

Millennium Challenge Corporation

§ 1304.9

non-commercial scientific institution requesters for document duplication only, except that the first 100 pages of paper copies shall be provided without charge.

(3) *News media requesters.* The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) *All other requesters.* The FOIA Officer shall charge requesters who do not fall into any of the categories in paragraphs (d)(1) through (3) of this section fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total cost exceeds \$14.99, except that the first 100 pages of duplication and the first two hours of manual search time shall not be charged.

(e) *Charges for unsuccessful searches.* If the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(f) *Nonpayment of fees.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting the thirty-first (31st) day following the day on which the bill was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717. MCC will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the remaining estimated fee before MCC will begin to process a new re-

quest or continue processing a then-pending request from the requester. The administrative response time limits prescribed in subsection (a)(6) of the FOIA will begin only after MCC has received fee payments described in this section.

(g) *Aggregating requests.* The requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the FOIA Officer reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the FOIA Officer may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment will be required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines the total fee will exceed \$250.00. When payment is required in advance of the processing of a request, the time limits prescribed in §1304.5 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee. Where it is anticipated that the cost of providing the requested record will exceed \$25.00 but fall below \$250.00 after the free duplication and search time has been calculated, MCC may, in its discretion may require either:

(1) An advance deposit of the entire estimated charges; or

(2) Written confirmation of the requester's willingness to pay such charges.

CHAPTER XIV—FOREIGN SERVICE LABOR
RELATIONS BOARD; FEDERAL LABOR
RELATIONS AUTHORITY; GENERAL COUNSEL
OF THE FEDERAL LABOR RELATIONS
AUTHORITY; AND THE FOREIGN SERVICE
IMPASSE DISPUTES PANEL

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SUBCHAPTER A [RESERVED] SUBCHAPTER B—GENERAL PROVISIONS

PART 1411—AVAILABILITY OF OFFICIAL INFORMATION

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 46 FR 45854, Sept. 15, 1981, unless otherwise noted.

§ 1411.1 Purpose and scope.

This part contains the regulations of the Foreign Service Labor Relations Board (the Board), the General Counsel of the Federal Labor Relations Authority (the General Counsel) and the Foreign Service Impasse Disputes Panel (the Panel) providing for public access to information from the Board, the General Counsel or the Panel. These regulations implement the Freedom of Information Act, as amended, 5 U.S.C. 552, and the policy of the Board, the General Counsel and the Panel to disseminate information on matters of interest to the public and to disclose to members of the public on request such information contained in records insofar as is compatible with the discharge of their responsibilities, consistent with applicable law.

§ 1411.2 Delegation of authority.

(a) *Foreign Service Labor Relations Board/General Counsel of the Federal Labor Relations Authority.* Regional Directors of the Federal Labor Relations Authority, the Freedom of Information Officer of the Office of the General Counsel, Washington, DC, and the Solicitor of the Federal Labor Relations Authority are delegated the exclusive authority to act upon all requests for information, documents and records

which are received from any person or organization under § 1411.4(a).

(b) *Foreign Service Impasse Disputes Panel.* The Executive Director of the Federal Service Impasses Panel is delegated the exclusive authority to act upon all requests for information, documents and records which are received from any person or organization under § 1411.4(b).

§ 1411.3 Information policy.

(a) *Foreign Service Labor Relations Board/General Counsel of the Federal Labor Relations Authority.* (1) It is the policy of the Foreign Service Labor Relations Board and the General Counsel of the Federal Labor Relations Authority to make available for public inspection and copying: (i) Final decisions and orders of the Board and administrative rulings of the General Counsel; (ii) statements of policy and interpretations which have been adopted by the Board or by the General Counsel and are not published in the FEDERAL REGISTER; and (iii) administrative staff manuals and instructions to staff that affect a member of the public (except those establishing internal operating rules, guidelines, and procedures for the investigation, trial, and settlement of cases). Any person may examine and copy items in paragraphs (a)(1) (i) through (iii) of this section at each regional office of the Authority and at the offices of the Authority and the General Counsel, respectively, in Washington, DC, under conditions prescribed by the Board and the General Counsel, respectively, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority, the Board and the General Counsel. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted and, in each case, the justification for the deletion shall be fully explained in writing.

(2) It is the policy of the Board and the General Counsel to make promptly available for public inspection and

copying, upon request by any person, other records where the request reasonably describes such records and otherwise conforms with the rules provided herein.

(b) *Foreign Service Impasse Disputes Panel.* (1) It is the policy of the Foreign Service Impasse Disputes Panel to make available for public inspection and copying: (i) Procedural determinations of the Panel; (ii) factfinding and arbitration reports; (iii) final decisions and orders of the Panel; (iv) statements of policy and interpretations which have been adopted by the Panel and are not published in the FEDERAL REGISTER; and (v) administrative staff manuals and instructions to staff that affect a member of the public. Any person may examine and copy items in paragraphs (b)(1)(i) through (v) of this section at the offices of the Federal Service Impasses Panel in Washington, DC, under conditions prescribed by the Panel, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Federal Service Impasses Panel and the Panel. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted and, in each case, the justification for the deletion shall be fully explained in writing.

(2) It is the policy of the Panel to make promptly available for public inspection and copying, upon request by any person, other records where the request reasonably describes such records and otherwise conforms with the rules provided herein.

(c) The Board, the General Counsel and the Panel shall maintain and make available for public inspection and copying the current indexes and supplements thereto which are required by 5 U.S.C. 552(a)(2) and, as appropriate, a record of the final votes of each member of the Board and of the Panel in every agency proceeding. Any person may examine and copy such document or record of the Board, the General Counsel or the Panel at the offices of the Authority, the General Counsel, or the Federal Service Impasses Panel, as appropriate, in Washington, DC, under conditions prescribed by the Board, the General Counsel or the Panel at rea-

sonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority, the Board, the General Counsel, the Federal Service Impasses Panel, or the Panel.

(d) The Board, the General Counsel or the Panel may decline to disclose any matters exempted from the disclosure requirements in 5 U.S.C. 552(b), particularly those that are:

(1)(i) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such executive order;

(2) Related solely to internal personnel rules and practices of the Authority, the General Counsel or the Federal Service Impasses Panel;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)): *Provided*, That such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(i) Interfere with an enforcement proceeding;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security

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intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(e)(1) The formal documents constituting the record in a case or proceeding are matters of official record and, until destroyed pursuant to applicable statutory authority, are available to the public for inspection and copying at the appropriate regional office of the Authority, or the offices of the Authority, the General Counsel or the Federal Service Impasses Panel in Washington, DC, as appropriate, under conditions prescribed by the Authority, the General Counsel or the Federal Service Impasses Panel at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority, the General Counsel or the Federal Service Impasses Panel.

(2) The Board, the General Counsel or the Panel, as appropriate, shall certify copies of the formal documents upon request made a reasonable time in advance of need and payment of lawfully prescribed costs.

(f)(1) Copies of forms prescribed by the Board for the filing of charges and petitions may be obtained without charge from any regional office of the Authority.

(2) Copies of forms prescribed by the Panel for the filing of requests may be obtained without charge from the offices of the Federal Service Impasses Panel in Washington, DC.

§ 1411.4 Procedure for obtaining information.

(a) *Foreign Service Labor Relations Board/General Counsel of the Federal Labor Relations Authority.* Any person who desires to inspect or copy any records, documents or other information of the Board or the General Counsel, covered by this part, other than those specified in paragraphs (a) (1) and (c) of § 1411.3, shall submit a written request to that effect as follows:

(1) If the request is for records, documents or other information in a regional office of the Authority, it should

be made to the appropriate Regional Director;

(2) If the request is for records, documents or other information in the Office of the General Counsel and located in Washington, DC, it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, DC; and

(3) If the request is for records, documents or other information in the offices of the Authority in Washington, DC, it should be made to the Solicitor of the Authority, Washington, DC.

(b) *Foreign Service Impasse Disputes Panel.* Any person who desires to inspect or copy any records, documents or other information of the Panel covered by this part, other than those specified in paragraphs (b) (1) and (c) of § 1411.3, shall submit a written request to that effect to the Executive Director, Federal Service Impasses Panel, Washington, DC.

(c) All requests under this part should be clearly and prominently identified as a request for information under the Freedom of Information Act and, if submitted by mail or otherwise submitted in an envelope or other cover, should be clearly identified as such on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received by the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Federal Service Impasses Panel, as appropriate, until the time it is actually received by such person.

§ 1411.5 Identification of information requested.

(a) Each request under this part should reasonably describe the records being sought in a way that they can be identified and located. A request should include all pertinent details that will help identify the records sought.

(b) If the description is insufficient, the officer processing the request will so notify the person making the request and indicate the additional information needed. Every reasonable effort

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shall be made to assist in the identification and location of the record sought.

(c) Upon receipt of a request for records, the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Federal Service Impasses Panel, as appropriate, shall enter it in a public log. The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to paragraphs (b) and (c) of §1411.6, the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

§ 1411.6 Time limits for processing requests.

(a) All time limits established pursuant to this section shall begin as of the time at which a request for records is logged in by the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Federal Service Impasses Panel, as appropriate, processing the request pursuant to paragraph (c) of §1411.5. An oral request for records shall not begin any time requirement. A written request for records sent to other than the appropriate officer will be forwarded to that officer by the receiving officer, but in that event the applicable time limit for response set forth in paragraph (b) of this section shall begin upon the request being logged in as required by paragraph (c) of §1411.5.

(b) Except as provided in §1411.8, the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Council, the Solicitor of the Authority, or the Executive Director of the Federal Service Impasses Panel, as appropriate, shall, within ten (10) working days following receipt of the request, respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(1) If all the records requested have been located and a final determination has been made with respect to disclosure of all of the records requested, the response shall so state.

(2) If all of the records have not been located or a final determination has not been made with respect to disclosure of all the records requested, the response shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

(3) If the request is expected to involve an assessed fee in excess of \$25.00, the response shall specify or estimate the fee involved and shall require prepayment of any charges in accordance with the provisions of paragraph (a) of §1411.10 before the records are made available.

(4) Whenever possible, the response relating to a request for records that involves a fee of less than \$25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Board, the General Counsel or the Panel.

(c) If any request for records is denied in whole or in part, the response required by paragraph (b) of this section shall notify the requester of the denial. Such denial shall specify the reason therefor, set forth the name and title or position of the person responsible for the denial, and notify the person making the request of the right to appeal the denial under the provisions of §1411.7.

§ 1411.7 Appeal from denial of request.

(a) *Foreign Service Labor Relations Board/General Counsel of the Federal Labor Relations Authority.* (1) Whenever any request for records is denied, a written appeal may be filed within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. If the denial was made by a Regional Director or by the Freedom of Information Officer of the Office of the General Counsel, the appeal shall be filed with the General Counsel in Washington,

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DC. If the denial was made by the Solicitor of the Authority, the appeal shall be filed with the Chairperson of the Board in Washington, DC.

(2) The Chairperson of the Board or the General Counsel, as appropriate, shall, within twenty (20) working days from the time of receipt of the appeal, except as provided in §1411.8, make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(i) If the determination is to comply with the request and the request is expected to involve an assessed fee in excess of \$25.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of §1411.10 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than \$25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Board or the General Counsel.

(b) *Foreign Service Impasse Disputes Panel.* (1) Whenever any request for records is denied by the Executive Director of the Federal Service Impasses Panel, a written appeal may be filed with the Chairperson of the Panel within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial.

(2) The Chairperson of the Panel, within twenty (20) working days from the time of receipt of the appeal, except as provided in §1411.8, shall make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(i) If the determination is to comply with the request and the request is expected to involve an assessed fee in excess of \$25.00, the determination shall specify or estimate the fee involved and shall require prepayment of any

charges due in accordance with the provisions of paragraph (a) of §1411.10 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than \$25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Panel.

(c) If on appeal the denial of the request for records is upheld in whole or in part by the Chairperson of the Board, the General Counsel, or the Chairperson of the Panel, as appropriate, the person making the request shall be notified of the reasons for the determination, the name and title or position of the person responsible for the denial, and the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the Chairperson of the Board, the General Counsel or the Chairperson of the Panel, as appropriate, may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of a denial under this appeal procedure by written notification to the person making the request. In such event, the time limit for making the determination shall commence with the issuance of such notification.

§ 1411.8 Extension of time limits.

In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the officer handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in a total extension of more than ten (10) working days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

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(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(b) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

§ 1411.9 Effect of failure to meet time limits.

Failure by the Board, the General Counsel or the Federal Service Impasses Panel either to deny or grant any request under this part within the time limits prescribed by the Freedom of Information Act, as amended, 5 U.S.C. 552, and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making this request.

§ 1411.10 Fees.

Persons requesting records from the Board, the General Counsel or the Panel shall be subject to a charge of fees for the direct cost of document search and duplication in accordance with the following schedules, procedures and conditions:

(a) The following fees shall be charged for disclosure of any record pursuant to this part:

(1) *Copying of records.* Ten cents per copy of each page.

