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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2423 and 2429

Unfair Labor Practice Proceedings: Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority amends portions of its regulations regarding unfair labor practice (ULP) proceedings (Part 2423) and miscellaneous and general requirements (Part 2429). The amendments are designed to streamline the existing regulations, facilitate dispute resolution, clarify the matters to be adjudicated, provide more flexibility to the participants in the ULP process, simplify the filing and service requirements, and promote confidence in ULP proceedings. Implementation of these changes enhances the ULP process, by raising the level of advocacy and assisting in the adjudication and resolution of ULP claims.

EFFECTIVE DATE: October 1, 1997.

ADDRESSES: Written comments received are available for public inspection during normal business hours at the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW., Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of Case Control, at the address listed above or by telephone # (202) 482–6540.

SUPPLEMENTARY INFORMATION:

Background

The Federal Labor Relations Authority proposed revisions to Part 2423 of its regulations addressing unfair labor practice (''ULP'') proceedings, as well as to related miscellaneous and general requirements located at Part 2429 of its regulations. The proposed rule was published in the **Federal Register** and public comment was solicited on the proposed changes (62 FR 28378) (May 23, 1997). Prior to proposing the rule, the Federal Labor Relations Authority established a task force to evaluate the policies and procedures concerning the processing of an unfair labor practice complaint. The task force conducted focus groups and invited the public to submit written recommendations on ways to improve the post complaint ULP process (60 FR 11057) (Mar. 1, 1995).

Concurrent with issuing the proposed rule, the Authority invited comment on the proposed rule in two ways: by convening focus group meetings, in June 1997 in Chicago, IL and in Washington, DC, and by offering the public an opportunity to submit written comments. All comments, whether expressed orally in a focus group or submitted in writing, have been considered prior to publishing the final rule, although all comments are not specifically addressed in the section-by-section analysis, below. Revisions to the proposed rule are driven for the most part by suggestions and comments received from the public.

One commenter stated that in order to ensure that serious consideration was afforded to suggested revisions, the regulations should not be finalized until a lengthy time period after the close of the comment period. The process of revising the Authority's ULP regulations has been anything but precipitous. On the contrary, publication of the final rule marks the culmination of years of careful consideration of how to better the ULP process. The Authority has afforded full consideration to the advice offered by commenters. The improvements these essential and needed changes bring to the ULP process should be implemented without further delay.

Those commenters who suggested changes to subpart A of part 2423 are reminded that it will be revised during 1998. As a result, comments concerning subpart A (Filing, Investigating, Resolving, and Acting on Charges) will not be addressed at this time.

Sectional Analyses

Sectional analyses of the amendments and revisions to Part 2423—Unfair Labor Practice Proceedings and Part 2429—Miscellaneous and General Requirements are as follows:

Part 2423—Unfair Labor Practice Proceedings

Section 2423.1—Final rule is amended to reflect the October 1, 1997 effective date of subparts B, C, and D of this part.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

Sections 2423.2–2423.11—Final rule as promulgated is the same as proposed rule.

Sections 2423.12–2423.19—These sections are reserved.

Subpart B—Post Complaint, Prehearing Procedures

Section 2423.20—Numerous commenters responded favorably to the transfer of various functions from the Regional Director to the Office of the Administrative Law Judge reflected in this and subsequent sections. Commenters acknowledged that this transfer promoted confidence in the system by properly recognizing the distinctions between prosecutorial and adjudicatory responsibilities.

One proposed change, having both support and opposition, was the proposal in paragraph (a) that the complaint specifically set out the ''relief sought.'' Those in favor of this change believed that this requirement would clarify issues and notify the charged parties of what was being requested of them. Those opposed contended that such a pleading requirement could hinder settlement and might be interpreted as placing a ceiling upon the remedy that ultimately could be awarded in the case. It was suggested that this pleading requirement would lead to complaints listing every conceivable remedy or, alternatively, multiple amendments of the complaint. Suggesters recommended a less onerous pleading requirement, such as requiring the pleading of only non-traditional remedies, in order to avoid ''locking'' the parties into positions that would jeopardize settlement discussions.

In addressing these concerns, the final regulation eliminates the requirement to plead the remedy sought in the complaint, but instead requires disclosing the relief sought prior to the hearing pursuant to § 2423.23. This modification was made in order to effectuate the underlying goal of

providing notice and clarification to the respondent, while, at the same time, allowing the parties the freedom to pursue resolution of the complaint without having established positions concerning the remedy desired.

It was suggested that ''affirmative defenses'' be made a part of the respondent's answer. Along these lines, one commenter suggested an amendment that any affirmative defenses not raised in the answer would be waived. On the other hand, one commenter indicated that even a ''no comment'' answer from a respondent should be an acceptable reply, at least until the General Counsel had proven his or her case. The final regulation remains unchanged, in this regard, from the proposed rule, requiring only that the respondent either admit, deny or explain allegations contained in the complaint. In seeking to balance the respective interests, the final rule treats the respondent's obligation to set out affirmative defenses in the same way that it addresses the General Counsel's obligation to describe the relief sought. As a result, at the prehearing disclosure stage, governed by § 2423.23, the respondent will be required to set forth any and all defenses. The regulation thus should serve the underlying goal of putting the parties on notice as to what the defenses are, without requiring more than is necessary in the answer itself. As the previous paragraph indicates, the interests of all parties are served by having the remedies and defenses set forth at the prehearing stage.

One commenter suggested that the Authority include a sentence in paragraphs (a) and (b) regarding the service and filing requirements. As stated in the proposed rule and unchanged in the final rule, all pleadings are subject to the filing and service requirements of part 2429 of the subchapter.

One commenter noted that in unusual circumstances, a hearing might begin less than 20 days after service of the complaint. In such cases, under the regulation as proposed, the answer would not have been filed and served prior to the beginning of the hearing. Paragraphs (b) and (c) have been revised to respond to this contingency and provide that the answer, and any amendments to the answer, must be filed and served, in any event, prior to the beginning of the hearing.

Paragraph (d) has been changed to note that the terms ''Administrative Law Judge'' and ''Judge'' are synonymous for the purposes of subparts B, C, and D.

Section 2423.21—Commenters favored the filing of motions with the Judge rather than with the Regional Director, as was required under the prior regulations. In response to commenters' concerns regarding the prehearing time deadlines set forth in the proposed rules (for prehearing disclosure, motions, and subpoenas), time deadlines are changed throughout the final rule. The final rule changes the time for filing of motions from 15 days before or after the specified event to 10 days. For prehearing motions, this 10-day prior to hearing deadline retains the same number of days as the current rule (5 CFR 2423.22(a)). The time for responses is unchanged. It is also noteworthy that the Judge has the authority to vary the timeliness provisions governing the filing of motions as necessary to meet the needs of a given case.

One commenter wanted to verify that all motions, including motions for summary judgment, are subject to filing and service requirements of part 2429. To ensure that this is understood, the last sentence of paragraph (a) has been clarified.

Paragraph (b) of this section has been subdivided into four parts in order to accommodate suggestions of commenters. As a result, the final regulation clarifies that responses to motions made during the hearing shall be made prior to the close of hearing, unless otherwise directed by the Judge, and that motions to correct the transcript shall be filed within 10 days of receiving the transcript, rather than within 15 days of hearing. Subsection (c) also now states that responses to motions filed with the Authority shall be filed within 5 days after service of the motion.

The reference to § 2429.11 in paragraph (d) has been changed to § 2423.31(c) as a result of the relocation of the unfair labor practice interlocutory appeals procedures to part 2423.

Section 2423.22—Final rule as promulgated is the same as proposed rule.

