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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 position. A copy of the opposition to enforcement shall be served on the Assistant Secretary.

#### § 1428.3 Board decision.

(a) A decision and order of the Assistant Secretary shall be enforced unless it is arbitrary and capricious or based upon manifest disregard of the law.

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

## PART 1429—MISCELLANEOUS AND GENERAL REQUIREMENTS

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AUTHORITY: 22 U.S.C. 4107(c).

SOURCE: 46 FR 45876, Sept. 15, 1981, unless otherwise noted.

### Subpart A—Miscellaneous

#### § 1429.1 Transfer of cases to the Board.

(a) In any representation case under part 1422 of this subchapter in which the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists, the Regional Director may transfer the case to the Board; and the Board may decide the case on the basis of the papers alone after having allowed twenty-five (25) days for the filing of briefs. In any unfair labor practice case under part 1423 of this subchapter in which, after the issuance of a complaint, the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists, the Regional Director may upon agreement of all parties transfer the case to the Board; and the Board shall decide the case on the basis of the case papers alone after having allowed twenty-five (25) days for the filing of briefs. The Board may remand any such case to the Regional Director if it determines that a material question of fact does exist. Orders of transfer and remand shall be served on all parties.

(b) In any case under parts 1422 and 1423 of this subchapter in which it appears to the Regional Director that the proceedings raise questions which should be decided by the Board, the Regional Director may, at any time, issue an order transferring the case to the Board for decision or other appropriate action. Such an order shall be served on the parties.

#### § 1429.2 Transfer and consolidation of cases.

In any matter arising pursuant to parts 1422 and 1423 of this subchapter, whenever it appears necessary in order to effectuate the purposes of the Foreign Service Labor-Management Relations Statute or to avoid unnecessary costs or delay, Regional Directors may

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consolidate cases within their own region or may transfer such cases to any other region, for the purpose of investigation or consolidation with any proceedings which may have been instituted in, or transferred to, such region.

### § 1429.3 Transfer of record.

In any case under part 1425 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 Grievance Board, to the Board.

### § 1429.4 Referral of policy questions to the Board.

Notwithstanding the procedures set forth in this subchapter, the General Counsel, the Assistant Secretary, or the Panel may refer for review and decision or general ruling by the 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.

### § 1429.5 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 Regional Director, Hearing Officer, Administrative Law Judge, or Grievance Board. The Board may, however, take official notice of such matters as would be proper.

### § 1429.6 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.

### § 1429.7 Subpoenas.

(a) Any member of the Board, the General Counsel, any Administrative Law Judge appointed by the Board under 5 U.S.C. 3105, and any Regional Director, Hearing Officer, or other em-

ployee of the Board designated by the Board 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 22 U.S.C. 4102 shall be in writing and filed with the Regional Director, in proceedings arising under parts 1422 and 1423 of this subchapter, or filed with the Board, in proceedings arising under parts 1424 and 1425 of this subchapter, not less than fifteen (15) days prior to the opening of a hearing, or with the appropriate presiding official(s) during the hearing.

(d) All requests shall name and identify the witnesses or documents sought, and state the reasons therefor. The Board, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Board designated by the Board, as appropriate, shall grant the request upon the determination that the testimony or documents appear to be necessary to the matters under investigation and the request describes with sufficient particularity the documents sought. Service of an approved subpoena is the responsibility of the party on whose behalf the subpoena was issued. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued.

(e) Any person served with a subpoena who does not intend to comply, shall, within five (5) days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the party on whose behalf the subpoena was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Regional Director, who may

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refer the petition to the Board, General Counsel, Administrative Law Judge, Hearing Officer, or any other employee of the Board designated by the Board, as appropriate, for ruling. A petition to revoke a subpoena filed during the hearing, and a written statement of service, shall be filed with the appropriate presiding official(s). The Regional Director, or the appropriate presiding official(s) will, as a matter of course, cause a copy of the petition to revoke to be served on the party on whose behalf the subpoena was issued, but shall not be deemed to assume responsibility for such service. The Board, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Board designated by the Board, as appropriate, shall revoke the subpoena if the evidence the production of which is required does not relate to any matter under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The Board, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Board designated by the Board, as appropriate, shall make a simple statement of procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) Upon the failure of any person to comply with a subpoena issued, upon the request of the party on whose behalf the subpoena was issued, the General Counsel shall, on behalf of such party, institute proceedings in the appropriate district court for the enforcement thereof, unless, in the judgment of the General Counsel, the enforcement of such subpoena would be inconsistent with law and the policies of the Foreign Service Labor-Management Relations Statute. The General Counsel shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court thereafter.

**§ 1429.8 Stay of action taken by Grievance Board; requests.**

(a) A request for a stay shall be entertained only in conjunction with and as a part of an exception to an action taken by the Grievance Board under part 1425 of this subchapter. The filing of an exception shall not itself operate as a stay of the action involved in the proceedings.

(b) A timely request for a stay of an action taken by the Grievance Board to which an exception has been filed shall operate as a temporary stay of the award. Such temporary stay shall be deemed effective from the date of the action and shall remain in effect until the Board issues its decision and order on the exception, or the Board or its designee otherwise acts with respect to the request for the stay.

(c) A request for a stay of an action taken by the Grievance Board will be granted only where it appears, based upon the facts and circumstances presented, that:

(1) There is a strong likelihood of success on the merits of the appeal; and

(2) A careful balancing of all the equities, including the public interest, warrants issuance of a stay.