(2) *Clerical searches.* \$1.25 for each one-quarter hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(3) *Nonclerical searches.* \$2.50 for each one-quarter hour spent by professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

(4) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(b) All charges may be waived or reduced whenever it is in the public interest to do so.

(c) Requests for copies of transcripts of hearings should be made to the official hearing reporter. However, a person may request a copy of a transcript of a hearing from the Board, the Panel or the General Counsel, as appropriate. In such instance, the Board, the Panel or the General Counsel, as appropriate, may, by agreement with the person making the request, make arrangements with commercial firms for required services to be charged directly to the requester.

(d) No charge shall be made for the time spent in resolving legal or policy issues or in examining records for the purpose of deleting nondisclosable portions thereof.

(e) Payment of fees shall be made by check or money order payable to the U.S. Treasury.

§ 1411.11 Compliance with subpoenas.

No member of the Board or the Panel, or the General Counsel, or employee of the Authority, the Federal Service Impasses Panel, or the General Counsel shall produce or present any files, documents, reports, memoranda, or records of the Board, the Panel or the General Counsel, or testify in behalf of any party to any cause pending in any arbitration or in any court or before the Board or the Panel, or any other board, commission, or administrative agency of the United States, territory, or the District of Columbia with respect to any information, facts, or other matter to their knowledge in their official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Board, the Panel or the General Counsel, whether in answer to a subpoena, subpoena duces tecum, or otherwise, without the written consent of the Board, the Panel or the General Counsel, as appropriate. Whenever any subpoena, the purpose for which is to adduce testimony or require the production of records as described in this section, shall have been served on any member of the Board or of the Panel or employee of the Authority, the Federal Service Impasses Panel or the General

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Counsel, such person will, unless otherwise expressly directed by the Board, the Panel or the General Counsel, as appropriate, and as provided by law, move pursuant to the applicable procedure to have such subpoena invalidated on the ground that the evidence sought is privileged against disclosure by this rule.

§ 1411.12 Annual report.

On or before March 1 of each calendar year, the Executive Director of the Authority shall submit a report of the activities of the Board, the General Counsel and the Panel with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include for such calendar year all information required by 5 U.S.C. 552(d) and such other information as indicates the efforts of the Board, the General Counsel and the Panel to administer fully the provisions of the Freedom of Information Act, as amended.

PART 1413—OPEN MEETINGS

Sec.

- 1413.1 Purpose and scope.
- 1413.2 Public observation of meetings.
- 1413.3 Definition of meeting.
- 1413.4 Closing of meetings; reasons therefor.
- 1413.5 Action necessary to close meeting; record of votes.
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- 1413.7 Transcripts, recordings or minutes of closed meeting; public availability; retention.

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 46 FR 45858, Sept. 15, 1981, unless otherwise noted.

§ 1413.1 Purpose and scope.

This part contains the regulations of the Foreign Service Labor Relations Board implementing the Government in the Sunshine Act, 5 U.S.C. 552b.

§ 1413.2 Public observation of meetings.

Every portion of every meeting of the Board shall be open to public observation, except as provided in § 1413.4, and Board members shall not jointly con-

duct or dispose of agency business other than in accordance with the provisions of this part.

§ 1413.3 Definition of meeting.

For purposes of this part, *meeting* shall mean the deliberations of at least two (2) members of the Board where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting should be closed to public observation in accordance with the provisions of this part.

§ 1413.4 Closing of meetings; reasons therefor.

(a) Except where the Board determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpoena, the Board participation in a civil action or proceeding or an arbitration, or the initiation, conduct or disposition by the Board of particular cases of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing, or any court proceedings collateral or ancillary thereto.

(b) Meetings, or portions thereof, may also be closed by the Board, except where it determines that the public interest requires otherwise, when the deliberations concern matters or information falling within the reasons for closing meetings specified in 5 U.S.C. 552b(c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (privileged or confidential trade secrets and commercial or financial information); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B) (disclosure would significantly frustrate implementation of a proposed agency action).

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§ 1413.5 Action necessary to close meeting; record of votes.

A meeting shall be closed to public observation under §1413.4, only when a majority of the members of the Board who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in §1413.4(a), the Board members shall vote at the beginning of the meeting, or portion thereof, on whether to close such meeting, or portion thereof, to public observation and on whether the public interest requires that a meeting which may properly be closed should nevertheless be open to public observation. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concern matters specified in §1413.4(b), the Board shall vote on whether to close such meeting, or portion thereof, to public observation, and on whether there is a public interest which requires that a meeting which may properly be closed should nevertheless be open to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public announcement thereof. A single vote may be taken with respect to a series of meetings at which the deliberations will concern the same particular matters where such subsequent meetings are scheduled to be held within thirty (30) days after the initial meeting. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available for the public within one (1) day after the vote is taken.

(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Board close that meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement pur-

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poses), the Board members participating in the meeting, upon request of any one of its members, shall vote on whether to close such meeting, or a portion thereof, for that reason. A record of such vote, reflecting the vote of each member of the Board participating in the meeting, shall be kept and made available to the public within one (1) day after the vote is taken.

(d) After public announcement of a meeting as provided in §1413.6, a meeting, or portion thereof, announced as closed may be opened, or a meeting, or portion thereof, announced as open may be closed only if a majority of the members of the Board who will participate in the meeting determine by a recorded vote that Board business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each member on the change shall be announced publicly at the earliest practicable time.

(e) Before a meeting may be closed pursuant to §1413.4, the Solicitor of the Authority shall certify that in the Solicitor's opinion the meeting may properly be closed to public observation. The certification shall set forth each applicable exemptive provision for such closing. Such certification shall be retained by the agency and made publicly available as soon as practicable.

§ 1413.6 Notice of meetings; public announcement and publication.

(a) A public announcement setting forth the time, place and subject matter of meetings, or portions thereof, closed to public observation pursuant to the provisions of §1413.4(a), shall be made at the earliest practicable time.

(b) Except for meetings closed to public observation pursuant to the provisions of §1413.4(a), the agency shall make public announcement of each meeting to be held at least seven (7) days before the scheduled date of the meeting. The announcement shall specify the time, place and subject matter of the meeting, whether it is to be open to public observation or closed, and the name, address, and phone number of an agency official designated to respond to requests for information about the meeting. The seven (7) day

period for advance notice may be shortened only upon a determination by a majority of the members of the Board who will participate in the meeting that agency business requires that such meeting be called at an earlier date, in which event the public announcements shall be made at the earliest practicable time. A record of the vote to schedule a meeting at an earlier date shall be kept and made available to the public.

(c) Within one (1) day after a vote to close a meeting, or any portion thereof, pursuant to the provisions of §1413.4(b), the agency shall make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If after public announcement required by paragraph (b) of this section has been made, the time and place of the meeting are changed, a public announcement shall be made at the earliest practicable time. The subject matter of the meeting may be changed after the public announcement only if a majority of the members of the Board who will participate in the meeting determine that agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved, a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereto issued pursuant to the provisions of paragraphs (b) and (d) of this section or pursuant to the provisions of §1413.5(d) shall be submitted for publication in the FEDERAL REGISTER immediately following their release to the public.

(f) Announcements of meetings made pursuant to the provisions of this section shall be made publicly available by the Executive Director of the Authority.

§ 1413.7 Transcripts, recordings or minutes of closed meeting; public availability; retention.

(a) For every meeting, or portion thereof, closed under the provisions of §1413.4, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the agency. For each such meeting, or portion thereof, there shall also be maintained a complete transcript or electronic recording of the proceedings, except that for meetings closed pursuant to §1413.4(a), the Board may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reasons therefor and views thereon, documents considered and the members' vote on each roll-call vote.

(b) The agency shall make promptly available to the public copies of transcripts, recordings or minutes maintained as provided in accordance with paragraph (a) of this section, except to the extent the items therein contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552b(c). Copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs in accordance with the schedule of fees set forth in §1411.10 of this subchapter and the actual cost of transcription.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two (2) years after such meeting or until one (1) year after the conclusion of any agency proceeding with respect to which the meeting or portion was held whichever occurs later.

PART 1414—EX PARTE COMMUNICATIONS

Sec.

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- 1414.3 Definitions.
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- 1414.6 Communications not prohibited.
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AUTHORITY: 22 U.S.C. 4107(c).

SOURCE: 46 FR 45859, Sept. 15, 1981, unless otherwise noted.

§ 1414.1 Purpose and scope.

This part contains the regulations of the Foreign Service Labor Relations Board relating to ex parte communications.

§ 1414.2 Unauthorized communications.

(a) No interested person outside this agency shall, in any Board proceeding subject to 5 U.S.C. 557(a), make or knowingly cause to be made any prohibited ex parte communication to any Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding.

(b) No Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding shall: (1) Request any prohibited ex parte communications; or (2) make or knowingly cause to be made any prohibited ex parte communications about the proceeding to any interested person outside this agency relevant to the merits of the proceeding.

§ 1414.3 Definitions.

When used in this part:

(a) The term *person outside this agency*, to whom the prohibitions apply, shall include any individual outside the Board or the Authority, labor organization, agency, or other entity, or an agent thereof, and the General Counsel or his representative when prosecuting an unfair labor practice proceeding before the Board pursuant to 22 U.S.C. 4116.

(b) The term *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, subject how-

ever, to the provisions of §§ 1414.5 and 1414.6.

§ 1414.4 Duration of prohibition.

Unless otherwise provided by specific order of the Board entered in the proceeding, the prohibition of § 1414.2 shall be applicable in any Board proceeding subject to 5 U.S.C. 557(a) beginning at the time of which the proceeding is noticed for hearing, unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of such person's acquisition of such knowledge.

§ 1414.5 Communications prohibited.

Except as provided in § 1414.6, ex parte communications prohibited by § 1414.2 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of part 1429 of this chapter; and

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present.

§ 1414.6 Communications not prohibited.

Ex parte communications prohibited by § 1414.2 shall not include:

(a) Oral or written communications which relate solely to matters which the Hearing Officer, Regional Director, Administrative Law Judge, General Counsel or member of the Board is authorized by law or Board rules to entertain or dispose of on an ex parte basis;

(b) Oral or written requests for information solely with respect to the status of a proceeding;

(c) Oral or written communications which all the parties to the proceeding agree, or which the responsible official formally rules, may be made on an ex parte basis;

(d) Oral or written communications proposing settlement or an agreement for disposition of any or all issues in the proceeding;

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(e) Oral or written communications which concern matters of general significance to the field of labor-management relations or administrative practice and which are not specifically related to any agency proceeding subject to 5 U.S.C. 557(a); or

(f) Oral or written communications from the General Counsel to the Board when the General Counsel is acting on behalf of the Board under 22 U.S.C. 4109(d).

§ 1414.7 Solicitation of prohibited communications.

No person shall knowingly and willfully solicit the making of an unauthorized ex parte communication by any other person.

§ 1414.8 Reporting of prohibited communications; penalties.

Any Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding to whom a prohibited oral ex parte communication is attempted to be made, shall refuse to listen to the communication, inform the communicator of this rule, and advise such person that if the person has anything to say it should be said in writing with copies to all parties. Any such Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding who receives, or who makes or knowingly causes to be made, an unauthorized ex parte communication, shall place or cause to be placed on the public record of the proceeding: (a) The communication, if it was written; (b) a memorandum stating the substance of the communication, if it was oral; (c) all written responses to the prohibited communication; and (d) memoranda stating the substance of all oral responses to the prohibited communication. The Executive Director of the Authority, if the proceeding is then pending before the Board, the Administrative Law Judge, if the proceeding is then pending before any such judge, or the Regional Director, if the proceeding is then pending before a Hearing Officer or the Regional Director,

shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within ten (10) days after the mailing of such copies, any party may file with the Executive Director of the Authority, Administrative Law Judge, or Regional Director serving the communication, as appropriate, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record, which may be required under the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Board to impose an appropriate penalty under § 1414.9

§ 1414.9 Penalties and enforcement.

(a) Where the nature and circumstances of a prohibited communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Board, Administrative Law Judge, or Regional Director, as appropriate, may issue to the party making the communication a notice to show cause, returnable before the Board, Administrative Law Judge, or Regional Director, within a stated period not less than seven (7) days from the date thereof, why the Board, Administrative Law Judge, or Regional Director should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Board may censure, suspend or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication. However, before the Board

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institutes formal proceedings under this section, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than seven (7) days from the date thereof, why it should not take such action.

(c) The Board may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Board agent who knowingly and willfully violates the prohibitions and requirements of this rule.

SUBCHAPTER C—FOREIGN SERVICE LABOR RELATIONS BOARD AND GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY

PART 1420—PURPOSE AND SCOPE

§ 1420.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement the provisions of the Foreign Service Labor-Management Relations Statute. They prescribe the procedures and basic principles or criteria under which the Foreign Service Labor Relations Board or the General Counsel of the Federal Labor Relations Authority, as applicable, will:

(a) Supervise or conduct elections and determine whether a labor organization has been selected as an exclusive representative by a majority of the employees who cast valid ballots and otherwise administer the provisions of the Statute relating to the according of exclusive recognition to a labor organization;

(b) Resolve complaints of alleged unfair labor practices;

(c) Resolve issues relating to the obligation to bargain in good faith;

(d) Resolve disputes concerning the effects, the interpretation, or a claim of breach of collective bargaining agreement, in accord with 22 U.S.C. 4114; and

(e) Take any action considered necessary to administer effectively the provisions of the Foreign Service Labor-Management Relations Statute.