Section 2423.23—Most commenters favored early disclosure of information prior to hearing, believing that such an exchange would facilitate an early resolution of cases and avert ''trial by ambush.'' One commenter disagreed, stating that early exchange of information would not lead to earlier resolution via settlements; was unnecessary because the parties already generally know what evidence and arguments others in the case will offer; and would require extensive prehearing preparation far in advance of the date of hearing. Having carefully considered these opinions, the Authority continues to view prehearing disclosure as an important device that will facilitate dispute resolution and clarify the matters to be adjudicated. The parties are more likely to resolve disputes earlier in the ULP process if they are obliged to focus on their own and their opponents' evidence and theory of the case in advance of the hearing. By settling earlier, the Authority, the parties, and the witnesses avoid expending resources by preparing for and traveling to trials that are averted by settlement on the courthouse steps. On the other hand, if the dispute is not settled, early prehearing disclosure will enable the parties to knowledgeably and more efficiently prepare their cases without having to guess what evidence or theories others in the litigation will offer.

As noted in the comment to § 2423.21, several commenters suggested that the time deadlines in the proposed regulations should be modified. With regard to the number of days prior to the hearing that information is disclosed, although some favored the proposed 21 days, others asserted that 21 days was insufficient, and still others stated that 21 days was too far in advance of the hearing. One commenter suggested that disclosure should be 7 days prior to the prehearing conference. Suggestions to lengthen the time have been rejected because such a change would unduly increase the time prior to the hearing during which the parties would have to devote resources to case preparation. However, recommendations to truncate the period between disclosure and the hearing have been adopted.

The final rule changes the prescribed disclosure period from 21 to 14 days. Changing the time to 14 days will still allow for timely illumination of strategy concerning other prehearing activities, e.g., subpoenas or motions, as those time deadlines also have been adjusted based upon the change in the time for information disclosure. The 14-day deadline should also allay some commenters' concerns regarding prehearing administrative burdens and the potential that information will be unnecessarily prepared and exchanged in cases that may well be resolved before hearing.

As noted earlier in commentary concerning § 2423.21, if 14 days is not deemed an appropriate time to exchange information in a given case, a party may move the Judge, pursuant to § 2423.24(c)(1)(ii), to change the disclosure date or any other prehearing dates where appropriate. The final regulation has only established 14 days as the time period that will be controlling absent the changing of the time line by the Judge.

In response to queries about the meaning of the term ''shall exchange,'' the final regulations indicate that parties shall serve the documents on any other party in accordance with § 2429.27(b). This should clarify both acceptable methods of exchange and the fact that all parties—the General Counsel, the Respondent, and the Charging Party—are required to disclose and be served. With respect to such information, several commenters suggested that the Judge be served along with the parties, and that copies served on the Judge be made exhibits at hearing. The final regulation declines to provide for service to the Judge for the reason that disclosure is intended to put the parties on notice and not to create a record of the information exchanged in disclosure. The Judge will thus not need to review the information exchanged unless there is a dispute over disclosure, which would normally be handled at the prehearing conference, pursuant to § 2423.24(d).

As prompted by suggestions, the language relating to disclosure of documents has been modified to reflect that it only includes documents proposed to be offered into evidence. Thus, the requirement for document disclosure in paragraph (b) mirrors the requirement for witness disclosure in paragraph (a) in that both now refer to disclosing proposed lists of both witnesses and documents.

One commenter questioned the meaning of the requirement to disclose ''synopsis of testimony,'' suggesting that this phrase could be subjected to different interpretations, e.g., the facts about which the witness would testify, a summary of the testimony the witness would offer, or the allegation(s) in the complaint the witness would address. The first two examples would satisfy the ''synopsis of testimony'' requirement, but the third would be insufficient because it would not disclose the substance of the expected testimony.

One commenter suggested that in addition to the synopsis of testimony, a witness's prehearing statements should also be exchanged prior to the hearing. The final regulation declines to adopt, at this time, this suggested addition to the disclosure requirement; instead, until this matter is fully litigated, the Authority will maintain the rule presently in effect governing release of prehearing statements. Under long-settled current law, and pursuant to the Jencks Rule (*Jencks* v. *United States*, 353 U.S. 657 (1957)), a written statement previously obtained prior to the hearing is disclosable for the purpose of cross-examination after the witness has testified. *Department of Treasury, Internal Revenue Service, Memphis Service Center,* 16 FLRA 687 (1984). Of course, under the final rule, if parties have taken a statement from a witness and intend to introduce the written statement itself into evidence, such a statement will have to be disclosed in advance of the hearing pursuant to paragraph (b).

Some commenters recommended that the regulations specify the consequences for failing to comply with disclosure requirements. The final rule does not adopt this suggestion, but instead reserves to the Judge's discretion the power to impose sanctions in appropriate cases. Offering the Judge such discretion answers the concern of one commenter that sanctions would too often be levied against unsophisticated parties. The expectation is that the Judge will exercise prudence, consider all relevant factors, and impose appropriate sanctions when parties fail to act in good faith in meeting their respective prehearing disclosure obligations.

Finally, in response to suggestions, three changes have been made to paragraph (c). First, and as noted earlier, the final rule adds the relief sought to the information that must be disclosed 14 days prior to the hearing. Second, the word ''charges'' has been replaced with the more appropriate phrase ''allegations in the complaint.'' Third, several commenters noted that the requirement to disclose citations relied upon in support of a theory of the case or a defense is overly broad and could be interpreted to prevent a party from relying on a case precedent at a later stage in the litigation if the case was not exchanged in disclosure. The final regulation has been modified to delete the requirement that parties list citations to precedent.

Section 2423.24—Language has been added into paragraphs (b), (c), and (e) to reflect that the changing of hearing date or place, the issuing of a prehearing order, and imposition of sanctions may be ordered either by the Judge in his or her discretion, or on the motion of a party.

The final rule does not accept the recommendation of a commenter that paragraph (b) of the regulation recognize the authority of the Regional Director to order a change in the date, time, or place of the hearing when directed by the Judge. Any orders making such changes must be issued by the Judge.

Commenters generally, with one exception, favored prehearing conferences; one commenter suggested requiring prehearing conferences in every case. The Authority has concluded that at this time it is not necessary to mandate a prehearing conference in every case. As a result, the final rule in paragraph (d) retains the procedure that was proposed, with the Judge scheduling and conducting a conference at least 7 days before the hearing unless the Judge determines that a conference is not necessary and no party has moved for a prehearing conference. This process for the holding of prehearing conferences will be monitored; if it proves unwieldy, it will be altered. Many commenters objected to the Judge having the authority to assign one of the parties to draft a summary of the prehearing conference. This objection has been accommodated in the final regulations; thus, when a summary of a conference is necessary, it will be prepared and filed in the record by the Judge. In response to a commenter's suggestion, paragraph (d)(4) has been broadened to clarify that petitions to revoke subpoenas are a matter that may be considered at a prehearing conference.

Several commenters suggested that the Judge's sanction authority should be more expressly regulated. As noted in the commentary concerning § 2423.23, the final rule on sanctions does not establish specific penalties and procedures, opting instead to leave these matters to the discretion of the Judge. However, paragraph (e) has been clarified to reflect that an important purpose of sanctions is to ensure that a party's failing to comply with subpart B or C is not condoned. Also, in paragraph (e)(1), theories of violation, specific relief, and specific defenses have been included among the examples of items that a party may be precluded from pursuing if that party has failed to satisfy prehearing obligations.

Section 2423.25—One commenter suggested that implementation of an informal settlement be stayed pending the appeal by a charging party who objected to the settlement between the Regional Director and the respondent. Since this is already the practice under the current regulation, which has not been substantively altered by the proposed rule change, it does not appear necessary that stays be regulated by the final rule.

The settlement judge program, set out in paragraph (d), was favored, with commenters believing it will increase chances of settlement and reduce unnecessary litigation expense. Three suggestions have been incorporated in the final rule. First, the word ''informal'' has been stricken from the last sentence in the introductory paragraph, thus permitting a settlement official to conduct negotiations for any type of settlement. Second, the final rule has

been modified to clarify that information derived from settlement discussions will be inadmissible rather than confidential; thus, the final rule does not preclude the parties from discussing settlement. Third, the proposed paragraph (3), as modified, has been subdivided into two separate paragraphs.