**§ 1429.9 Amicus curiae.**

Upon petition of an interested person, a copy of which petition shall be served on the parties, and as the Board deems appropriate, the Board may grant permission for the presentation of written and/or oral argument at any stage of the proceedings by an amicus curiae and the parties shall be notified of such action by the Board.

**§ 1429.10 Advisory opinions.**

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

**§ 1429.11 Interlocutory appeals.**

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

**§ 1429.12 Service of process and papers by the Board.**

(a) *Methods of service.* Notices of hearings, reports and findings, decisions of

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Administrative Law Judges, complaints, written rulings on motions, decisions and orders, and all other papers required by this subchapter to be issued by the Board, the General Counsel, Regional Directors, Hearing Officers and Administrative Law Judges, shall be served personally or by certified mail or by telegraph.

(b) *Upon whom served.* All papers required to be served under paragraph (a) of this section shall be served upon all counsel of record or other designated representative(s) of parties, and upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) *Proof of service.* Proof of service shall be the verified return by the individual serving the papers setting forth the manner of such service, the return post office receipt, or the return telegraph receipt. When service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail. When service is to be made to an addressee outside the United States, the date of service shall be the date received, as evidenced by official receipt.

### § 1429.13 Official time.

If the participation of any employee in any phase of any proceeding before the Board, 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 General Counsel, any Administrative Law Judge, Regional Director, 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. In addition, necessary transportation and per diem expenses shall be paid by the Department.

### § 1429.14 Witness Fees.

(a) Witnesses (whether appearing voluntarily, or under a subpoena) shall be paid the fee and mileage allowances

which are paid subpoenaed witnesses in the courts of the United States: *Provided*, That any witness who is employed by the Federal Government shall not be entitled to receive witness fees in addition to compensation received pursuant to §1429.13.

(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 (the preceding section).

### § 1429.15 Board requests for advisory opinions.

(a) Whenever the Board, pursuant to section 1007(c)(2)(f) of the Foreign Service Act of 1980 (22 U.S.C. 4107) 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 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 parties in the manner and upon the Office of Personnel Management.

### § 1429.16 General remedial authority.

The Board shall take any actions which are necessary and appropriate to administer effectively the provisions of chapter 41 of title 22 of the United States Code.

## Subpart B—General Requirements

### § 1429.21 Computation of time for filing papers.

In computing any period of time prescribed by or allowed by this subchapter, except in agreement bar situations described in §1422.3(c) of this subchapter, the day of the act, event, or default from or after which the designated period of time begins to run, shall not be included. The last day of

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the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday: *Provided, however,* In agreement bar situations described in §1422.3 (c) and (d), if the sixtieth (60th) day prior to the expiration date of an agreement falls on Saturday, Sunday or a Federal legal holiday, a petition, to be timely, must be received by the close of business of the last official workday preceding the sixtieth (60th) day. When the period of time prescribed or allowed is seven (7) days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations. When this subchapter requires the filing of any paper, such document must be received by the Board or the officer or agent designated to receive such matter before the close of business on the last day of the time limit, if any, for such filing or extension of time that may have been granted.

**§ 1429.22 Additional time after service by mail.**

Whenever a party has the right or is required to do some act pursuant to this subchapter within a prescribed period after service of a notice or other paper upon such party, and the notice or paper is served on such party by mail, five (5) days shall be added to the prescribed period.

**§ 1429.23 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 filed in writing no 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

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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) The time limits prescribed by 22 U.S.C. 4114(c) may not be waived.

**§ 1429.24 Place and method of filing; acknowledgement.**

(a) A document submitted to the Board pursuant to this subchapter shall be filed with the Board at the address set forth in appendix A to this chapter XIV.

(b) A document submitted to the General Counsel pursuant to this subchapter shall be filed with the General Counsel at the address set forth in appendix A.

(c) A document submitted to a Regional Director pursuant to this subchapter shall be filed with the appropriate regional office, as set forth in appendix A.

(d) A document submitted to an Administrative Law Judge pursuant to this subchapter shall be filed with the appropriate Administrative Law Judge, as set forth in appendix A.

(e) All documents filed pursuant to paragraphs (a), (b), (c) and (d) of this section shall be filed by certified mail or in person, or if the filing party is outside the United States, by the most appropriate available means.

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

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

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

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

**§ 1429.25 Number of copies.**

Unless otherwise provided by the Board or the General Counsel, or their designated representatives, as appropriate, or under this subchapter, any document or paper filed with the Board, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate, under this subchapter, together with any enclosure filed therewith, shall be submitted in an original and four (4) copies. A clean copy capable of being used as an original for purposes such as further reproduction may be substituted for the original.

**§ 1429.26 Other documents.**

(a) The Board or the General Counsel, or their designated representatives, as appropriate, may in their discretion grant leave to file other documents as they deem appropriate.

(b) A copy of such other documents shall be served on the other parties.

**§ 1429.27 Service; statement of service.**

(a) Except as provided in §1423.10 (c) and (d), any party filing a document as provided in this subchapter is responsible for serving a copy upon all coun-

sel of record or other designated representative(s) of parties, upon parties not so represented, and upon any interested person who has been granted permission by the Board pursuant to §1429.9 to present written and/or oral argument as amicus curiae. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

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

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

(d) The date of service or date served shall be in the day when the matter served is deposited in the U.S. mail or is delivered in person. When service is to be made to an addressee outside the United States, the date of service shall be the date received, as evidenced by official receipt.

**§ 1429.28 Petitions for amendment of regulations.**

Any interested person may petition the Board or General Counsel in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.