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

[46 FR 45861, Sept. 15, 1981]

PART 1421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

Sec.

1421.1 Foreign Service Labor-Management Relations Statute.

1421.2 Terms defined in section 1002 of the Foreign Service Act of 1980 (22 U.S.C. 4102).

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1421.18 Regular and substantially equivalent employment.

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

SOURCE: 46 FR 45861, Sept. 15, 1981, unless otherwise noted.

§ 1421.1 Foreign Service Labor-Management Relations Statute.

The term *Foreign Service Labor-Management Relations Statute* means chapter 10 of title 1 of the Foreign Service Act of 1980, codified as chapter 41 of title 22 of United States Code.

§ 1421.2 Terms defined in section 1002 of the Foreign Service Act of 1980 (22 U.S.C. 4102).

(a) The terms *Authority*, *Board*, *collective bargaining*, *collective bargaining agreement conditions of employment*, *confidential employee*, *dues*, *exclusive representative*, *General Counsel*, *labor organization*, *management official*, *Panel*, and *person*, as used herein shall have the meaning set forth in 22 U.S.C. 4102.

(b) The term *Assistant Secretary* means the Assistant Secretary of Labor for Labor-Management Relations.

§ 1421.3 Exclusive recognition; Unfair labor practices.

(a) *Exclusive Recognition* has the meaning as set forth in 22 U.S.C. 4111; and

(b) *Unfair labor practices* has the meaning as set forth in 22 U.S.C. 4115.

§ 1421.4 Department.

Department means the Department of State, except that with reference to the exercise of functions under this Act

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with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency.

§ 1421.5 Regional Director.

Regional Director means the Director of a region of the Authority with geographical boundaries as fixed by the Authority.

§ 1421.6 Executive Director.

Executive Director means the Executive Director of the Authority.

§ 1421.7 Hearing Officer.

Hearing Officer means the individual designated to conduct a hearing involving a question concerning the appropriateness of a unit or such other matters as may be assigned.

§ 1421.8 Administrative law judge.

Administrative law judge means the Chief Administrative Law Judge or any administrative law judge designated by the Chief Administrative Law Judge to conduct a hearing in cases under 22 U.S.C. 4115, and such other matters as may be assigned.

§ 1421.9 Chief Administrative Law Judge.

Chief Administrative Law Judge means the Chief Administrative Law Judge of the Authority.

§ 1421.10 Secretary.

Secretary means the Secretary of State, except that (subject to 22 U.S.C. 3921) with reference to the exercise of functions under the Foreign Service Act of 1980 with respect to any agency authorized by law to utilize the Foreign Service personnel system, such term means the head of that agency.

§ 1421.11 Party.

Party means (a) any person: (1) Filing a charge, petition, or request; (2) named in a charge, complaint, petition, or request; (3) whose intervention in a proceeding has been permitted or directed by the Board; (4) who participated as a party (i) in a matter that was decided by an agency head under 22 U.S.C. 4105 or (ii) in a matter where action by the Grievance Board was taken; and (b) the General Counsel, or the

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General Counsel's designated representative, in appropriate proceedings.

§ 1421.12 Intervenor.

Intervenor means a party in a proceeding whose intervention has been permitted or directed by the Authority, its agents or representatives.

§ 1421.13 Certification.

Certification means the determination by the Board, its agents or representatives, of the results of an election.

§ 1421.14 Bargaining unit.

Bargaining unit has the meaning as set forth in 22 U.S.C. 4112 for the purpose of exclusive recognition under 22 U.S.C. 4111, and for purposes of allotments to representatives under 22 U.S.C. 4118.

§ 1421.15 Secret ballot.

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.

§ 1421.16 Showing of interest.

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; and existing or recently expired agreement; current exclusive recognition or 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 recognized or certified labor organization; or other evidence approved by the Authority.

§ 1421.17 Grievance Board.

Grievance Board means the Foreign Service Grievance Board established under 22 U.S.C. 4135.

§ 1421.18 Regular and substantially equivalent employment.

Regular and substantially equivalent employment means employment that entails substantially the same amount of work, rate of pay, hours, working conditions, location of work, and seniority rights if any, of an employee prior to the cessation of employment in a Department because of any unfair labor practice under 22 U.S.C. 4115.

PART 1422—REPRESENTATION PROCEEDINGS

Sec.

- 1422.1 Who may file petitions.
- 1422.2 Contents of petition; filing and service of petition; challenges to petition.
- 1422.3 Timeliness of petition.
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- 1422.5 Intervention.
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- 1422.7 Agreement for consent election.
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- 1422.9 Conduct of hearing.
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- 1422.17 Election procedure; request for authorized representation election observers.
- 1422.18 Challenged ballots.
- 1422.19 Tally of ballots.
- 1422.20 Certification; objections to election; determination on objections and challenged ballots.
- 1422.21 Preferential voting.
- 1422.22 Inconclusive elections.

AUTHORITY: 22 U.S.C. 4107.

SOURCE: 46 FR 45862, Sept. 15, 1981, unless otherwise noted.

§ 1422.1 Who may file petitions.

(a) A petition for exclusive recognition may be filed by a labor organization requesting an election to determine whether it should be recognized as the exclusive representative of employees of the Department in the unit described in 22 U.S.C. 4112 or should replace another labor organization as the exclusive representative of employees in such unit.

(b) A petition for any election to determine if a labor organization should cease to be the exclusive representative because it does not represent a majority of employees in the unit described in 22 U.S.C. 4112 may be filed by an employee or employees or an individual acting on behalf of any employee(s).

(c) A petition seeking to clarify a matter relating to representation may be filed by the Department where the Department has a good faith doubt, based on objective considerations, that the currently recognized or certified labor organization represents a majority of the employees in the unit described in 22 U.S.C. 4112.

(d) A petition for clarification of the unit described in 22 U.S.C. 4112 or for amendment of recognition or certification may be filed by the Department or by a labor organization which is currently recognized by the Department as the exclusive representative.

(e) A petition for determination of eligibility for dues allotment may be filed by a labor organization in accordance with 22 U.S.C. 4118(c).

§ 1422.2 Contents of petition; filing and service of petition; challenges to petition.

(a) *Petition for exclusive recognition.* A petition by a labor organization for exclusive recognition shall be submitted on a form prescribed by the Board and shall contain the following:

(1) The name of the Department, its address, telephone number, and the persons to contact and their titles, if known;

(2) A description of the unit described in 22 U.S.C. 4112. Such description shall indicate the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit;

(3) Name, address, and telephone number of the recognized or certified representative, if any, and the date of such recognition or certification and the expiration date of any applicable agreement, if known to the petitioner;

(4) Names, addresses, and telephone numbers of any other interested labor organizations, if known to the petitioner;

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

(6) A statement that the petitioner has submitted to the Department 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;

(7) A declaration by such 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;

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

(9) The petition shall be accompanied by a showing of interest of not less than thirty percent (30%) of the employees in the unit described in 22 U.S.C. 4112 and an alphabetical list of names constituting such showing.

(b) *Department petition seeking clarification of a matter relating to representation; employee petition for an election to determine whether a labor organization should cease to be an exclusive representative.* (1) A petition by the Department shall be submitted on a form prescribed by the Board and shall contain the information set forth in paragraph (a) of this section, except paragraphs (a) (6), and (9), and a statement that the Department has a good faith doubt, based on objective considerations, that the currently recognized or certified labor organization represents a majority of the employees in the unit described in 22 U.S.C. 4112. Attached to the petition shall be a detailed explanation of the reasons supporting the good faith doubt.

(2) A petition by any employee or employees or an individual acting on behalf of any employee(s) shall contain the information set forth in paragraph (a) of this section, except paragraphs

(a) (6) and (9), and it shall be accompanied by a showing of interest of not less than thirty percent (30%) of the employees in the unit indicating that the employees no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization and an alphabetical list of names constituting such showing.

(c) *Petition for clarification of unit or for amendment of recognition or certification.* A petition for clarification of unit or for amendment of recognition or certification shall be submitted on a form prescribed by the Board and shall contain the information required by paragraph (a) of this section, except paragraphs (a) (2), (6) and (9), and shall set forth:

(1) A description of the unit and the date of recognition or certification;

(2) The proposed clarification or amendment of the recognition or certification; and

(3) A statement of reasons why the proposed clarification or amendment is requested.

(d) *Petition for determination of eligibility for dues allotment.* A petition for determination of eligibility for dues allotment in the unit may be filed if there is no exclusive representative. The petition shall be submitted on a form prescribed by the Board and shall contain the information required in paragraphs (a) (1), (4), (5), (6), (7), and (8) of this section, and shall set forth:

(1) A description of the unit described in 22 U.S.C. 4112. Such description shall indicate the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit; and

(2) The petition shall be accompanied by a showing of membership in the petitioner of not less than ten percent (10%) of the employees in the unit and an alphabetical list of names constituting such showing.

(e) *Filing and service of petition and copies.* (1) A petition for exclusive recognition, for an election to determine if a labor organization should cease to be the exclusive representative, for clarification of unit, for amendment of

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recognition or certification, or for determination of eligibility for dues allotment, filed pursuant to paragraphs (a), (b), (c), or (d) of this section respectively, shall be filed with the Regional Director for the region in which the unit exists, or, if the claimed unit exists in two or more regions, the petition shall be filed with the Regional Director for the region in which the affected employees are located.

(2) 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 relating to the question concerning representation.

(3) Copies of the petition together with any attachments shall be served by the petitioner on all known interested parties, and a written statement of such service shall be filed with the Regional Director: *Provided, however,* That the showing of interest or the showing of membership submitted with a petition filed pursuant to paragraphs (a), (b)(2), (d), or (h) of this section shall not be furnished to any other person.

(f) *Adequacy and validity of showing of interest or showing of membership.* (1) The Regional Director shall determine the adequacy of the showing of interest or the showing of membership administratively, and such determination shall not be subject to collateral attack at a unit or representation hearing. If the petition is dismissed or the intervention sought pursuant to §1422.5 is denied, a request for review of such dismissal or denial may be filed with the Board in accordance with the procedures set forth in §1422.6(d).

(2) Any party challenging the validity of any showing of interest or showing of membership of a petitioner, or a cross-petitioner filing pursuant to §1422.5(b), or of a labor organization seeking to intervene pursuant to §1422.5, must file its challenge with the Regional Director, with respect to the petitioner or a cross-petitioner, within twenty (20) days after the initial date of posting of the notice of petition as provided in §1422.4(a), and with respect to any labor organization seeking to intervene, within twenty (20) days of service of a copy of the request for intervention on the challenging party.

The challenge shall be supported with evidence including signed statements of employees and any other written evidence. The Regional Director shall investigate the challenge and thereafter shall take such action as the Regional Director deems appropriate which shall be final and not subject to review by the Board, unless the petition is dismissed or the intervention is denied on the basis of the challenge. Such request for review shall be filed with the Board in accordance with the procedures set forth in §1422.6(d).

(g) *Challenge to status of a labor organization.* Any party challenging the status of a labor organization under chapter 41 of title 22 of the United States Code must file its challenge with the Regional Director and support the challenge with evidence. With respect to the petitioner or a cross-petitioner filing pursuant to §1422.5(b), such a challenge must be filed within twenty (20) days after the initial date of posting of the notice of petition as provided in §1422.4(a), and with respect to a labor organization seeking to intervene pursuant to §1422.5, within twenty (20) days after service of a copy of the request for intervention on the challenging party. The Regional Director shall investigate the challenge and thereafter shall take such action as the Regional Director deems appropriate, which shall be subject to review by the Board. Such request for review shall be filed with the Board in accordance with the procedures set forth in §1422.6(d).

§ 1422.3 Timeliness of petition.

(a) When there is no certified exclusive representative of the employees, a petition will be considered timely filed provided a valid election has not been held within the preceding twelve (12) month period in the unit described in 22 U.S.C. 4112.

(b) When there is a certified exclusive representative of the employees, a petition will not be considered timely if filed within twenty-four (24) months after the certification as the exclusive representative of employees in unit described in 22 U.S.C. 4112, unless a signed and dated collective bargaining agreement covering the unit has been entered into in which case paragraphs

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(c) and (d) of this section shall be applicable.

(c) When a collective bargaining agreement covering the unit described in 22 U.S.C. 4112 has been signed and dated by the Department and the incumbent exclusive representative, a petition for exclusive recognition or other election petition will not be considered timely if filed during the period of review by the Secretary as set forth in 22 U.S.C. 4113(f), absent unusual circumstances.

(d) A petition for exclusive recognition or other election petition will be considered timely when filed as follows:

(1) Not more than one hundred and five (105) days and not less than (60) days prior to the expiration date of a collective bargaining agreement having a term of three (3) years or less from the date it became effective.