Section 2423.26—Responding to a concern that motions for stipulations will add an additional step and time to the process, the final rule provides that such motions will be ruled upon expeditiously. The final rule also notes that individual briefs are required and must be filed within 30 days of the filing of the joint motion.

In response to suggestions, the final rule clarifies when stipulations to the Authority will be permitted. One commenter suggested that stipulations to the Authority be permitted when a United States Court of Appeals has already ruled on the legal issue in the case. It might well be that a motion to stipulate would be granted in such a case; however, it is not clear that a recommended decision of the Judge would be of no assistance in the resolution of every case falling into this category—especially if the Authority had not had an opportunity to consider the court's decision. Instead, the final rule permits stipulations when an adequate basis for application of established precedent exists. The final rule also provides the Authority discretion to grant the motion to stipulate in unusual circumstances.

Lastly, and also in response to comment, paragraph (d) has been added to the section noting that once a motion to stipulate has been granted, the Authority will adjudicate the case based upon the information in the stipulation and the briefs. It is anticipated that this provision will enable the Authority to avoid remanding cases to the parties for additions to the stipulation.

Section 2423.27—Most comments noted that codification of the summary judgment procedures should promote judicial economy.

As noted earlier, motions for summary judgment, like all written motions, are subject to the requirements of § 2423.21. In keeping with the time deadline changes in that section, the time for filing motions for summary judgment has changed from 15 days to 10 days prior to the hearing. In order to ensure that summary judgment motions do not interfere with the overall post complaint process, responses to motions for summary judgment must be filed within 5 days after the date of service of the motion instead of 10 days after service.

In response to a concern that such motions must, in every case, be filed at least 10 days prior to hearing, the final rule permits, with the approval of the Judge, motions for summary judgment to be filed less than 10 days in advance of the hearing. One commenter suggested that a party moving for summary judgment shortly in advance of a hearing be required to move for a postponement of the hearing so that those opposing the summary judgment motion would not be overloaded with the dual obligations of responding to the motion and preparing for trial. Although this suggestion has not been adopted, it is noted that any party, whether a movant for or an opponent of a summary judgment, may move the Judge to postpone the hearing pending a ruling on the motion for summary judgment.

The reference to § 2429.11 in paragraph (c) has been changed to § 2423.31(c) as a result of the relocation of the unfair labor practice interlocutory appeals procedures to part 2423.

Section 2423.28—Based upon one commenter's suggestion and in furtherance of unifying the rules governing the ULP process and ease of reference, the procedures governing subpoenas in an unfair labor practice proceeding have been moved from § 2429.7 to this section of the final rule. This section has been modeled after the revised § 2429.7 governing subpoena procedures in other FLRA proceedings.

Also, the time for requesting subpoenas has been adjusted to correspond with other prehearing disclosure deadlines, as discussed in the commentary concerning §§ 2423.21 and 2423.23. Thus, subpoena requests must be made not less than 10 days prior to the hearing, instead of the 15 days in the proposed regulations.

With regard to the subpoena process, many commenters suggested that subpoenas be issued ministerially with a minimum of involvement by the Judge in the issuance. The final rule addresses this concern in paragraph (c) by providing that subpoena requests filed with the Office of Administrative Law Judges will be automatically issued on an ex parte basis. The requesting party will be responsible for completion of the subpoena form and service of the subpoena. This change should avoid delays in issuing subpoenas and eliminate the potential problems of a Judge having to revisit a previous decision to issue a subpoena when a petition to revoke is filed.

In response to concerns about service, language has been added defining proper ''service'' for the subpoena. In the final rule, the process for service of a subpoena is different from the general service provisions of part 2429, in that registered or certified mail or personal delivery is required.

Section 2423.29—This section is reserved.

Subpart C—Hearing Procedures

Section 2423.30—Paragraph (b) has been edited for clarity in the final rule.

Section 2423.31—The final sentence in paragraph (a) has been edited for clarity in the final rule.

One commenter suggested that the last sentence in paragraph (b) could be interpreted as precluding a Judge from following the rules of evidence. This is neither the meaning nor intent of the sentence. The last sentence in paragraph (b) should be read in context of the entire paragraph. As such, the rules of evidence are a guide, but do not strictly govern the proceeding.

The final rule moves procedures governing interlocutory appeals from § 2429.11 to paragraph (c) of this section. This reorganization has been accomplished for the same reasons referenced in the commentary to the newly established § 2423.28, i.e., unifying unfair labor practice rules and ease of reference. Although provisions governing interlocutory appeals have been located in subpart C, which governs hearing procedures, these procedures would be equally applicable if a party were to challenge a prehearing determination of the Judge.

Substantively, one commenter suggested that the regulation require that the hearing be stayed while the certified interlocutory appeal is before the Authority. The final rule does not mandate such a stay, leaving this matter to the discretion of the Judge or the Authority. This flexibility would, in appropriate circumstances, allow segregable portions of a hearing to continue while an interlocutory appeal proceeded.

Voluminous commentary was received on the issue of bench decisions. While commenters appreciated the availability of such an option, most objected to the requirement that parties waive their rights to file exceptions and to obtain other forms of review. These concerns should be alleviated by the modifications contained in the final rule which is now denominated as paragraph (d) of this section. Under the final rule, all of the parties may jointly move the Judge to issue an oral bench decision at the close of the hearing. In filing such a motion, the parties waive their rights to file a posthearing brief to the Judge. If the Judge, relying on judicial discretion, grants the joint motion, the Judge will

render an oral decision which shall satisfy the requirements of § 2423.34(a)(1)–(5). Subsequent to the hearing, the Judge's oral decision will be transcribed. This transcription, together with any supplementary matter the Judge deems necessary, will be the written recommended decision which the Judge shall transmit to the Authority and serve on the parties. Exceptions to this recommended decision will be permitted. In response to queries about the relevance of ''the public interest'' to this process, the final rule has deleted this phrase.

The last paragraph in the section, formerly denominated as (d), has been redesignated as (e) in the final rule.

Section 2423.32—Comment was received noting that the proposed rule's requirement that the respondent have the burden of establishing defenses would cause confusion and controversy. One commenter noted that the respondent's burden varies depending upon the type of case and is not subject to a generic requirement. It was also pointed out that a respondent's burden is often a ''burden of going forward'' rather than a ''burden of proof.'' Noting these comments, and recognizing that the General Counsel has and retains the burden of proof in all cases, the final rule clarifies that the respondent shall have the burden of proving any ''affirmative'' defenses that it raises. Use of this more specific term serves to remind the respondent of its burden concerning certain defenses that it chooses to raise. This language is not intended to impose any additional burden on respondents; rather, it notifies respondents of their burden which is established in the case law.

Section 2423.33—The final rule is modified to account for waiver of the right to file posthearing briefs when bench decisions are issued, pursuant to § 2423.31(d).

Section 2423.34—In response to suggestions, summaries of prehearing conferences, as well as the basis for any ruling on sanctions, are specifically made part of the record, in order to document these matters and to allow the parties to except to any matter involving the prehearing conference or sanctions.

Sections 2423.35–2423.39—These sections are reserved.

Subpart D—Post-transmission and Exceptions to Authority Procedures

Section 2423.40—The final rule clarifies in paragraph (a), that a single document containing both exceptions to the Judge's decision and a brief in support of those exceptions, is contemplated. The final rule also expressly explains how separate arguments for each issue raised are to be set forth in the exceptions. The page limitation triggering the table of contents and legal authorities requirement has been raised from 20 to 25 pages. Parties should note that pursuant to § 2429.24(e) and § 2429.25, standard font sizes (12 point) and margins (1 inch) will be required.

The section heading and paragraph (b) have been altered to clarify the time within which to file oppositions to cross-exceptions. Commenters approved of the increased time—20 days—to file oppositions to exceptions as a valuable change.

