely to cause or has caused an adverse agency

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impact, the Panel shall take whatever final action is appropriate.

(c) In preparation for taking such final action, the Panel may hold hearings, administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas, or it may appoint one or more individuals to exercise such authority on its behalf. Such action may be taken without regard to procedures previously authorized by the Panel.

(d) Notice of any final action of the Panel shall be promptly served upon the parties.

[48 FR 19695, May 2, 1983. Redesignated and amended at 61 FR 41295, 41296, Aug. 8, 1996]

## PART 2473—SUBPOENAS

AUTHORITY: 5 U.S.C. 7119, 7134.

### § 2473.1 Subpenas.

(a) Any member of the Panel, the Executive Director, or other person designated by the Panel, may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

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

(c) A request for a subpoena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Executive Director, not less than fifteen (15) days prior to the opening of a hearing, or with the appropriate presiding official(s) during the hearing.

(d) All requests shall name and identify the witnesses or documents sought, and state the reasons therefor. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall grant the request upon the determination that the testimony or documents appear to be necessary to the matters under consideration and the request describes with sufficient particularity the documents