(2) Not more than one hundred and five (105) days and not less than sixty (60) days prior to the expiration of the initial three (3) year period of a collective bargaining agreement having a term of more than three (3) years from the date it became effective, and any time after the expiration of the initial three (3) year period of such a collective bargaining agreement; and

(3) Any time when unusual circumstances exist which substantially affect the unit or the majority representation.

(e) When a collective bargaining agreement having a term of three (3) years or less is in effect between the Department and the incumbent exclusive representative, and a petition has been filed challenging the representation status of the incumbent exclusive representative and the petition is subsequently withdrawn or dismissed less than sixty (60) days prior to the expiration date of that collective bargaining agreement, or any time thereafter, the Department and incumbent exclusive representative shall be afforded a ninety (90) day period from the date the withdrawal is approved or the petition is dismissed free from rival claim within which to consummate a collective bargaining agreement: *Provided, however,* That the provisions of this paragraph shall not be applicable when any other petition is pending which has

been filed pursuant to paragraph (d)(1) of this section.

(f) When an extension of a collective bargaining agreement having a term of three (3) years or less has been signed more than sixty (60) days before its expiration date, such extension shall not serve as a basis for the denial of a petition submitted in accordance with the time limitations provided herein.

(g) Collective bargaining agreements which go into effect automatically pursuant to 22 U.S.C. 4113(f) and which do not contain the date on which the agreement became effective shall not constitute a bar to an election petition.

(h) A petitioner who withdraws a petition after the issuance of a notice of hearing or after the approval of an agreement for an election, shall be barred from filing another petition for the unit described in 22 U.S.C. 4112 for six (6) months, unless a withdrawal request has been received by the Regional Director not later than three (3) days before the date of the hearing.

(i) The time limits set forth in this section shall not apply to a petition for clarification of unit or for amendment of recognition or certification, or to a petition for dues allotment.

§ 1422.4 Investigation of petition and posting of notice of petition; action by Regional Director.

(a) Upon the request of the Regional Director, after the filing of a petition, the Department shall post copies of a notice to all employees in places where notices are normally posted affecting the employees in the unit described in 22 U.S.C. 4112.

(b) Such notice shall set forth:

(1) The name of the petitioner;

(2) The description of the unit;

(3) If appropriate, the proposed clarification of unit or the proposed amendment of recognition or certification; and

(4) A statement that all interested parties are to advise the Regional Director in writing of their interest and position within twenty (20) days after the date of posting of such notice: *Provided, however,* That the notice in a petition for determination of eligibility

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for dues allotment shall contain the information required in paragraphs (a) (1), (2), and (4) of this section.

(c) The notice shall remain posted for a period of twenty (20) days. The notice shall be posted conspicuously and shall not be covered by other material, altered or defaced.

(d) The Department shall furnish the Regional Director and all known interested parties with the following:

(1) Names, addresses and telephone numbers of all labor organizations known to represent any of the employees in the unit described in 22 U.S.C. 4112;

(2) A copy of all relevant correspondence;

(3) A copy of existing or recently expired agreement(s) covering any of the employees described in the petition;

(4) A current alphabetized list of employees included in the unit, together with their job classifications; and

(5) A current alphabetized list of employees described in the petition as excluded from the unit, together with their job classifications.

(e) The parties are expected to meet as soon as possible after the expiration of the twenty (20) day posting period of the notice of petition as provided in paragraph (a) of this section and use their best efforts to secure agreement on the unit.

(f) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall take action which may consist of the following, as appropriate:

(1) Approve an agreement for consent election in the unit as provided under §1422.7;

(2) Approve a withdrawal request;

(3) Dismiss the petition; or

(4) Issue a notice of hearing.

(g) In processing a petition for clarification of unit or for amendment of recognition or certification, or dues allotment, where appropriate, the Regional Director shall prepare and serve a report and findings upon all parties to the proceedings and shall state therein, among other pertinent matters, the Regional Director's conclusions and the action contemplated. A party may file with the Board a request for review of such action of the Regional Director in accordance with

the procedures set forth in §1422.6(d). If no request for review is filed, or if one is filed and denied, the Regional Director shall take such action as may be appropriate, which may include issuing a clarification of unit or an amendment of recognition or certification, or determination of eligibility for dues allotment.

(h) A determination by the Regional Director to issue a notice of hearing shall not be subject to review by the Board.

§ 1422.5 Intervention.

(a) No labor organization will be permitted to intervene in any proceeding involving a petition filed pursuant to §1422.2 (a) or (b) unless it has submitted to the Regional Director a showing of interest of ten percent (10%) or more of the employees in the unit described in 22 U.S.C. 4112 together with an alphabetical list of names constituting such showing, or has submitted a current or recently expired agreement with the Department covering any of the employees involved, or has submitted evidence that it is currently recognized or certified exclusive representative of any of the employees involved: *Provided, however,* That an incumbent exclusive representative shall be deemed to be an intervenor in the proceeding unless it serves on the Regional Director a written disclaimer of any representation interest for the employees involved: *Provided, further,* That any such incumbent exclusive representative that declines to sign an agreement for consent election because of a disagreement on the matters contained in §1422.7(c) as decided by the Regional Director, or fails to appear at a hearing held pursuant to §1422.9, shall be denied its status as an intervenor.

(b) No labor organization may participate to any extent in any representation proceeding unless it has notified the Regional Director in writing, accompanied by its showing of interest as specified in paragraph (a) of this section, of its desire to intervene within twenty (20) days after the initial date of posting of the notice of petition as provided in §1422.4(a), unless good

cause is shown for extending the period. A copy of the request for intervention filed with the Regional Director, excluding the showing of interest, shall be served on all known interested parties, and a written statement of such service should be filed with the Regional Director: *Provided, however,* That an incumbent exclusive representative shall be deemed to be an intervenor in the proceeding in accordance with paragraph (a) of this section.

(c) Any labor organization seeking to intervene in a proceeding involving a petition for determination of eligibility for dues allotment filed pursuant to §1422.2(d) may intervene solely on the basis it claims to be the exclusive representative of some or all the employees specified in the petition and shall submit to the Regional Director a current or recently expired agreement with the Department covering any of the employees involved, or evidence that it is the currently recognized or certified exclusive representative of any of the employees involved.

(d) Any labor organization seeking to intervene must submit to the Regional Director a statement that it has submitted to the Department 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.

(e) The Regional Director may grant intervention to a labor organization in a proceeding involving a petition for clarification of unit or a petition for amendment of recognition or certification filed pursuant to §1422.2(c), or a petition for determination of eligibility for dues allotment filed pursuant to §1422.2(d), based on a showing that the proposed clarification, amendment or dues allotment affects that labor organizations's existing exclusively recognized unit(s) in that it would cover one or more employees who are included in such unit(s).

§1422.6 Withdrawal, dismissal or deferral of petitions; consolidation of cases; denial of intervention; review of action by Regional Director.

(a) If the Regional Director determines, after such investigation as the Regional Director deems necessary, that the petition has not been timely

filed, the unit is not as described in 22 U.S.C. 4114, the petitioner has not made a sufficient showing of interest, the petition is not otherwise actionable, or an intervention is not appropriate, the Regional Director may request the petitioner or intervenor to withdraw the petition or the request for intervention. In the absence of such withdrawal within a reasonable period of time, the Regional Director may dismiss the petition or deny the request for intervention.

(b) If the Regional Director determines, after investigation, that a valid issue has been raised by a challenge under §1422.2 (f) or (g), the Regional Director may take action which may consist of the following, as appropriate:

(1) Request the petitioner or intervenor to withdraw the petition or the request for intervention;

(2) Dismiss the petition and/or deny the request for intervention if a withdrawal request is not submitted within a reasonable period of time;

(3) Defer action on the petition or request for intervention until such time as issues raised by the challenges have been resolved pursuant to this part; or

(4) Consolidate such issues with the representation matter for resolution of all issues.

(c) If the Regional Director dismisses the petition and/or denies the request for intervention, the Regional Director shall serve on the petitioner or the party requesting intervention a written statement of the grounds for the dismissal or the denial, and serve a copy of such statement on the Department, and on the petitioner and any intervenors, as appropriate.

(d) The petitioner or party requesting intervention may obtain a review of such dismissal and/or denial by filing a request for review with the Board within twenty-five (25) days after service of the notice of such action. Copies of the request for review shall be served on the Regional Director and the other parties, and a statement of service shall be filed with the request for review. Requests for extensions of time shall be in writing and received by the Board not later than five (5) days before the date the request for review is due. The request for review shall contain a complete statement setting

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forth facts and reasons upon which the request is based. Any party may file an opposition to a request for review with the Board within ten (10) days after service of the request for review. Copies of the opposition to the request for review shall be served on the Regional Director and the other parties, and a statement of service shall be filed with the opposition to the request for review. The Board may issue a decision or ruling affirming or reversing the Regional Director in whole or in part or making any other disposition of the matter as it deems appropriate.

§ 1422.7 Agreement for consent election.

(a) All parties desiring to participate in an election being conducted pursuant to this section or § 1422.16, including intervenors who have met the requirements of § 1422.5, must sign an agreement providing for such an election on a form prescribed by the Board. An original and one (1) copy of the agreement shall be filed with the Regional Director.

(b) The Department, a petitioner, and any intervenors who have complied with the requirements set forth in § 1422.5 may agree that a secret ballot election shall be conducted among the employees in the unit to determine whether the employees desire to be represented for purposes of exclusive recognition by any or none of the labor organizations involved.

(c) The parties shall agree on the eligibility period for participation in the election, the date(s), hour(s), and place(s) of the election, the designations on the ballot and other related election procedures.

(d) In the event that the parties cannot agree on the matters contained in paragraph (c) of this section, the Regional Director, acting on behalf of the Board, shall decide these matters without prejudice to the right of a party to file objections to the procedural conduct of the election under § 1422.20(b).

(e) If the Regional Director approves the agreement, the election shall be conducted by the Department, as appropriate, under the supervision of the Regional Director, in accordance with § 1422.17.

(f) Any qualified intervenor who refuses to sign an agreement for an election may express its objections to the agreement in writing to the Regional Director. The Regional Director, after careful consideration of such objections, may approve the agreement or take such other action as the Regional Director deems appropriate.

§ 1422.8 Notice of hearing; contents; attachments; procedures.

(a) The Regional Director may cause a notice of hearing to be issued involving any matters related to the petition.

(b) The notice of hearing shall be served on all interested parties and shall include:

(1) The name of the Department, petitioner, and intervenors, if any;

(2) A statement of the time and place of the hearing, which shall be not less than twenty (20) days after service of the notice of hearing, except in extraordinary circumstances;

(3) A statement of the nature of the hearing; and

(4) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A copy of the petition shall be attached to the notice of hearing.

(d) Hearings on matters related to the petition pursuant to paragraph (a) of this section shall be conducted by a Hearing Officer in accordance with §§ 1422.9 through 1422.15.

§ 1422.9 Conduct of hearing.

(a) Hearings shall be conducted by a Hearing Officer and shall be open to the public unless otherwise ordered by the Hearing Officer. At any time another Hearing Officer may be substituted for the Hearing Officer previously presiding. It shall be the duty of the Hearing Officer to inquire fully into all matters in issue and the Hearing Officer shall obtain a full and complete record upon which the Board can make an appropriate decision. An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript may be examined in the appropriate regional office during normal working hours. Requests by parties for copies of transcripts should be made to the official hearing reporter.

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(b) Hearings under this section are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record. The rules of relevancy and materiality are paramount; there are no burdens of proof and the technical rules of evidence do not apply.

§ 1422.10 Motions.

(a) *General.* (1) A motion shall state briefly the order or relief sought and the grounds for the motion: *Provided, however,* That a motion to intervene will not be entertained by the Hearing Officer. Intervention will be permitted only to those who have met the requirements of §1422.5.

(2) A motion prior to, and after a hearing and any response thereto, shall be made in writing. A response shall be filed within five (5) days after service of the motion. An original and two (2) copies of such motion and any response thereto shall be filed and copies shall be served on the parties and the Regional Director. A statement of such service shall be filed with the original.

(3) During a hearing a motion may be made and responded to orally on the record.

(4) The right to make motions, or to make objections to rulings on motions, shall not be deemed waived by participation in the proceeding.

(5) All motions, rulings, and orders shall become part of the record.

(b) *Filing of motions.* (1) Motions and responses thereto prior to a hearing shall be filed with the Regional Director. During the hearing motions shall be made to the Hearing Officer.

(2) After the transfer of the case to the Board, except as otherwise provided, motions and responses thereto shall be filed with the Board: *Provided,* That following the close of a hearing, motions to correct the transcript should be filed with the Hearing Officer within ten (10) days after the transcript is received in the regional office.

(c) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them, or they may refer them to the Hearing Officer. A ruling by a Regional Director granting a motion to dismiss a petition may be reviewed by the Board upon the filing by the peti-

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tioner of a request for review pursuant to §1422.6(d).

(2) Hearing Officers shall rule, either orally on the record or in writing, on all motions made at the hearing or referred to them, except that a motion to dismiss a petition shall be referred for appropriate action at such time as the record is considered by the Regional Director or the Board. Rulings by a Hearing Officer reduced to writing shall be served on the parties.