Paragraph (c) has been added clarifying that reply briefs are not allowed, absent permission of the Authority.

Sections 2423.41–2423.42—Final rule as promulgated is the same as proposed rule.

Sections 2423.43–2423.49—These sections are reserved.

Part 2429—Miscellaneous and General Requirements

Section 2429.1—This section is removed and reserved.

Section 2429.7—As noted earlier, a separate section addressing subpoena process in ULP cases has been established in part 2423, § 2423.28. This section establishes subpoena processes for other Authority proceedings, pursuant to parts 2422, 2424, and 2425 and generally follows the procedures established for the issuance and revocation of subpoenas in ULP cases. The only significant difference between this section and the rules established in § 2423.28 involves the official who is authorized to issue and is revoke subpoenas.

Section 2429.11—As noted earlier, the procedures governing interlocutory appeals in unfair labor practice cases have been moved to § 2423.31(c). The final rule notes that such appeals will ordinarily not be considered, except as set forth in part 2423.

Section 2429.12—Almost all commenters endorsed the liberalization of service requirements allowing for first class mail and facsimile transmissions. The final rule adopts the proposed rule's service requirements.

In response to a suggestion, the final rule expands the list of documents that must be served to include amended complaints and withdrawals of complaints and amends the list of those who are required to serve to include the Regional Director when not acting as a party under part 2423. The reference in the proposed regulation to § 2429.7 has been changed in the final rule to subpoenas, as a result of subpoena sections appearing in both parts 2429 and 2423.

Also, the final rule has been revised to provide for the Authority's service by facsimile of time sensitive matters.

Section 2429.13—Final rule as promulgated is the same as proposed rule.

Section 2429.14—Final rule as promulgated is the same as proposed rule.

Section 2429.21—Final rule as promulgated is the same as proposed rule.

Section 2429.22—Commenters noted that when service is by facsimile, there is no reason to add 5 additional days to periods within which a party must act, as is done in the case of service by mail. The final regulation adopts this suggestion and has been modified to delete facsimile filing from this section.

Section 2429.24—As previously noted, parties uniformly and overwhelmingly supported the change allowing for filing by facsimile. In response to several requests, the 5-page limitation on facsimile filings with the Authority has been increased in the final rule to 10 pages. However, piecemeal filing is not permitted, as the 10-page limit applies to the entire individual document. This limit, however, will be strictly enforced and standard font sizes (12 point) and margins (1 inch) will be required.

Clarification was sought as to the term ''other similar matters'' with respect to documents appropriate for facsimile submissions. The final rule lists a number of items that may be filed by facsimile; with these examples offered in the regulation, further definition of this phrase is not considered feasible or prudent at this time. As in § 2429.12, the reference in the proposed regulation to § 2429.7 has been changed in the final rule to subpoenas, as a result of subpoena sections appearing in both parts 2429 and 2423.

Section 2429.25—The final rule includes one minor change to clarify that standard font sizes and margins will be required in all filings with the Authority.

Section 2429.27—Three minor changes have been incorporated into the final rule: First, in paragraph (b), the modifier of the word party has been changed from ''another'' to ''any other,'' thus clarifying that all parties, including the charging party, must be served; second, in paragraph (d), commercial delivery has been included as a method of service; and third, also in paragraph (d), the phrase ''date of transmission'' has been changed to ''date transmitted.''

List of Subjects

5 CFR Part 2423

Administrative practice and procedure, Government employees, Labor-management relations.

5 CFR Part 2429

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set forth in the preamble, the Federal Labor Relations Authority amends parts 2423 and 2429 of its regulations as follows:

1. Part 2423 is revised to read as follows:

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

Authority: 5 U.S.C. 7134.

§ 2423.1 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices filed with the Authority on or after January 11, 1979, and any complaint filed on or after October 1, 1997.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

§ 2423.2 Informal proceedings.

(a) The purposes and policies of the Federal 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 Authority 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 Authority.

(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 5 U.S.C. 7118(a)(4), it shall be the policy of the Authority 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.

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

§ 2423.3 Who may file charges.

An activity, agency or labor organization may be charged by any person with having engaged in or engaging in any unfair labor practice prohibited under 5 U.S.C. 7116.

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

(a) A charge alleging a violation of 5 U.S.C. 7116 shall be submitted on forms prescribed by the Authority 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 activity, agency, or labor organization against whom the charge is made;

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the section(s) and paragraph(s) of chapter 71 of title 5 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 Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board or the Special Counsel of the Merit Systems Protection Board for consideration or action; or

(iii) involves a negotiability issue raised by the charging party in a petition pending before the Authority pursuant to part 2424 of this subchapter.

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

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

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

Where a labor organization files an unfair labor practice charge pursuant to this part which involves a negotiability issue, and the labor organization also files pursuant to part 2424 of this subchapter a petition for review of the same negotiability issue, the Authority and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one

procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Authority, the appropriate Regional Director and all parties to both the unfair labor practice case and the negotiability case. 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 2424 of this subchapter.

§ 2423.6 Filing and service of copies.

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

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

§ 2423.7 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. Consistent with the policy set forth in § 2423.2, the investigation will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed 15 days from the filing of the charge, to informally resolve the unfair labor practice allegation.

(b) During the course of the investigation all parties involved will have an opportunity to present their evidence and views to the 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 Federal 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 from all potential sources during the course of the investigation. To this end, it shall be the policy of the Authority 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 Authority's and the General Counsel's continuing ability to obtain all relevant information.

§ 2423.8 Amendment of charges.

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

§ 2423.9 Action by the 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 part 2423;

(4) Issue a complaint; or

(5) Withdraw a complaint.

(b) Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel will initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority for such temporary relief is final and may not be appealed to the Authority.

(c) Upon a determination to issue a complaint, whenever it is deemed advisable by the Authority to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the Regional Attorney or other designated agent of the Authority to whom the matter has been referred will make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Such temporary 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 agency to carry out its essential functions.

(d) Whenever temporary relief has been obtained pursuant to 5 U.S.C. 7123(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 Authority handling the case for the Authority shall inform the district court which granted the temporary relief of the possible change in circumstances arising out of the decision of the Administrative Law Judge.

§ 2423.10 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 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 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.

§ 2423.11 Settlement prior to issuance of a complaint.

(a) 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.

(b) 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 Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director shall enter into the agreement with the Respondent and 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 § 2423.10(c). The General Counsel shall take action on such appeal as set forth in § 2423.10(e).

§§ 2423.12–2423.19 [Reserved]

Subpart B—Post Complaint, Prehearing Procedures

§ 2423.20 Issuance and contents of the complaint; answer to the complaint; amendments; role of Office of Administrative Law Judges.

(a) *Complaint.* Whenever formal proceedings are deemed necessary, the Regional Director shall file and serve, in accordance with § 2429.12 of this subchapter, a complaint with the Office of Administrative Law Judges. The decision to issue a complaint shall not be subject to review. Any complaint may be withdrawn by the Regional Director prior to the hearing. The complaint shall set forth:

(1) Notice of the charge;

(2) The basis for jurisdiction;

(3) The facts alleged to constitute an unfair labor practice;

(4) The particular sections of 5 U.S.C., chapter 71 and the rules and regulations involved;

(5) Notice of the date, time, and place that a hearing will take place before an Administrative Law Judge; and

(6) A brief statement explaining the nature of the hearing.

(b) *Answer.* Within 20 days after the date of service of the complaint, but in any event, prior to the beginning of the hearing, the Respondent shall file and serve, in accordance with part 2429 of this subchapter, an answer with the Office of Administrative Law Judges. The answer shall admit, deny, or explain each allegation of the complaint. If the Respondent has no knowledge of an allegation or insufficient information as to its truthfulness, the answer shall so state. Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission. Motions to extend the filing deadline shall be filed in accordance with § 2423.21.