(3) The Board shall consider the rulings by the Regional Director and the Hearing Officer when the case is transferred to it for decision.

§ 1422.11 Rights of the parties.

(a) A party shall have the right to appear at any hearing in person, by counsel, or by other representative, and to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) A party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Such oral argument shall not preclude a party from filing a brief under §1422.14.

§ 1422.12 Duties and powers of the Hearing Officer.

It shall be the duty of Hearing Officers to inquire fully into the facts as they relate to the matters before them. With respect to cases assigned to them between the time they are designated and the transfer of the case to the Board, Hearing Officers shall have the authority to:

(a) Grant requests for subpoenas pursuant to §1429.7 of this subchapter;

(b) Rule upon offers of proof and receive relevant evidence and stipulations of fact;

(c) Take or cause depositions or interrogatories to be taken whenever the ends of justice would be served thereby;

(d) Limit lines of questioning or testimony which are immaterial, irrelevant or unduly repetitious;

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(e) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct;

(f) Strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(g) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon the Hearing Officer's own motion;

(h) Dispose of procedural requests, motions, or similar matters, which shall be made part of the record of the proceedings, including motions referred to the Hearing Officer by the Regional Director and motions to amend petitions;

(i) Call and examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(j) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(k) Continue the hearing from day-to-day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(l) Rule on motions to correct the transcript which are received within ten (10) days after the transcript is received in the regional office; and

(m) Take any other action necessary under this section and not prohibited by the regulations in this subchapter.

§ 1422.13 Objections to conduct of hearing.

Any objection to the introduction of evidence may be stated orally or in writing and shall be accompanied by a short statement of the grounds of such objection, and be included in the record. No such objection shall be deemed waived by further participation in the hearing. Automatic exceptions will be allowed to all adverse rulings.

§ 1422.14 Filing of briefs.

A party desiring to file a brief with the Board shall file the original and three (3) copies within thirty (30) days from the close of the hearing. Copies thereof shall be served on all other parties to the proceeding. Requests for additional time in which to file a brief

under authority of this section shall be made to the Regional Director, in writing, and copies thereof shall be served on the other parties and a statement of such service shall be filed with the Regional Director. Requests for extension of time shall be in writing and received not later than five (5) days before the date such briefs are due. No reply brief may be filed in any proceeding except by special permission of the Board.

§ 1422.15 Transfer of case to the Board; contents of record.

Upon the close of the hearing the case is transferred automatically to the Board. The record of the proceeding shall include the petition, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing with any corrections thereto, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence, and any briefs or other documents submitted by the parties.

§ 1422.16 Decision.

The Board will issue a decision directing an election or dismissing the petition, or making other disposition of the matters before it.

§ 1422.17 Election procedure; request for authorized representation election observers.

This section governs all elections conducted under the supervision of the Regional Director pursuant to §1422.7 or §1422.16. The Regional Director may conduct elections in unusual circumstances in accordance with terms and conditions set forth in the notice of election.

(a) Appropriate notices of election shall be posted by the Department. Such notices shall set forth the details and procedures for the election, the unit described in 22 U.S.C. 4112, the eligibility period, the date(s), hour(s) and place(s) of the election and shall contain a sample ballot.

(b) The reproduction of any document purporting to be a copy of the official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face,

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which suggests either directly or indirectly to employees that the Board endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed.

(c) All elections shall be by secret ballot. An exclusive representative shall be chosen by a majority of the valid ballots cast.

(d) Whenever two or more labor organizations are included as choices in an election, any intervening labor organization may request the Regional Director to remove its name from the ballot. The request must be in writing and received not later than seven (7) days before the date of the election. Such request shall be subject to the approval of the Regional Director whose decision shall be final.

(e) In a proceeding involving an election to determine if a labor organization should cease to be the exclusive representative filed by the Department or any employee or employees or an individual acting on behalf of any employee(s) under §1422.2(b), an organization currently recognized or certified may not have its name removed from the ballot without having served the written request submitted pursuant to paragraph (d) of this section on all parties. Such request shall contain an express disclaimer of any representation interest among the employees in the unit.

(f) Any party may be represented at the polling place(s) by observers of its own selection, subject to such limitations as the Regional Director may prescribe.

(g) A party's request to the Regional Director for named observers shall be in writing and filed with the Regional Director not less than fifteen (15) days prior to an election to be supervised or conducted pursuant to this part. The request shall name and identify the authorized representation election observers sought, and state the reasons therefor. Copies thereof shall be served on the other parties and a written statement of such service shall be filed with the Regional Director. Within five (5) days after service of a copy of the request, a party may file objections to the request with the Regional Director and state the reasons therefor. Copies thereof shall be served on the other

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parties and a written statement of such service shall be filed with the Regional Director. The Regional Director shall rule upon the request not later than five (5) days prior to the date of the election. However, for good cause shown by a party, or on the Regional Director's own motion, the Regional Director may vary the time limits prescribed in this paragraph.

§ 1422.18 Challenged ballots.

Any party or the representative of the Board may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded.

§ 1422.19 Tally of ballots.

Upon the conclusion of the election, the Regional Director shall cause to be furnished to the parties a tally of ballots.

§ 1422.20 Certification; objections to election; determination on objections and challenged ballots.

(a) The Regional Director shall issue to the parties a certification of results of the election or a certification of representative, where appropriate: *Provided, however,* That no objections are filed within the time limit set forth below; the challenged ballots are insufficient in number to affect the results of the election; and no rerun election is to be held.

(b) Within twenty (20) days after the tally of ballots has been furnished, a party may file objections to the procedural conduct of the election, or to conduct which may have improperly affected the results of the election, setting forth a clear and concise statement of the reasons therefor. The objecting party shall bear the burden of proof at all stages of the proceeding regarding all matters raised in its objections. An original and two (2) copies of the objections shall be filed with the Regional Director and copies shall be served on the parties. A statement of such service shall be filed with the Regional Director. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Within

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ten (10) days after the filing of the objections, unless an extension of time has been granted by the Regional Director, the objecting party shall file with the Regional Director evidence, including signed statements, documents and other material supporting the objections.

(c) If objections are filed or challenged ballots are sufficient in number to affect the results of the election, the Regional Director shall investigate the objections or challenged ballots, or both.

(d) When the Regional Director determines that no relevant question of fact exists, the Regional Director (1) shall find whether improper conduct occurred of such a nature as to warrant the setting aside of the election and, if so, indicate an intention to set aside the election, or (2) shall rule on determinative challenged ballots, if any, or both. The Regional Director shall issue a report and findings on objections and/or challenged ballots which shall be served upon all parties to the proceeding. Such report and findings shall state therein any additional pertinent matters such as an intent to rerun the election or count ballots at a specified date, time, and place, and if appropriate, that the Regional Director will cause to be issued a revised tally of ballots.

(e) When the Regional Director determines that no relevant question of fact exists, but that a substantial question of interpretation or policy exists, the Regional Director shall notify the parties in the report and findings and transfer the case to the Board in accordance with of this subchapter.

(f) Any party aggrieved by the findings of a Regional Director with respect to objections to an election or challenged ballots may obtain a review of such action by the Board by following the procedure set forth in §1422.6(d) of this subchapter: *Provided, however,* That a determination by the Regional Director to issue a notice of hearing shall not be subject to review by the Board.

(g) Where it appears to the Regional Director that the objections or challenged ballots raise any relevant question of fact which may have affected the results of the election, the Re-

gional Director shall cause to be issued a notice of hearing. Hearings shall be conducted and decisions issued by Administrative Law Judges and exceptions and related submissions filed with the Board in accordance with §§1423.14 through 1423.28 of this subchapter excluding §1423.18 and §1423.19(j), with the following exceptions:

(1) The Administrative Law Judge may not recommend remedial action to be taken or notices to be posted, as provided under §1423.26(a); and

(2) Reference to “charge, complaint” in §1423.26(b) shall be read as “report and findings of the Regional Director.”

(h) At a hearing conducted pursuant to paragraph (g) of this section the party filing the objections shall have the burden of proving all matters alleged in its objections by a preponderance of the evidence. With respect to challenged ballots, no burden of proof is imposed on any party.

(i) The Board shall take action which may consist of the following, as appropriate:

(1) Issue a decision adopting, modifying, or rejecting the Administrative Law Judge’s decision;

(2) Issue a decision in any case involving a substantial question of interpretation or policy transferred pursuant to paragraph (e) of this section; or

(3) Issue a ruling with respect to a request for review filed pursuant to paragraph (f) of this section affirming or reversing, in whole or in part, the Regional Director’s findings, or make such other disposition as may be appropriate.

§ 1422.21 Preferential voting.

In any election in which more than two choices are on the ballot and no choice receives a majority of first preferences the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

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§ 1422.22 Inconclusive elections.

(a) An inconclusive election is one in which none of the choices on the ballot is declared the winner. If there are no challenged ballots that would affect the results of the election, the Regional Director may declare the election a nullity and may order another election providing for a selection from among the choices afforded in the previous ballot.

(b) Only one further election pursuant to this section may be held.

PART 1423—UNFAIR LABOR PRACTICE PROCEEDINGS

Sec.

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§ 1423.1 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices filed with the Board on or after February 15, 1981.

§ 1423.2 Informal proceedings.

(a) The purposes and policies of the Foreign Service Labor-Management Relations Statute 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 with the Board.

(b) In furtherance of the policy referred to in paragraph (a) of this section, and noting the six (6) month period of limitation set forth in 22 U.S.C. 4116(d), 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 issuance of a complaint by the Regional Director.

§ 1423.3 Who may file charges.

The Department or labor organization may be charged by any person with having engaged in or engaging in any unfair labor practice prohibited under 22 U.S.C. 4115.

§ 1423.4 Contents of the charge; supporting evidence and documents.

(a) A charge alleging a violation of 22 U.S.C. 4115 shall be submitted on forms prescribed by the Board 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 Department 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

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section(s) and subsection(s) of chapter 41 of title 22 of the United States Code 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 Foreign Service Impasse Disputes Panel or the Foreign Service Grievance Board for consideration or action; or (iii) involves a negotiability issue raised by the charging party in a petition pending before the Board pursuant to part 1424 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 Regional Director any supporting evidence and documents.

§ 1423.5 Selection of the unfair labor practice procedure or the negotiability procedure.

(a) 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 1424 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.

(b) 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 appropriate Regional

Director and all parties to both the unfair labor practice case and the negotiability case.

(c) Cases which solely involve an agency's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under part 1424 of this subchapter.

§ 1423.6 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 Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director for any such region.

(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 Regional Director. The Regional Director 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.

§ 1423.7 Investigation of charges.

(a) The Regional Director, on behalf of the General Counsel, shall conduct such investigation of the charge as the Regional Director deems necessary.

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

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

(d) The purposes and policies of the Foreign Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the voluntary submission of all potentially relevant information

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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.

§ 1423.8 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 §1423.6.

§ 1423.9 Action by the Regional Director.

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

- (1) Approve a request to withdraw a charge;
- (2) Refuse to issue a complaint;
- (3) Approve a written settlement agreement in accordance with the provisions of §1423.11;
- (4) Issue a complaint;
- (5) Upon agreement of all parties, transfer to the Board for decision, after issuance of a complaint, a stipulation of facts in accordance with the provisions of §1429.1(a) this subchapter; or
- (6) Withdraw a complaint.

(b) Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 22 U.S.C. 4109(d). The General Counsel will initiate and prosecute injunctive proceedings under 22 U.S.C. 4109(d) only upon approval of the Board. A determination by the General Counsel not to seek approval of the Board for such temporary relief is final and may not be applied to the Board.

(c) Upon a determination to issue a complaint, whenever it is deemed advisable by the Board to seek appropriate temporary relief (including a restraining order) under 22 U.S.C. 4109(d), the Regional Attorney or other designated agent of the Board to whom the matter has been referred will make application for appropriate temporary relief (including a restraining order) in the United States District Court for the District of Columbia. Such tem-

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porary relief will not be sought unless the record establishes probable cause that an unfair labor practice is being committed, or if such temporary relief will interfere with the ability of the Department to carry out its essential functions.

(d) Whenever temporary relief has been obtained pursuant to 22 U.S.C. 4109(d) and thereafter the Administrative Law Judge hearing the complaint, upon which the determination to seek such temporary relief was predicated, recommends dismissal of such complaint, in whole or in part, the Regional Attorney or other designated agent of the Board handling the case for the Board shall inform the United States District Court for the District of Columbia of the possible change in circumstances arising out of the decision of the Administrative Law Judge.

§ 1423.10 Determination not to issue complaint; review of action by the Regional Director.

(a) If the Regional Director 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 Regional Director may request the charging party to withdraw the charge, and in the absence of such withdrawal within a reasonable time, decline to issue a complaint.

(b) If the Regional Director determines not to issue a complaint on a charge which is not withdrawn, the Regional Director shall provide the parties with a written statement of the reasons for not issuing a complaint.

(c) The charging party may obtain a review of the Regional Director's decision not to issue a complaint by filing an appeal with the General Counsel within twenty-five (25) days after service of the Regional Director's decision. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based. A copy of the appeal shall also be filed with the Regional Director. In addition, the charging party should notify all other parties of the fact that an appeal has been taken, but any failure to give such notice shall not affect the validity of the appeal.

(d) A request for extension of time to file an appeal shall be in writing and received by the General Counsel not later than five (5) days before the date the appeal is due. The charging party should notify the Regional Director and all other parties that it has requested an extension of time in which to file an appeal, but any failure to give such notice shall not affect the validity of its request for an extension of time to file an appeal.

(e) The General Counsel may sustain the Regional Director's refusal to issue or re-issue a complaint, stating the grounds of affirmance, or may direct the Regional Director to take further action. The General Counsel's decision shall be served on all the parties. The decision of the General Counsel shall be final.

§ 1423.11 Settlement or adjustment of issues.

GENERAL SETTLEMENT POLICY

(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 Regional Director with whom the charge was filed, for consideration, all facts and arguments concerning offers of settlement, or proposals of adjustment.

PRECOMPLAINT INFORMAL SETTLEMENTS

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

(2) In the event that the charging party fails or refuses to become a party to an informal settlement agreement offered by the respondent, if the Re-

gional Director concludes that the offered settlement will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director and the latter shall decline to issue a complaint. The charging party may obtain a review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 1423.10(c). The General Counsel shall take action on such appeal as set forth in § 1423.10(e).

POST COMPLAINT SETTLEMENT POLICY

(c) Consistent with the policy reflected in paragraph (a) of this section, even after the issuance of a complaint, the Board favors the settlement of issues. Such settlements may be either informal or formal. Informal settlement agreements shall be accomplished as provided in paragraph (b) of this section. Formal settlement agreements are subject to the approval of the Board. In such formal settlement agreements, the parties shall 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 the formal settlement agreement also contains the respondent's consent to the Board application for the entry of a decree by the United States Court of Appeals for the District of Columbia enforcing the Board's order.

POST COMPLAINT—PREHEARING FORMAL SETTLEMENTS

(d)(1) If, after issuance of a complaint but before opening of the hearing, the charging party and the respondent enter into a formal settlement agreement, and such agreement is accepted by the Regional Director, the formal settlement agreement shall be submitted to the Board for approval.

(2) If, after issuance of a complaint but before opening of the hearing, the charging party fails or refuses to become a party to a formal settlement agreement offered by the respondent, and the Regional Director concludes

that the offered settlement will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director. The charging party will be so informed and provided a brief written statement by the Regional Director of the reasons therefor. The formal settlement agreement together with the charging party's objections, if any, and the Regional Director's written statements, shall be submitted to the Board for approval. The Board may approve or disapprove any formal settlement agreement or return the case to the Regional Director for other appropriate action.

POST COMPLAINT—PREHEARING INFORMAL SETTLEMENTS

(3) After the issuance of a complaint but before opening of the hearing, if the Regional Director concludes that it will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the Regional Director may withdraw the complaint and approve an informal settlement agreement pursuant to paragraph (b) of this section.

INFORMAL SETTLEMENTS AFTER THE OPENING OF THE HEARING

(e)(1) After issuance of a complaint and after opening of the hearing, if the Regional Director concludes that it will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the Regional Director may request the Administrative Law Judge for permission to withdraw the complaint and, having been granted such permission to withdraw the complaint, may approve an informal settlement pursuant to paragraph (b) of this section.

FORMAL SETTLEMENTS AFTER THE OPENING OF THE HEARING

(2) If, after issuance of a complaint and after opening of the hearing, the parties enter into a formal settlement agreement, the Regional Director may request the Administrative Law Judge to approve such formal 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 formal settlement agreement offered by the respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director. After the charging party is given an opportunity to state on the record or in writing the reasons for opposing the formal settlement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Board for approval. The Board may approve or disapprove any formal settlement agreement or return the case to the Administrative Law Judge for another appropriate action.

§ 1423.12 Issuance and contents of the complaint.

(a) After a charge is filed, if it appears to the Regional Director that formal proceedings in respect thereto should be instituted, the Regional Director shall issue and cause to be served on all other parties a formal complaint: *Provided, however,* That a determination by a Regional Director to issue a complaint shall not be subject to review.

(b) The complaint shall include:

- (1) Notice of the charge;
- (2) Notice that a hearing will be held before an Administrative Law Judge;
- (3) Notice of the time and place fixed for the hearing which shall not be earlier than five (5) days after service of the complaint;
- (4) A statement of the nature of the hearing;
- (5) A clear and concise statement of the facts upon which assertion of jurisdiction by the Board is predicated;
- (6) A reference to the particular sections of chapter 41 of title 22 of the United States Code and the rules and regulations involved; and
- (7) A clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate

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dates and places of such acts and the names of respondent's agents or other representatives by whom committed.

(c) The Chief Administrative Law Judge may, upon such judge's own motion or upon proper cause shown by any other party, extend the date of the hearing or may change the place at which it is to be held.

(d) A complaint may be amended, upon such terms as may be deemed just, prior to the hearing, by the Regional Director issuing the complaint; at the hearing and until the case has been transmitted to the Board pursuant to §1423.26, upon motion by the Administrative Law Judge designated to conduct the hearing; and after the case has been transmitted to the Board pursuant to §1423.26, upon motion by the Board at any time prior to the issuance of an order based thereon by the Board.

(e) Any such complaint may be withdrawn before the hearing by the Regional Director.

§ 1423.13 Answer to the complaint; extension of time for filing; amendment.

(a) Except in extraordinary circumstances as determined by the Regional Director, within twenty (20) days after the complaint is served upon the respondent, the respondent shall file the original and four (4) copies of the answer thereto, signed by the respondent or its representative, with the Regional Director who issued the complaint. The respondent shall serve a copy of the answer on the Chief Administrative Law Judge and on all other parties.

(b) The answer: (1) Shall specifically admit, deny, or explain each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) Shall state that the respondent admits all of the allegations in the complaint. Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Board, unless good cause to the contrary is shown.

(c) Upon the Regional Director's own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may by written

order extend the time within which the answer shall be filed.

(d) The answer may be amended by the respondent at any time prior to the hearing. During the hearing or subsequent thereto, the answer may be amended in any case where the complaint has been amended, within such period as may be fixed by the Administrative Law Judge or the Board. Whether or not the complaint has been amended, the answer may, in the discretion of the Administrative Law Judge or the Board, upon motion, be amended upon such terms and within such periods as may be fixed by the Administrative Law Judge or the Board.

§ 1423.14 Conduct of hearing.

(a) Hearings shall be conducted not earlier than five (5) days after the date on which the complaint is served. The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge. A substitute Administrative Law Judge may be designated at any time to take the place of the Administrative Law Judge previously designated to conduct the hearing. Such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5 of the United States Code, except that the parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by a court.

(b) An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript may be examined in the appropriate regional office during normal working hours. Requests by parties for copies of transcripts should be made to the official hearing reporter.

§ 1423.15 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 §1423.22. The motion shall state the grounds upon which such person claims involvement.

§ 1423.16 Rights of parties.

A party shall have the right to appear at any hearing in person, by counsel, or by other representative, and to

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examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, and to submit rebuttal evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

§ 1423.17 Rules of evidence.

The parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by court. Any evidence may be received, except that an Administrative Law Judge may exclude any evidence which is immaterial, irrelevant, unduly repetitious or customarily privileged.

§ 1423.18 Burden of proof before the Administrative Law Judge.

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.

§ 1423.19 Duties and powers of the Administrative Law Judge.

It shall be the duty of the Administrative Law Judge to inquire fully into the facts as they relate to the matter before such judge. Subject to the rules and regulations of the Board and the General Counsel, an Administrative Law Judge presiding at a hearing may:

- (a) Grant requests for subpoenas pursuant to §1429.7 of this subchapter;
- (b) Rule upon petitions to revoke subpoenas pursuant to §1429.7 of this subchapter;
- (c) Administer oaths and affirmations;
- (d) Take or order the taking of a deposition whenever the ends of justice would be served thereby;
- (e) Order responses to written interrogatories whenever the ends of justice would be served thereby unless it would interfere with the Board's and the General Counsel's policy of protecting the personal privacy and confidentiality of sources of information as set forth in §1423.7(d);

(f) Call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(g) Rule upon offers of proof and receive relevant evidence and stipulations of fact with respect to any issue;

(h) Limit lines of questioning or testimony which are immaterial, irrelevant, unduly repetitious, or customarily privileged;

(i) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in contemptuous conduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(j) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon the judge's own motion;

(k) Dispose of procedural requests, motions, or similar matters, including motions referred to the Administrative Law Judge by the Regional Director and motions for summary judgment or to amend pleadings; dismiss complaints or portions thereof; order hearings reopened; and, upon motion, order proceedings consolidated or severed prior to issuance of the Administrative Law Judge's decision;

(l) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(m) Continue the hearing from day-to-day or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(n) Prepare, serve and transmit the decision pursuant to §1423.26;

(o) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: *Provided, however,* That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(p) Approve requests for withdrawal of complaints based on informal settlements occurring after the opening of the hearing pursuant to §1423.11(e)(1),

and transmit formal settlement agreements to the Board for approval pursuant to § 1423.11(e) (2) and (3);

(q) Grant or deny requests made at the hearing to intervene and to present testimony;

(r) Correct or approve proposed corrections of the official transcript when deemed necessary;

(s) Sequester witnesses where appropriate; and

(t) Take any other action deemed necessary under the foregoing and not prohibited by the regulations in this subchapter.

§ 1423.20 Unavailability of Administrative Law Judges.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge shall designate another Administrative Law Judge for the purpose of further hearing or issuance of a decision on the record as made, or both.

§ 1423.21 Objection to conduct of hearing.

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Formal exceptions to adverse rulings are unnecessary. Automatic exceptions will be allowed to all adverse rulings. Except by special permission of the Board, and in view of § 1429.11 of this subchapter, rulings by the Administrative Law Judge shall not be appealed prior to the transmittal of the case to the Board, but shall be considered by the Board only upon the filing of exceptions to the Administrative Law Judge's decision in accordance with § 1423.27. In the discretion of the Administrative Law Judge, the hearing may be continued or adjourned pending any such request for special permission to appeal.

§ 1423.22 Motions.

(a) *Filing of Motions.* (1) Motions made prior to a hearing and any response thereto shall be made in writing and filed with the Regional Director: *Provided, however,* That after the issuance of a complaint by the Regional Director any motion to postpone the hearing should be filed with the Chief Administrative Law Judge at least five (5) days prior to the opening of the scheduled hearing. Motions made after the hearing opens and prior to the transmittal of the case to the Board shall be made in writing to the Administrative Law Judge or orally on the record. After the transmittal of the case to the Board, motions and any response thereto shall be filed in writing with the Board: *Provided, however,* That a motion to correct the transcript shall be filed with the Administrative Law Judge.

(2) A response to a motion shall be filed within five (5) days after service of the motion, unless otherwise directed.

(3) An original and two (2) copies of the motions and responses shall be filed, and copies shall be served on the parties. A statement of such service shall accompany the original.

(b) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them before the hearing, or they may refer them to the Chief Administrative Law Judge.

(2) Except by special permission of the Board, and in view of § 1429.11 of this subchapter, rulings by the Regional Director shall not be appealed prior to the transmittal of the case to the Board, but shall be considered by the Board when the case is transmitted to it for decision.

(3) Administrative Law Judges may rule on motions referred to them prior to the hearing and on motions filed after the beginning of the hearing and before the transmittal of the case to the Board. Such motions may be ruled upon by the Chief Administrative Law Judge in the absence of an Administrative Law Judge.

(4) Except by special permission of the Board, and in view of § 1429.11 of this subchapter, rulings by Administrative Law Judges shall not be appealed prior to the transmittal of the case to

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the Board, but shall be considered by the Board when the case is transmitted to it for decision. In the discretion of the Administrative Law Judge, the hearing may be continued or adjourned pending any such request for special permission to appeal.

§ 1423.23 Waiver of objections.

Any objection not made before an Administrative Law Judge shall be deemed waived.

§ 1423.24 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§ 1423.25 Filing of brief.

Any party desiring to submit a brief to the Administrative Law Judge shall file the original and two (2) copies within a reasonable time fixed by the Administrative Law Judge, but not in excess of thirty (30) days from the close of the hearing. Copies of any brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the Administrative Law Judge. Requests for additional time to file a brief shall be made to the Chief Administrative Law Judge, in writing, and copies thereof shall be served on the other parties. A statement of such service shall be furnished. Requests for extension of time shall be received not later than five (5) days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

§ 1423.26 Transmittal of the Administrative Law Judge's decision to the Board; exceptions.

(a) After the close of the hearing, and the receipt of brief, if any, the Administrative Law Judge shall prepare the decision expeditiously. The Administrative Law Judge shall prepare a decision even when the parties enter into a stipulation of fact at the hearing. The decision shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and conclusions as to the

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disposition of the case including, where appropriate, the remedial action to be taken and notices to be posted.

(b) The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Board including the judge's decision and the record. The record shall include the charge, complaint, service sheet, answer, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence and any briefs or other documents submitted by the parties.