(c) *Amendments.* The Regional Director may amend the complaint at any time before the answer is filed. The Respondent then has 20 days from the date of service of the amended complaint to file an answer with the Office of Administrative Law Judges. Prior to the beginning of the hearing, the answer may be amended by the Respondent within 20 days after the answer is filed. Thereafter, any requests to amend the complaint or answer must be made by motion to the Office of Administrative Law Judges.

(d) *Office of Administrative Law Judges.* Pleadings, motions, conferences, hearings, and other matters throughout as specified in subparts B, C, and D of this part shall be administered by the Office of Administrative Law Judges, as appropriate. The Chief Administrative Law Judge, or any Administrative Law Judge designated by the Chief Administrative Law Judge, shall administer any matters properly submitted to the Office of Administrative Law Judges. Throughout subparts B, C, and D of this part, ''Administrative Law Judge'' or ''Judge'' refers to the Chief Administrative Law Judge or his or her designee.

§ 2423.21 Motions procedure.

(a) *General requirements.* All motions, except those made during a prehearing conference or hearing, shall be in writing. Motions for an extension of time, postponement of a hearing, or any other procedural ruling shall include a statement of the position of the other parties on the motion. All written motions and responses in subparts B, C, or D of this part shall satisfy the filing and service requirements of part 2429 of this subchapter.

(b) *Motions made to the Administrative Law Judge.* Prehearing motions and motions made at the hearing shall be filed with the Administrative Law Judge. Unless otherwise specified in subparts B or C of this part, or otherwise directed or approved by the Administrative Law Judge:

(1) Prehearing motions shall be filed at least 10 days prior to the hearing, and responses shall be filed within 5 days after the date of service of the motion;

(2) Responses to motions made during the hearing shall be filed prior to the close of hearing;

(3) Posthearing motions shall be filed within 10 days after the date the hearing closes, and responses shall be filed within 5 days after the date of service of the motion; and

(4) Motions to correct the transcript shall be filed with the Administrative Law Judge within 10 days after receipt of the transcript, and responses shall be filed within 5 days after the date of service of the motion.

(c) *Post-transmission motions.* After the case has been transmitted to the Authority, motions shall be filed with the Authority. Responses shall be filed within 5 days after the date of service of the motion.

(d) *Interlocutory appeals.* Motions for an interlocutory appeal of any ruling and responses shall be filed in accordance with this section and § 2423.31(c).

§ 2423.22 Intervenors.

Motions for permission to intervene and responses shall be filed in accordance with § 2423.21. Such motions shall be granted upon a showing that the outcome of the proceeding is likely to directly affect the movant's rights or duties. Intervenors may participate only: on the issues determined by the Administrative Law Judge to affect them; and to the extent permitted by the Judge. Denial of such motions may be appealed pursuant to § 2423.21(d).

§ 2423.23 Prehearing disclosure.

Unless otherwise directed or approved by the Judge, the parties shall exchange, in accordance with the service requirements of § 2429.27(b) of this subchapter, the following items at least 14 days prior to the hearing:

(a) *Witnesses.* Proposed witness lists, including a brief synopsis of the expected testimony of each witness;

(b) *Documents.* Copies of documents, with an index, proposed to be offered into evidence; and

(c) *Theories.* A brief statement of the theory of the case, including relief sought, and any and all defenses to the allegations in the complaint.

§ 2423.24 Powers and duties of the Administrative Law Judge during prehearing proceedings.

(a) *Prehearing procedures.* The Administrative Law Judge shall regulate the course and scheduling of prehearing matters, including prehearing orders, conferences, disclosure, motions, and subpoena requests.

(b) *Changing date, time, or place of hearing.* After issuance of the complaint or any prehearing order, the Administrative Law Judge may, in the Judge's discretion or upon motion by any party through the motions procedure in § 2423.21, change the date, time, or place of the hearing.

(c) *Prehearing order.* (1) The Administrative Law Judge may, in the Judge's discretion or upon motion by any party through the motions procedure in § 2423.21, issue a prehearing order confirming or changing:

(i) The date, time, or place of the hearing;

(ii) The schedule for prehearing disclosure of witness lists and documents intended to be offered into evidence at the hearing;

(iii) The date for submission of procedural and substantive motions;

(iv) The date, time, and place of the prehearing conference; and

(v) Any other matter pertaining to prehearing or hearing procedures.

(2) The prehearing order shall be served in accordance with § 2429.12 of this subchapter.

(d) *Prehearing conferences.* The Administrative Law Judge shall conduct one or more prehearing conferences, either by telephone or in person, at least 7 days prior to the hearing date, unless the Administrative Law Judge determines that a prehearing conference would serve no purpose and no party has moved for a prehearing conference in accordance with § 2423.21. If a prehearing conference is held, all parties must participate in the prehearing conference and be prepared to discuss, narrow, and resolve the issues set forth in the complaint and answer, as well as any prehearing disclosure matters or disputes. When necessary, the Administrative Law Judge shall prepare and file for the record a written summary of actions taken at the conference. Summaries of the conference shall be served on all parties in accordance with § 2429.12 of this subchapter. The following may also be considered at the prehearing conference:

(1) Settlement of the case, either by the Judge conducting the prehearing conference or pursuant to § 2423.25;

(2) Admissions of fact, disclosure of contents and authenticity of documents, and stipulations of fact;

(3) Objections to the introduction of evidence at the hearing, including oral or written testimony, documents, papers, exhibits, or other submissions proposed by a party;

(4) Subpoena requests or petitions to revoke subpoenas;

(5) Any matters subject to official notice;

(6) Outstanding motions; or

(7) Any other matter that may expedite the hearing or aid in the disposition of the case.

(e) *Sanctions.* The Administrative Law Judge may, in the Judge's discretion or upon motion by any party through the motions procedure in § 2423.21, impose sanctions upon the parties as necessary and appropriate to ensure that a party's failure to fully comply with subpart B or C of this part is not condoned. Such authority includes, but is not limited to, the power to:

(1) Prohibit a party who fails to comply with any requirement of subpart B or C of this part from, as appropriate, introducing evidence, calling witnesses, raising objections to the introduction of evidence or testimony of witnesses at the hearing, presenting a specific theory of violation, seeking certain relief, or relying upon a particular defense.

(2) Refuse to consider any submission that is not filed in compliance with subparts B or C of this part.

§ 2423.25 Post complaint, prehearing settlements.

(a) *Informal and formal settlements.* Post complaint settlements may be either informal or formal.

(1) Informal settlement agreements provide for withdrawal of the complaint by the Regional Director and are not subject to approval by or an order of the Authority. If the Respondent fails to perform its obligations under the informal settlement agreement, the Regional Director may reinstitute formal proceedings consistent with this subpart.

(2) Formal settlement agreements are subject to approval by the Authority, and include the parties' agreement to waive their right to a hearing and acknowledgment that the Authority may issue an order requiring the Respondent to take action appropriate to the terms of the settlement. The formal settlement agreement shall also contain the Respondent's consent to the Authority's application for the entry of a decree by an appropriate federal court enforcing the Authority's order.

(b) *Informal settlement procedure.* If the Charging Party and the Respondent enter into an informal settlement agreement that is accepted by the Regional Director, the Regional Director shall withdraw the complaint and approve the informal settlement agreement. If the Charging Party fails or refuses to become a party to an informal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director shall enter into the agreement with the Respondent and shall withdraw the complaint. The Charging Party then may obtain a review of the Regional Director's action by filing an appeal with the General Counsel as provided in subpart A of this part.

(c) *Formal settlement procedure.* If the Charging Party and the Respondent enter into a formal settlement agreement that is accepted by the Regional Director, the Regional Director shall withdraw the complaint upon approval of the formal settlement agreement by the Authority. 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 Federal Service Labor-Management Relations Statute, the agreement shall be between the Respondent and the Regional Director. The formal settlement agreement together with the Charging Party's objections, if any, shall be submitted to the Authority for approval. The Authority may approve a formal settlement agreement upon a sufficient showing that it will effectuate the policies of the Federal Service Labor-Management Relations Statute.