(c) An original and three (3) copies of any exception to the Administrative Law Judge's decision and briefs in support of exceptions may be filed by any party with the Board within twenty-five (25) days after service of the decision: *Provided, however,* That the Board may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than five (5) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Board.

§ 1423.27 Contents of exceptions to the Administrative Law Judge's decision.

(a) Exceptions to an Administrative Law Judge's decision shall:

- (1) Set forth specifically the questions upon which exceptions are taken;
- (2) Identify that part of the Administrative Law Judge's decision to which objection is made; and
- (3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding or conclusion which is not specifically urged shall be deemed to have been waived. Any exception which fails to

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comply with the foregoing requirements may be disregarded.

§ 1423.28 Briefs in support of exceptions; oppositions to exceptions; cross-exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued; and

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Any party may file an opposition to exceptions and cross-exceptions and a supporting brief with the Board within ten (10) days after service of any exceptions to an Administrative Law Judge's decision. Copies of the opposition to exceptions and the cross-exceptions and any supporting briefs shall be served on all other parties, and a statement of service shall be filed with the opposition to exceptions and cross-exceptions and any supporting briefs.

§ 1423.29 Action by the Board.

(a) After considering the Administrative Law Judge's decision, the record, and any exceptions and related submissions filed, the Board shall issue its decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as it deems appropriate: *Provided, however,* That unless exceptions are filed which are timely and in accordance with §1423.27, the Board may, at its discretion, adopt without discussion the decision of the Administrative Law Judge, in which event the findings and conclusions of the Administrative Law Judge, as contained in such decision shall, upon appropriate notice to the parties, automatically become the decision of the Board.

(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 Department 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 (b) (1) through (3) of this section or such other action as will carry out the purpose of the Foreign Service Labor-Management Relations Statute.

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

§ 1423.30 Compliance with decisions and orders of the Board.

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

§ 1423.31 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 Regional Director that a controversy exists between the Board and a respondent which cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a backpay specification accompanied by a notice of hearing or a notice of hearing without a specification. The respondent shall, within twenty (20) days after the service of a backpay specification accompanied by a notice of hearing, file an answer thereto in accordance with §1423.13 with the Regional Director issuing such specification. 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

procedures provided in §§1423.14 to 1423.29, inclusive, shall be followed insofar as applicable.

PART 1424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

Sec.

- 1424.1 Conditions governing review.
- 1424.2 Who may file a petition.
- 1424.3 Time limits for filing.
- 1424.4 Content of petition; service.
- 1424.5 Selection of the unfair labor practice procedure or the negotiability procedure.
- 1424.6 Position of the Department; time limits for filing; service.
- 1424.7 Response of the exclusive representative; time limits for filing; service.
- 1424.8 Additional submissions to the Board.
- 1424.9 Hearing.
- 1424.10 Board decision and order; compliance.

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

SOURCE: 46 FR 45873, Sept. 15, 1981, unless otherwise noted.

§ 1424.1 Conditions governing review.

Pursuant to the authority contained in 22 U.S.C. 4107 (a)(3) and (c)(1) the Board will consider a direct appeal concerning whether a matter proposed to be bargained is within the obligation to bargain under the Foreign Service Act of 1980 as follows: If the Department is involved in collective bargaining with an exclusive representative and 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 applicable law, rule or regulation the exclusive representative may appeal the allegation to the Board when it disagrees with Department's allegation that the matter as proposed to be bargained is inconsistent with applicable law, rule or regulation.

§ 1424.2 Who may file a petition.

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

§ 1424.3 Time limits for filing.

(a) The time limit for filing an appeal under this part is fifteen (15) days from the Department's allegation, which was requested in writing by the exclusive representative, is served on the ex-

clusive representative. The Department 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 the exclusive representative under this part without a prior written allegation by the Department if a written allegation has not been served upon the exclusive representative within ten (10) days after the date of receipt by any Department bargaining representative at the negotiations of a written request for such allegation.

§ 1424.4 Content of petition; service.

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

(1) A statement setting forth the matter proposed to be bargained as submitted to the Department;

(2) A copy of all pertinent material, including the Department'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

(3) 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 1423 of this subchapter and pending before the General Counsel.

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

§ 1424.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to part 1423 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

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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 appropriate Regional Director and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve the Department's allegation that the duty bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under this part.

§ 1424.6 Position of the Department; time limits for filing; service.

(a) Within thirty (30) days after the date of receipt by the Secretary of a copy of the petition for review of a negotiability issue the Department 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 bargained; 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.

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

§ 1424.7 Response of the exclusive representative; time limits for filing; service.

(a) Within fifteen (15) days after the date of receipt by an exclusive representative of a copy of the Department's statement of position the exclusive representative shall file a full and detailed response stating its position and reasons for disagreeing with the Department's allegation that the matter, as proposed to be bargained, is inconsistent with applicable law or rule or regulation.

(b) A copy of the response of the exclusive representative including all attachments thereto shall be served on the Secretary and on the Department's representative of record in the proceedings before the Board.

§ 1424.8 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 §§ 1424.2 through 1424.7 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 such submission.

§ 1424.9 Hearing.

A hearing may be held, in the discretion of the Board, before a determination is made under 22 U.S.C. 4107(a)(3). If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

§ 1424.10 Board decision and order; compliance.

(a) Subject to the requirements of this part the Board shall expedite proceedings under this part to the extent practicable and shall issue to the exclusive representative and to the Department 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 Department 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 bargained, 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 Department, 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 Department or exclusive representative shall report to the appropriate Regional Director within a specified period failure to comply with an order that the Department shall upon request (or as otherwise agreed to by the parties) bargain concerning the disputed matter. If the Board finds such a failure to comply with its order, the Board shall take whatever action it deems necessary, including enforcement under 22 U.S.C. 4109(b).

PART 1425—REVIEW OF IMPLEMENTATION DISPUTE ACTIONS

Sec.

1425.1 Who may file an exception; time limits for filing; opposition; service.

1425.2 Content of exception.

1425.3 Grounds for review.

1425.4 Board decision.

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

SOURCE: 46 FR 45875, Sept. 15, 1981, unless otherwise noted.

§ 1425.1 Who may file an exception; time limits for filing; opposition; service.

(a) Either party to an appeal to the Foreign Service Grievance Board under the provisions of 22 U.S.C. 4114 may file an exception to the action of the Foreign Service Grievance Board taken pursuant to the appeal.

(b) The time limit for filing an exception to a Foreign Service Grievance Board action is thirty (30) days after such action is communicated to the parties.

(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.

§ 1425.2 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 decision or other document representing the action taken by the Foreign Service Grievance Board, together with legible copies of other pertinent documents pertaining to the action.

§ 1425.3 Grounds for review.

The Board will review an action of the Foreign Service Grievance Board to which an exception has been filed to determine if it 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.

§ 1425.4 Board decision.

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

PART 1427—GENERAL STATEMENTS OF POLICY OR GUIDANCE

Sec.

1427.1 Scope.

1427.2 Requests for general statements of policy or guidance.

1427.3 Content of request.

1427.4 Submissions from interested parties.

1427.5 Standards governing issuance of general statements of policy or guidance.

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

SOURCE: 46 FR 45875, Sept. 15, 1981, unless otherwise noted.

§ 1427.1 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 22 U.S.C. 4107(c)(2)(F).

§ 1427.2 Requests for general statements of policy or guidance.

(a) The head of the Department (or designee), the national president of a labor organization (or designee), or the president of a labor organization not affiliated with a national organization

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(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 the Foreign Service Labor-Management Relations Statute.

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

§ 1427.3 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 §1427.5 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 Foreign Service Labor-Management Statute.

(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, the Panel, and the Assistant Secretary, where appropriate.

§ 1427.4 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.

§ 1427.5 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 the Foreign Service Labor-Management Relations Statute.

(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 Foreign Service and would otherwise promote the purposes of the Foreign Service Labor-Management Relations Statute.

PART 1428—ENFORCEMENT OF ASSISTANT SECRETARY STANDARDS OF CONDUCT DECISIONS AND ORDERS

Sec.

1428.1 Scope.

1428.2 Petitions for enforcement.

1428.3 Board decision.

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

SOURCE: 46 FR 45875, Sept. 15, 1981, unless otherwise noted.

§ 1428.1 Scope.

This part sets forth procedures under which the Board, pursuant to 22 U.S.C. 4107(a)(5) enforce decisions and orders of the Assistant Secretary in standards of conduct matters arising under 5 U.S.C. 7120.

§ 1428.2 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 22 U.S.C. 4117. 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

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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

Subpart A—Miscellaneous

Sec.

- 1429.1 Transfer of cases to the Board.
- 1429.2 Transfer and consolidation of cases.
- 1429.3 Transfer of record.
- 1429.4 Referral of policy questions to the Board.
- 1429.5 Matters not previously presented; official notice.
- 1429.6 Oral argument.
- 1429.7 Subpoenas.
- 1429.8 Stay of action taken by Grievance Board; requests.
- 1429.9 Amicus curiae.
- 1429.10 Advisory opinions.
- 1429.11 Interlocutory appeals.
- 1429.12 Service of process and papers by the Board.
- 1429.13 Official time.
- 1429.14 Witness fees.
- 1429.15 Board requests for advisory opinions.
- 1429.16 General remedial authority.

Subpart B—General Requirements

- 1429.21 Computation of time for filing papers.
- 1429.22 Additional time after service by mail.
- 1429.23 Extension; waiver.
- 1429.24 Place and method of filing; acknowledgement.

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- 1429.25 Number of copies.
- 1429.26 Other documents.
- 1429.27 Service; statement of service.
- 1429.28 Petitions for amendment of regulations.

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.

SUBCHAPTER D—FOREIGN SERVICE IMPASSE DISPUTES PANEL

PART 1470—GENERAL

Subpart A—Purpose

Sec.

1470.1 Purpose.

Subpart B—Definitions

1470.2 Definitions.

AUTHORITY: 22 U.S.C. 4107(c), 4110.

SOURCE: 46 FR 45879, Sept. 15, 1981, unless otherwise noted.

Subpart A—Purpose

§ 1470.1 Purpose.

The regulations contained in this subchapter are intended to implement the provisions of section 4110 of title 22 of the United States Code. They prescribed procedures and methods which the Foreign Service Impasse Disputes Panel may utilize in the resolution of negotiation impasses.

Subpart B—Definitions

§ 1470.2 Definitions.

(a) The term *Department* as used herein shall have the meaning set forth in 22 U.S.C. 3902 and 4103, and §1421.4 of subchapter C of these regulations.

(b) The terms *labor organization*, and *conditions of employment* as used herein shall have the meanings set forth in 22 U.S.C. 4102.

(c) The term *Executive Director* means the Executive Director of the Federal Service Impasse Panel as defined in 5 U.S.C. 7119(c).

(d) The terms *designated representative* or *designee* of the Panel means a Panel member, a staff member, or other individual designated by the Panel to act on its behalf pursuant to 22 U.S.C. 4110(c)(1).

(e) The term *hearing* means a fact-finding hearing, arbitration hearing, or any other hearing procedure deemed necessary to accomplish the purposes of 22 U.S.C. 4110.

(f) The term *impasse* means that point in the negotiation of a collective bar-

gaining agreement at which the parties are deadlocked, notwithstanding their efforts to reach agreement by direct negotiations and other voluntary arrangements, if any.

(g) The term *Panel* means the Foreign Service Impasse Disputes Panel described in 22 U.S.C. 4110(a) or a quorum thereof.

(h) The term *party* means the Department or the labor organization participating in the negotiation of a collective bargaining agreement.

(i) The term *quorum* means three (3) or more members of the Panel.

(j) The term *voluntary arrangements* means any appropriate technique, not inconsistent with the provisions of 22 U.S.C. 4110, used by the parties to assist in the negotiation of a collective bargaining agreement.

PART 1471—PROCEDURES OF THE PANEL

Sec.

1471.1 Request for Panel consideration.

1471.2 Content of request.

1471.3 Where to file.

1471.4 Copies and service.

1471.5 Investigation of request; Panel recommendation and assistance.

1471.6 Preliminary hearing procedures.

1471.7 Conduct of hearing and prehearing conference.

1471.8 Report and recommendations.

1471.9 Duties of each party following receipt of recommendations.

1471.10 Final action by the Panel.

APPENDIX A TO CHAPTER XIV—CURRENT ADDRESSES AND GEOGRAPHIC JURISDICTIONS

APPENDIX B TO CHAPTER XIV—MEMORANDUM DESCRIBING THE AUTHORITY AND ASSIGNED RESPONSIBILITIES OF THE GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY UNDER THE FOREIGN SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

AUTHORITY: 22 U.S.C. 4107(c), 4110.

SOURCE: 46 FR 45879, Sept. 15, 1981, unless otherwise noted.

§ 1471.1 Request for Panel consideration.

If direct negotiations and other voluntary arrangements for settlement, if

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any, fail to resolve a negotiation impasse:

(a) Either party, or the parties jointly, may request the Panel to consider the matter by filing a request as hereinafter provided; or

(b) The Panel may, pursuant to 22 U.S.C. 4110(a), undertake consideration of the matter upon request of the Executive Director.

§ 1471.2 Content of request.