(d) *Settlement judge program.* The Administrative Law Judge, in the Judge's discretion or upon the request of any party, may assign a judge or other appropriate official, who shall be other than the hearing judge unless otherwise mutually agreed to by the parties, to conduct negotiations for settlement.

(1) The settlement official shall convene and preside over settlement conferences by telephone or in person.

(2) The settlement official may require that the representative for each party be present at settlement conferences and that the parties or agents with full settlement authority be present or available by telephone.

(3) The settlement official shall not discuss any aspect of the case with the hearing judge.

(4) No evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement official shall be admissible in any proceeding before the Administrative Law Judge or Authority, except by stipulation of the parties.

§ 2423.26 Stipulations of fact submissions.

(a) *General.* When all parties agree that no material issue of fact exists, the parties may jointly submit a motion to the Administrative Law Judge or Authority requesting consideration of the matter based upon stipulations of fact. Briefs of the parties are required and must be submitted within 30 days of the joint motion. Upon receipt of the briefs, such motions shall be ruled upon expeditiously.

(b) *Stipulations to the Administrative Law Judge.* Where the stipulation adequately addresses the appropriate material facts, the Administrative Law Judge may grant the motion and decide the case through stipulation.

(c) *Stipulations to the Authority.* Where the stipulation provides an adequate basis for application of established precedent and a decision by the Administrative Law Judge would not assist in the resolution of the case, or in unusual circumstances, the Authority may grant the motion and decide the case through stipulation.

(d) *Decision based on stipulation.* Where the motion is granted, the Authority will adjudicate the case and determine whether the parties have met their respective burdens based on the stipulation and the briefs.

§ 2423.27 Summary judgment motions.

(a) *Motions.* Any party may move for a summary judgment in its favor on any of the issues pleaded. Unless otherwise approved by the Administrative Law Judge, such motion shall be made no later than 10 days prior to the hearing. The motion shall demonstrate that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Such motions shall be supported by documents, affidavits, applicable precedent, or other appropriate materials.

(b) *Responses.* Responses must be filed within 5 days after the date of service of the motion. Responses may not rest upon mere allegations or denials but must show, by documents, affidavits, applicable precedent, or other appropriate materials, that there is a genuine issue to be determined at the hearing.

(c) *Decision.* If all issues are decided by summary judgment, no hearing will be held and the Administrative Law Judge shall prepare a decision in accordance with § 2423.34. If summary judgment is denied, or if partial summary judgment is granted, the Administrative Law Judge shall issue an opinion and order, subject to interlocutory appeal as provided in § 2423.31(c) of this subchapter, and the hearing shall proceed as necessary.

§ 2423.28 Subpoenas.

(a) *When necessary.* 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 subpoena need be sought.

(b) *Requests for subpoenas.* A request for a subpoena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Office of Administrative Law Judges not less than 10 days prior to the hearing, or with the Administrative Law Judge during the hearing. Requests for subpoenas made less than 10 days prior to the hearing shall be granted on sufficient explanation of why the request was not timely filed.

(c) *Subpoena procedures.* The Office of Administrative Law Judges, or any other employee of the Authority designated by the Authority, as appropriate, shall furnish the requester the subpoenas sought, provided the request is timely made. Requests for subpoenas may be made ex parte. Completion of the specific information in the subpoena and the service of the subpoena are the responsibility of the party on whose behalf the subpoena was issued.

(d) *Service of subpoena.* A subpoena may be served by any person who is at least 18 years old and who is not a party to the proceeding. The person who served the subpoena must certify that he or she did so:

(1) By delivering it to the witness in person,

(2) By registered or certified mail, or

(3) By delivering the subpoena to a responsible person (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued.

(e)(1) *Petition to revoke subpoena.* Any person served with a subpoena who does not intend to comply shall, within 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 Office of Administrative Law Judges for ruling. A petition to revoke a subpoena filed during the hearing, and a written statement of service, shall be filed with the Administrative Law Judge.

(2) The Administrative Law Judge, or any other employee of the Authority designated by the Authority, as appropriate, shall revoke the subpoena if the person or evidence, the production of which is required, is not material and relevant to the matters 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 Administrative Law Judge, or any other employee of the Authority designated by the Authority, as appropriate, shall state the 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) *Failure to comply.* Upon the failure of any person to comply with a subpoena issued and upon the request of the party on whose behalf the subpoena was issued, the Solicitor of the Authority shall institute proceedings on behalf of such party in the appropriate district court for the enforcement thereof, unless to do so would be inconsistent with law and the Federal Service Labor-Management Relations Statute.

§ 2423.29 [Reserved]

Subpart C—Hearing Procedures

§ 2423.30 General rules.

(a) *Open hearing.* The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge.

(b) *Administrative Procedure Act.* The hearing shall, to the extent practicable, be conducted in accordance with 5 U.S.C. 554–557, and other applicable provisions of the Administrative Procedure Act.

(c) *Rights of parties.* A party shall have the right to appear at any hearing in person, by counsel, or by other

representative; to examine and cross-examine witnesses; 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.

(d) *Objections.* Objections are oral or written complaints concerning the conduct of a hearing. Any objection not raised to the Administrative Law Judge shall be deemed waived.

(e) *Oral argument.* 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.

(f) *Official transcript.* An official reporter shall make the only official transcript of such proceedings. Copies of the transcript may be examined in the appropriate Regional Office during normal working hours. Parties desiring a copy of the transcript shall make arrangements for a copy with the official hearing reporter.

§ 2423.31 Powers and duties of the Administrative Law Judge at the hearing.

(a) *Conduct of hearing.* The Administrative Law Judge shall conduct the hearing in a fair, impartial, and judicial manner, taking action as needed to avoid unnecessary delay and maintain order during the proceedings. The Administrative Law Judge may take any action necessary to schedule, conduct, continue, control, and regulate the hearing, including ruling on motions and taking official notice of material facts when appropriate. No provision of these regulations shall be construed to limit the powers of the Administrative Law Judge provided by 5 U.S.C. 556, 557, and other applicable provisions of the Administrative Procedure Act.

(b) *Evidence.* The Administrative Law Judge shall receive evidence and inquire fully into the relevant and material facts concerning the matters that are the subject of the hearing. The Administrative Law Judge may exclude any evidence that is immaterial, irrelevant, unduly repetitious, or customarily privileged. Rules of evidence shall not be strictly followed.

(c) *Interlocutory appeals.* Motions for an interlocutory appeal shall be filed in writing with the Administrative Law Judge within 5 days after the date of the contested ruling. The motion shall state why interlocutory review is appropriate, and why the Authority should modify or reverse the contested ruling.

(1) The Judge shall grant the motion and certify the contested ruling to the Authority if:

(i) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(ii) Immediate review will materially advance completion of the proceeding, or the denial of immediate review will cause undue harm to a party or the public.

(2) If the motion is granted, the Judge or Authority may stay the hearing during the pendency of the appeal. If the motion is denied, exceptions to the contested ruling may be filed in accordance with § 2423.40 of this subchapter after the Judge issues a decision and recommended order in the case.

(d) *Bench decisions.* Upon joint motion of the parties, the Administrative Law Judge may issue an oral decision at the close of the hearing when, in the Judge's discretion, the nature of the case so warrants. By so moving, the parties waive their right to file posthearing briefs with the Administrative Law Judge, pursuant to § 2423.33. If the decision is announced orally, it shall satisfy the requirements of § 2423.34(a)(1)–(5) and a copy thereof, excerpted from the transcript, together with any supplementary matter the judge may deem necessary to complete the decision, shall be transmitted to the Authority, in accordance with § 2423.34(b), and furnished to the parties in accordance with § 2429.12 of this subchapter.

(e) *Settlements after the opening of the hearing.* As set forth in § 2423.25(a), settlements may be either informal or formal.

(1) *Informal settlement procedure: Judge's approval of withdrawal.* If the Charging Party and the Respondent enter into an informal settlement agreement that is accepted by the Regional Director, the Regional Director may request the Administrative Law Judge for permission to withdraw the complaint and, having been granted such permission, shall withdraw the complaint and approve the informal settlement between the Charging Party and Respondent. If the Charging Party fails or refuses to become a party to an informal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director shall enter into the agreement with the Respondent and shall, if granted permission by the Administrative Law Judge, withdraw the complaint. The Charging Party then may obtain a review of the Regional Director's decision as provided in subpart A of this part.

(2) *Formal settlement procedure: Judge's approval of settlement.* If the Charging Party and the Respondent enter into a formal settlement agreement that is accepted by the Regional Director, 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 Authority for approval. 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 Federal 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 Authority for approval.

§ 2423.32 Burden of proof before the Administrative Law Judge.

The General Counsel shall present the evidence in support of the complaint and have the burden of proving the allegations of the complaint by a preponderance of the evidence. The Respondent shall have the burden of proving any affirmative defenses that it raises to the allegations in the complaint.

§ 2423.33 Posthearing briefs.

Except when bench decisions are issued pursuant to § 2423.31(d), posthearing briefs may be filed with the Administrative Law Judge within a time period set by the Judge, not to exceed 30 days from the close of the hearing, unless otherwise directed by the judge, and shall satisfy the filing and service requirements of part 2429 of this subchapter. Reply briefs shall not be filed absent permission of the Judge. Motions to extend the filing deadline or for permission to file a reply brief shall be filed in accordance with § 2423.21.

§ 2423.34 Decision and record.

(a) *Recommended decision.* Except when bench decisions are issued pursuant to § 2423.31(d), the Administrative Law Judge shall prepare a written decision expeditiously in every case. All written decisions shall be served in accordance with § 2429.12 of this subchapter. The decision shall set forth:

(1) A statement of the issues;

(2) Relevant findings of fact;

(3) Conclusions of law and reasons therefor;

(4) Credibility determinations as necessary; and

(5) A recommended disposition or order.

(b) *Transmittal to Authority.* The Judge shall transmit the decision and record to the Authority. The record shall include the charge, complaint, service sheet, answer, motions, rulings, orders, prehearing conference summaries, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence, basis for any sanctions ruling, official transcript of the hearing, briefs, and any other filings or submissions made by the parties.

§§ 2423.35–2423.39 [Reserved]

Subpart D—Post-Transmission and Exceptions to Authority Procedures

§ 2423.40 Exceptions; oppositions and cross-exceptions; oppositions to cross-exceptions; waiver.

(a) *Exceptions.* Any exceptions to the Administrative Law Judge's decision must be filed with the Authority within 25 days after the date of service of the Judge's decision. Exceptions shall satisfy the filing and service requirements of part 2429 of this subchapter. Exceptions shall consist of the following:

(1) The specific findings, conclusions, determinations, rulings, or recommendations being challenged; the grounds relied upon; and the relief sought.

(2) Supporting arguments, which shall set forth, in order: all relevant facts with specific citations to the record; the issues to be addressed; and a separate argument for each issue, which shall include a discussion of applicable law. Attachments to briefs shall be separately paginated and indexed as necessary.

(3) Exceptions containing 25 or more pages shall include a table of contents and a table of legal authorities cited.

(b) *Oppositions and cross-exceptions.* Unless otherwise directed or approved by the Authority, oppositions to exceptions, cross-exceptions, and oppositions to cross-exceptions may be filed with the Authority within 20 days after the date of service of the exceptions or cross-exceptions, respectively. Oppositions shall state the specific exceptions being opposed. Oppositions and cross-exceptions shall be subject to the same requirements as exceptions set out in paragraph (a) of this section.

(c) *Reply briefs.* Reply briefs shall not be filed absent prior permission of the Authority.

(d) *Waiver.* Any exception not specifically argued shall be deemed to have been waived.

§ 2423.41 Action by the Authority; compliance with Authority decisions and orders.

(a) *Authority decision; no exceptions filed.* In the absence of the filing of exceptions within the time limits established in § 2423.40, the findings, conclusions, and recommendations in the decision of the Administrative Law Judge shall, without precedential significance, become the findings, conclusions, decision and order of the Authority, and all objections and exceptions to the rulings and decision of the Administrative Law Judge shall be deemed waived for all purposes. Failure to comply with any filing requirement established in § 2423.40 may result in the information furnished being disregarded.

(b) *Authority decision; exceptions filed.* Whenever exceptions are filed in accordance with § 2423.40, the Authority shall issue a decision affirming or reversing, in whole or in part, the decision of the Administrative Law Judge or disposing of the matter as is otherwise deemed appropriate.

(c) *Authority's order.* Upon finding a violation, the Authority shall, in accordance with 5 U.S.C. 7118(a)(7), issue an order directing the violator, as appropriate, to cease and desist from any unfair labor practice, or to take any other action to effectuate the purposes of the Federal Service Labor-Management Relations Statute.

(d) *Dismissal.* Upon finding no violation, the Authority shall dismiss the complaint.

(e) *Report of compliance.* After the Authority issues an order, the Respondent shall, within the time specified in the order, provide to the appropriate Regional Director a report regarding what compliance actions have been taken. Upon determining that the Respondent has not complied with the Authority's order, the Regional Director shall refer the case to the Authority for enforcement or take other appropriate action.

§ 2423.42 Backpay proceedings.

After the entry of an Authority 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 Authority and a Respondent regarding backpay that cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a notice of hearing before an Administrative Law Judge to determine the backpay amount. The notice of hearing shall set forth the specific backpay issues to be resolved. The Respondent shall, within 20 days after the service of a notice of hearing, file an answer in accordance with § 2423.20. After the issuance of a notice of hearing, the procedures provided in subparts B, C, and D of this part shall be followed as applicable.

§§ 2423.43–2423.49 [Reserved]

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

2. The authority citation for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134.

§ 2429.1 [Removed and Reserved]

3. Section 2429.1 is removed and reserved

4. Section 2429.7 is amended by revising the heading and by removing the word ''subpena'' and substituting ''subpoena'' throughout the section and by revising paragraphs (c) through (f) to read as follows:

§ 2429.7 Subpoenas.

* * * * *

(c) A request for a subpoena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Regional Director, in proceedings arising under part 2422 of this subchapter, or with the Authority, in proceedings arising under parts 2424 and 2425 of this subchapter, not less than 10 days prior to the hearing, or with the appropriate presiding official(s) during the hearing. Requests for subpoenas made less than 10 days prior to the opening of the hearing shall be granted on sufficient explanation of why the request was not timely filed.

(d) The Authority, General Counsel, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall furnish the requester the subpoenas sought, provided the request is timely made. Requests for subpoenas may be made ex parte. Completion of the specific information in the subpoena and the service of the subpoena are the responsibility of the party on whose behalf the subpoena was issued. A subpoena may be served by any person who is at least 18 years old and who is not a party to the proceeding. The person who served the subpoena must certify that he or she did so:

(1) By delivering it to the witness in person,

(2) By registered or certified mail, or

(3) By delivering the subpoena to a responsible person (named in the

document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued. (e)(1) Any person served with a subpoena who does not intend to comply, shall, within 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 in proceedings arising under part 2422 of this subchapter, and with the Authority, in proceedings arising under parts 2424 and 2425 of this subchapter 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).

(2) The Authority, General Counsel, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall revoke the subpoena if the person or evidence, the production of which is required, is not material and relevant to the matters 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 Authority, General Counsel, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall state the 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 and upon the request of the party on whose behalf the subpoena was issued, the Solicitor of the Authority shall institute proceedings on behalf of such party in the appropriate district court for the enforcement thereof, unless to do so would be inconsistent with law and the Federal Service Labor-Management Relations Statute.