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

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

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

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

§ 1471.3 Where to file.

Requests to the Panel provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be directed to the Executive Director, Federal Service Impasses Panel, Suite 209, 1730 K Street NW., Washington, D.C. 20006.

§ 1471.4 Copies and service.

Any party submitting a request for Panel consideration of an impasse and any party submitting a response to such requests shall file an original and one copy with the Panel, shall serve a copy promptly on the other party to the dispute, and shall file a statement of such service with the Executive Director. When the Panel acts on a request from the Executive Director, it will notify the parties to the dispute.

§ 1471.5 Investigation of request; Panel recommendation and assistance.

Upon receipt of a request for consideration of an impasse, the Panel or its designee will promptly conduct an investigation. After due consideration, the Panel shall either:

(a) 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

(b) 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 Panel considers appropriate.

§ 1471.6 Preliminary hearing procedures.

When the Panel determines that a hearing is necessary under §1471.5 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 representative appointed by the Panel; and (5) the issues to be resolved.

§ 1471.7 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 (an original and one (1) copy of each brief, accompanied by a statement of service, shall be submitted to the designated representative of the Panel with a copy to the other party); 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 appropriated 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 Panel 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.

(c) An official reporter shall make the only official transcript of a hearing. Copies of the official transcript may be examined and copied at the Office of the Executive Director in accordance with part 1411 of this chapter.

§ 1471.8 Report and recommendations.

(a) When a report is issued after a hearing conducted pursuant to §§ 1471.6 and 1471.7, it normally 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.

§ 1471.9 Duties of each party following receipt of recommendations.

(a) Within thirty (30) 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.

(c) All papers submitted to the Executive Director under this section shall be filed in duplicate, along with a statement of service showing that a copy has been served on the other party to the dispute.

§ 1471.10 Final action by the Panel.

(a) If the parties do not arrive at a settlement as a result of or during action taken under §§ 1471.5(a)(2), 1471.6, 1471.7, 1471.8, and 1471.9, the Panel may take whatever action is necessary and not inconsistent with 22 U.S.C. 4110 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 22 U.S.C. 4110(c)(2), or it may appoint or designate one or more individuals pursuant to 22 U.S.C. 4110(c)(1) 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 § 1471.7 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

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term of the agreement, unless they agree otherwise.

(e) All papers submitted to the Executive Director under this section shall be filed in duplicate, along with a statement of service showing that a copy has been served on the other party to the dispute.

APPENDIX A TO CHAPTER XIV—CURRENT ADDRESSES AND GEOGRAPHIC JURISDICTIONS

(a) The Office address of the Board is as follows:

1900 E Street, NW., Room 7469, Washington, DC 20424. Telephone: Office of Executive Director, FTS—254-9595; Commercial—(202) 254-9595. Office of Operations, FTS—254-7362; Commercial—(202) 254-7362

(b) The Office address of the General Counsel is as follows:

1900 E Street, NW., Room 7469, Washington, DC 20424. Telephone: FTS—632-6264; Commercial—(202) 632-6264

(c) The Office address of the Chief Administrative Law Judge is as follows:

1111 20th Street, NW., Room 416, Washington, DC 20036. Telephone: FTS—653-7375; Commercial—(202) 653-7375

(d) The Office addresses of Regional Directors of the Authority are as follows:

- (1) *Boston Regional Office*, 441 Stuart Street, 9th Floor, Boston, MA 02116. Telephone: FTS—223-0920; Commercial—(617) 223-0920
- (2) *New York Regional Office*, 26 Federal Plaza, Room 241, New York, NY 10278. Telephone: FTS—264-4934; Commercial—(212) 264-4934
 - (i) *Philadelphia Sub-Regional Office*, 325 Chestnut Street, Mall Building, Room 5000, Philadelphia, PA 19106. Telephone: FTS—597-1527; Commercial—(215) 597-1527
- (3) *Washington Regional Office*, 1133 15th Street, NW., Suite 300, Washington, DC 20005. Telephone: FTS—653-8452; Commercial—(202) 653-8452
- (4) *Atlanta Regional Office*, 1776 Peachtree Street, NW., Suite 501, North Wing, Atlanta, GA 30309. Telephone: FTS—257-2324; Commercial—(404) 881-2324 or 881-2325
- (5) *Chicago Regional Office*, 175 W. Jackson Blvd., Suite 1359-A, Chicago, IL 60604. Telephone: FTS—886-3468 or 886-3469; Commercial—(312) 353-6306
 - (i) *Cleveland Sub-Regional Office*, 1301 Superior Avenue, Suite 230, Cleveland, OH 44114. Telephone: FTS—293-2114; Commercial—(216) 522-2114

(6) *Dallas Regional Office*, Downtown Post Office Station, Bryan and Ervay Streets, P.O. Box 2640, Dallas, TX 75221. Telephone: FTS—729-4996; Commercial—(214) 767-4996

(7) *Kansas City Regional Office*, City Center Square, 1100 Main Street, Suite 680, Kansas City, MO 64105. Telephone: FTS—758-2199; Commercial—(816) 374-2199

(i) *Denver Sub-Regional Office*, 1531 Stout Street, Suite 301, Denver, CO 80202. Telephone: FTS—327-5224; Commercial—(303) 837-5224

(8) *Los Angeles Regional Office*, 350 So. Figueroa Street, 10th Floor, World Trade Center, Los Angeles, CA 90071. Telephone: FTS—798-3805; Commercial—(213) 688-3805

(i) *Honolulu Sub-Regional Office*, Room 3206, 300 Alamoana Blvd., Honolulu, Hawaii 96850. Telephone: FTS—556-0220 through San Francisco FTS Operator; Commercial—(808) 546-8355

(9) *San Francisco Regional Office*, 530 Bush Street, Room 542, San Francisco, CA 94108. Telephone: FTS—556-8105; Commercial—(415) 556-8105

(e) The Office address of the Panel is as follows:

1730 K Street, NW., Suite 209, Washington, DC 20006. Telephone: FTS—653-7078; Commercial—(202) 653-7078

(f) The geographic jurisdictions of the Regional Directors of the Authority, are as follows:

State or other locality	Regional office
Alabama	Atlanta
Alaska	San Francisco
Arizona	Los Angeles
Arkansas	Dallas
California	Los Angeles/San Francisco ¹
Colorado	Kansas City
Connecticut	Boston
Delaware	New York
District of Columbia	Washington, DC
Florida	Atlanta
Georgia	Atlanta
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90°4E	Los Angeles
Idaho	San Francisco
Illinois	Chicago
Indiana	Chicago
Iowa	Kansas City
Kansas	Kansas City
Kentucky	Atlanta
Louisiana	Dallas
Maine	Boston

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State or other locality	Regional office
Maryland	Washington, DC
Massachusetts	Boston
Michigan	Chicago
Minnesota	Chicago
Mississippi	Atlanta
Missouri	Kansas City
Montana	Kansas City
Nebraska	Kansas City
Nevada	San Francisco
New Hampshire	Boston
New Jersey	New York
New Mexico	Dallas
New York	Boston/New York ²
North Carolina	Atlanta
North Dakota	Kansas City
Ohio	Chicago
Oklahoma	Dallas
Oregon	San Francisco
Pennsylvania	New York
Puerto Rico	New York
Rhode Island	Boston
South Carolina	Atlanta
South Dakota	Kansas City
Tennessee	Atlanta
Texas	Dallas
Utah	Kansas City
Vermont	Boston
Virginia	Washington, DC/ Atlanta ³
Washington	San Francisco
West Virginia	Washington, DC
Wisconsin	Chicago
Wyoming	Kansas City
Virgin Islands	New York
Panama/Limited FLRA jurisdiction	Dallas
All land and water areas east of the continents of North and South America to long. 90°4E, except the Virgin Islands, Panama (limited FLRA jurisdiction), Puerto Rico and coastal islands	Washington

¹San Francisco includes the following California counties: Monterey, Kings, Tulare, Inyo, and all counties north thereof. All counties in California south thereof are within the Los Angeles jurisdiction.

²New York includes the following counties: Ulster, Sullivan, Greene, Columbia and all counties south thereof. All counties in New York state north thereof are in the jurisdiction of Boston.

³Washington, DC includes the following counties in Virginia: Alexandria, Fairfax, Fauquier, Loudoun and Prince William. All other counties within Virginia are in the jurisdiction of Atlanta.

[46 FR 45881, Sept. 15, 1981]

APPENDIX B TO CHAPTER XIV—MEMORANDUM DESCRIBING THE AUTHORITY AND ASSIGNED RESPONSIBILITIES OF THE GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY UNDER THE FOREIGN SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

The statutory authority and responsibility of the General Counsel of the Federal Labor Relations Board are stated in section 4108 subsections (1), (2) and (3), of the Foreign Service Labor-Management Relations Statute as follows:

SECTION 4108 FUNCTIONS OF THE GENERAL COUNSEL

The General Counsel may—

(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Board as the Board may prescribe.

This memorandum is intended to describe the statutory authority and set forth the prescribed duties and authority of the General Counsel of the Federal Labor Relations Authority under the Foreign Service Statute, effective February 15, 1981.

I. *Case handling*— A. *Unfair labor practice cases*. The General Counsel has full and final authority and responsibility, on behalf of the Board, to accept and investigate charges filed, to enter into and approve the informal settlement of charges, to approve withdrawal requests, to dismiss charges, to determine matters concerning the consolidation and severance of cases before complaint issues, to issue complaints and notices of hearing, to appear before Administrative Law Judges in hearings on complaints and prosecute as provided in the Board's and the General Counsel's rules and regulations, and to initiate and prosecute injunction proceedings as provided for in section 4109(d) of the Foreign Service Statute. After issuance of the Administrative Law Judge's decision, the General Counsel may file exceptions and briefs and appear before the Board in oral argument, subject to the Board's and the General Counsel's rules and regulations.

B. *Compliance actions (injunction proceedings)*. The General Counsel is authorized and responsible, on behalf of the Board, to seek and effect compliance with the Board's orders and make such compliance reports to the Board as it may from time to time require.

On behalf of the Board, the General Counsel will, in full accordance with the directions of the Board, initiate and prosecute injunction proceedings as provided in section 4109(d) of the Foreign Service Statute: *Provided however*, That the General Counsel will initiate

and conduct injunction proceedings under section 4109(d) of the Foreign Service Statute only upon approval of the Board.

C. Representation cases. The General Counsel is authorized and has responsibility, on behalf of the Board, to receive and process, in accordance with the decisions of the Board and with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant to sections 4111 and 4118(c) of the Foreign Service Statute. The General Counsel is also authorized and has responsibility to supervise or conduct elections pursuant to section 4111 of the Foreign Service Statute and to enter into consent election agreements in accordance with section 4111(g) of the Foreign Service Statute.

The authority and responsibility of the General Counsel in representation cases shall extend, in accordance with the rules and regulations of the Board and the General Counsel, to all phases of the investigation through the conclusion of the hearing (if a hearing should be necessary to resolve disputed issues), but all matters involving decisional action after such hearings are reserved by the Board to itself. In the event a direction of election should issue by the Board, the authority and responsibility of the General Counsel, as herein prescribed, shall attach to the conduct of the ordered election, the initial determination of the validity of challenges and objections to the conduct of the election and other similar matters, except that if appeals shall be taken from the General Counsel's action on the validity of challenges and objections, such appeals will be directed to and decided by the Board in accordance with its procedural requirements. If challenged ballots would not affect the election results and if no objections are filed within five days after the conduct of the Board-directed election under the provisions of section 4111 of the Foreign Service Statute, the General Counsel is authorized and has responsibility, on behalf of the Board, to certify to the parties the results of the election in accordance with regulations prescribed by the Board and the General Counsel.

Appeals from the refusal of the General Counsel to issue a notice of hearing, from the conclusions contained in a report and findings issued by the General Counsel, or from the dismissal by the General Counsel of any petition, will be directed to and decided by the Board, in accordance with its procedural requirements.

In processing election petitions filed pursuant to section 4111 of the Foreign Service Statute and petitions filed pursuant to section 4118(c) of the Foreign Service Statute, the General Counsel is authorized to conduct an appropriate investigation as to the authenticity of the prescribed showing of interest and, upon making a determination to proceed, where appropriate, to supervise or conduct a secret ballot election or certify the validity of a petition for determination of eligibility for dues allotment. After an election, if there are no challenges or objections which require a hearing by the Board, the General Counsel shall certify the results thereof, with appropriate copies lodged in the Washington, DC, files of the Board.

II. Liaison with other governmental agencies. The General Counsel is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison and arrangements with the Office of the Assistant Secretary of Labor for Labor-Management Relations with reference to the financial and other reports required to be filed with the Assistant Secretary pursuant to section 4117 of the Foreign Service Statute and the availability to the Board and the General Counsel of the contents thereof. The General Counsel is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison with the Foreign Service Grievance Board with respect to functions which may be performed by the Foreign Service Grievance Board.

III. To the extent that the above-described duties, powers and authority rest by statute with the Board, the foregoing statement constitutes a prescription and assignment of such duties, powers and authority, whether or not so specified.

[46 FR 45882, Sept. 15, 1981]