5. Section 2429.11 is revised to read as follows:

§ 2429.11 Interlocutory appeals.

Except as set forth in part 2423, the Authority and the General Counsel ordinarily will not consider interlocutory appeals.

6. Section 2429.12 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2429.12 Service of process and papers by the Authority.

(a) *Methods of service.* Notices of hearings, decisions and orders of Regional Directors, decisions and recommended orders of Administrative Law Judges, decisions of the Authority, complaints, amended complaints, withdrawals of complaints, written rulings on motions, and all other papers required by this subchapter to be issued by the Authority, the General Counsel, Regional Directors, Hearing Officers, Administrative Law Judges, and Regional Directors when not acting as a party under part 2423 of this subchapter, shall be served personally, by first-class mail, by facsimile transmission, or by certified mail. Where facsimile equipment is available, rulings on motions; information pertaining to prehearing disclosure, conferences, orders, or hearing dates, and locations; information pertaining to subpoenas; and other similar or time sensitive matters may be served by facsimile transmission.

* * * * *

(c) *Proof of service.* Proof of service shall be verified by certificate of the individual serving the papers describing the manner of such service. 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 by facsimile, the date of service shall be the date the facsimile transmission is transmitted and, when necessary, verified by a dated facsimile record of transmission.

7. Section 2429.13 is revised to read as follows:

§ 2429.13 Official time for witnesses.

If the participation of any employee in any phase of any proceeding before the Authority, including the investigation of unfair labor practice charges and representation petitions and the participation in hearings and representation elections, is deemed necessary by the Authority, the General Counsel, any Administrative Law Judge, Regional Director, Hearing Officer, or other agent of the Authority designated by the Authority, the 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.

8. Section 2429.14 is revised to read as follows:

§ 2429.14 Witness fees.

(a) Witnesses, whether appearing voluntarily or pursuant to a subpoena, shall be paid the fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States. However, any witness who is employed by the Federal Government shall not be entitled to receive witness fees.

(b) Witness fees, as appropriate, as well as transportation and per diem expenses for a witness shall be paid by the party that calls the witness to testify.

9. Section 2429.21 is amended by revising paragraph (b) to read as follows:

§ 2429.21 Computation of time for filing papers.

* * * * *

(b) Except when filing an unfair labor practice charge pursuant to part 2423 of this subchapter, a representation petition pursuant to part 2422 of this subchapter, and a request for an extension of time pursuant to § 2429.23(a) of this part, when this subchapter requires the filing of any paper with the Authority, the General Counsel, a Regional Director, or an Administrative Law Judge, the date of filing shall be determined by the date of mailing indicated by the postmark date or the date a facsimile is transmitted. If no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If the date of facsimile transmission is unclear, the date of transmission shall be the date the facsimile transmission is received. If the filing is by personal or commercial delivery, it shall be considered filed on the date it is received by the Authority or the officer or agent designated to receive such materials.

* * * * *

10. Section 2429.22 is revised to read as follows:

§ 2429.22 Additional time after service by mail.

Except as to the filing of an application for review of a Regional Director's Decision and Order under § 2422.31 of this subchapter, 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, 5 days shall be added to the prescribed period: Provided, however, that 5 days shall not be added in any instance where an extension of time has been granted.

11. Section 2429.24 is amended by revising paragraph (e) to read as follows:

§ 2429.24 Place and method of filing; acknowledgment.

* * * * *

(e) All documents filed pursuant to this section shall be filed in person, by commercial delivery, by first-class mail, or by certified mail. Provided, however, that where facsimile equipment is available, motions; information pertaining to prehearing disclosure, conferences, orders, or hearing dates, times, and locations; information pertaining to subpoenas; and other similar matters may be filed by facsimile transmission, provided that the entire individual filing by the party does not exceed 10 pages in total length, with normal margins and font sizes.

* * * * *

12. Section 2429.25 is revised to read as follows:

§ 2429.25 Number of copies and paper size.

Unless otherwise provided by the Authority or the General Counsel, or their designated representatives, as appropriate, or under this subchapter, and with the exception of any prescribed forms, any document or paper filed with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate, under this subchapter, together with any enclosure filed therewith, shall be submitted on 8½ x 11 inch size paper, using normal margins and font sizes, in an original and four (4) legible copies. Where facsimile filing is permitted pursuant to § 2429.24(e), one (1) legible copy, capable of reproduction, shall be sufficient. A clean copy capable of being used as an original for purposes such as further reproduction may be substituted for the original.

13. Section 2429.27 is amended by revising paragraphs (b) and (d) to read as follows:

§ 2429.27 Service; statement of service.

* * * * *

(b) Service of any document or paper under this subchapter, by any party, including documents and papers served by one party on any other party, shall be accomplished by certified mail, first-class mail, commercial delivery, or in person. Where facsimile equipment is available, service by facsimile of documents described in § 2429.24(e) is permissible.

* * * * *

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail, delivered in person, received from commercial delivery, or, in the case of facsimile transmissions, the date transmitted.

Dated: July 28, 1997.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

[FR Doc. 97–20244 Filed 7–30–97; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 3, 278, and 400

Department of Agriculture Civil Monetary Penalties Adjustment

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: In accordance with Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, this final rule adjusts civil monetary penalties imposed by agencies within USDA to incorporate an inflation adjustment.

EFFECTIVE DATE: This rule will become effective on September 2, 1997.

FOR FURTHER INFORMATION CONTACT: Rey Gonzalez, OCFO, FPD, USDA, Room 3022–S, 1400 Independence Avenue, SW, Washington DC 20250 (202) 720–1168.

SUPPLEMENTARY INFORMATION:

I. The Debt Collection Improvement Act of 1996

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101–410) (Act) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104–134) to require Federal agencies to regularly adjust certain civil monetary penalties (CMP) for inflation. The Act applies to any CMP provided by law, except for any penalty under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, and the Social Security Act. The Act defines CMP to be any penalty, fine, or other sanction in which a Federal statute specifies a monetary amount, a maximum amount, or a range of amounts for such penalty, fine, or sanction.

As amended, the Act requires each agency to make an initial inflation adjustment for all applicable CMP, and to make further inflation adjustments at least once every 4 years thereafter. The Debt Collection Improvement Act of 1996 stipulates that any increases in CMP due to the calculated inflation adjustments (i) applies only to violations which occur after the date the increase takes effect, which will be thirty (30) days after publication of this final rule; and (ii) the first adjustment may not exceed 10 percent of the penalty indicated.

Method of Calculation

Under the Act, the inflation adjustment for each applicable CMP is determined by increasing the minimum or maximum CMP amount or range of CMP's per violation or the range of minimum and maximum civil monetary penalties, as applicable, by the ''cost-of-living adjustment.'' The ''cost-of-living adjustment'' is defined as the percentage of each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted in accordance with the law. The adjustment of these penalties contained in this notice were limited in two ways by the Act. First, the initial adjustment of any penalty may not exceed 10 percent of the unadjusted penalty. Second, any calculated increase under this adjustment is subject to a specific rounding formula contained in the Act. As a result of the application of these rounding rules, some penalties may not be adjusted. Among the penalties adjusted in this notice, the length of time covered by the adjustment varied, which means the rate and the amount of the adjustment, if any, applied to these penalties also varied.

The rule contained in this notice reflects the initial adjustment to the listed civil monetary penalties required by the Act. This rule will be amended to reflect any subsequent adjustments to the listed civil monetary penalties made in accordance with the Act.

II. Civil Monetary Penalties Affected by This Rule

A number of USDA agencies including the Agricultural Marketing Service; the Federal Crop Insurance Corporation; the Animal and Plant Health Inspection Service; the Grain Inspection, Packers and Stockyards Administration; the Food Safety Inspection Service; the Food and Consumer Service; and the Forest Service administer laws which provide for the imposition of civil monetary penalties.

This final rule lists the specific penalty or penalty range for each civil monetary penalty covered by this rule and reflects the required inflation