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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2425 and 2429

Review of Arbitration Awards; Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Chairman and Members of the Federal Labor Relations Authority (the Authority) revise the regulations concerning review of arbitration awards and the Authority's miscellaneous and general requirements to the extent that they set forth procedural rules that apply to the review of arbitration awards. The purpose of the proposed revisions is to improve and expedite review of such awards.

DATES: *Effective Date:* October 1, 2010.

ADDRESSES: Written comments received are available for public inspection during normal business hours at the Case Intake and Publication Office, Federal Labor Relations Authority, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001.

FOR FURTHER INFORMATION CONTACT: Sarah Whittle Spooner, Counsel for Regulatory and External Affairs, (202) 218-7791.

SUPPLEMENTARY INFORMATION: In an effort to improve the Authority's decision-making processes, the Authority established an internal workgroup to study and evaluate the policies and procedures in effect concerning the review of arbitration awards. In order to solicit the input of arbitrators and practitioners, the workgroup held several focus groups, specifically: One focus group in Washington, DC with arbitrators; two focus groups in Washington, DC with practitioners; and focus groups in Chicago, Illinois and Oakland,

California with both arbitrators and practitioners. In addition, through a survey, the Authority solicited input from parties to recent Authority decisions; the Authority also solicited general input through engagetheflra@flra.gov.

Subsequently, the Authority proposed revisions to parts 2425 (concerning review of arbitration awards) and 2429 (concerning miscellaneous and general requirements) of the Authority's regulations. The proposed rule was published in the **Federal Register**, and public comment was solicited on the proposed changes (75 FR 22540) (April 29, 2010). Formal written comments were submitted by three agencies, five exclusive representatives, one arbitrator, and four other individuals. All comments have been considered prior to publishing the final rule, and most comments are specifically addressed in the section-by-section analysis below. Several revisions to the proposed rule have been made in response to suggestions and comments received.

Significant Changes

The final rule, like the proposed rule, clarifies the processing of arbitration cases before the Authority. The final rule incorporates one significant change, based on consideration of a comment received. Specifically, based on a comment that parties should not be required to jointly request an expedited, abbreviated decision under § 2425.7, the final rule deletes the requirement of a separate, joint request. Instead, the final rule allows an excepting party to request, in its exceptions, such a decision, and an opposing party to state, in its opposition, whether the opposing party supports or opposes such a request. Under the final rule, the Authority may issue an expedited, abbreviated decision even absent an excepting party's request and without regard to whether an excepting party's request is opposed.

The proposed rule has also been modified in several other respects, primarily in response to specific comments. All of the changes from the proposed rule are described in the following sectional analyses of the final rule.

Sectional Analyses

Sectional analyses of the amendments and revisions to part 2425, Review of Arbitration Awards, and part 2429,

Miscellaneous and General Requirements, are as follows:

Part 2425—Review of Arbitration Awards

Section 2425.1

The final rule as promulgated is the same as the proposed rule.

Section 2425.2

With regard to § 2425.2(b), comments regarding the change in the Authority's practice of calculating the due date for exceptions were generally positive. One commenter suggested that the Authority further clarify this section by adding, after the proposed rule's wording, "The time limit for filing an exception to an arbitration award is thirty (30) days[.]" the following: "after the date of service of the award." The final rule incorporates this suggestion.

One commenter supported the proposed wording of § 2425.2(b) but questioned whether it is consistent with 5 U.S.C. 7122(b), which provides that an award shall be final and binding if no exception is filed "during the 30-day period beginning on the date the award is served on the party[.]" However, the Authority has discretion to interpret 5 U.S.C. 7122(b) to mean that "the 30-day period beginning on the date the award as served" counts "day one" of the thirty-day period as being the day after the award is served. *Cf. AFGE v. FLRA*, 802 F.2d 47, 47-48 (2nd Cir. 1986) (interpreting provision of 5 U.S.C. 7123(a) stating "during the 60-day period beginning on the date on which the order was issued" to exclude issuance date of order in calculating 60-day period). Consequently, the commenter's question does not raise a concern that requires amending the proposed rule.

With regard to § 2425.2(c), one commenter generally supported the proposed rule. In addition, one commenter suggested modifying the proposed wording of § 2425.2(c)(1) to clarify that, if there is no legible postmark on an envelope containing an arbitration award that has been served by regular mail, then the date of service will be the date of the award. The commenter similarly suggested modifying the proposed wording of § 2425.2(c)(2) to clarify that, if there is no indication of the date on which an award was deposited with a commercial-delivery service, then the

date of service will be the date of the award. The final rule incorporates these two suggestions.

In addition, the final rule corrects a typographical error from the proposed rule. Specifically, the final rule refers to "2429.22" rather than "2492.22."

However, as discussed further below, several additional commenters made suggestions that the final rule does not incorporate.

First, one commenter expressed concern that, as e-mail or fax transmissions of awards may occur outside post-office hours, they could occur late at night or on weekends, including weekends with a Monday holiday, and the excepting party could lose several days of the thirty days allowed for exceptions. The commenter also asserted that both e-mail and fax transmissions are subject to errors and electrical failures, *e.g.*, the arbitrator could type the address incorrectly, an intermediate server could be inoperative, or there could be a power failure at the receiving end of a fax. The commenter suggested revising § 2425.2(c)(3) as follows: "If the award is served by e-mail or fax, then the date of service is the date of successful and complete transmission, and the excepting party will not receive an additional five days for filing exceptions. However, if the arbitrator transmits his/her decision on a non-workday or on a workday after 5 pm, then the decision will be considered as having been served on the following workday."

Second, and similarly, one commenter suggested that, when an award is sent by e-mail, a second method of service should also be used in calculating the date of service so that the award does not remain unread while its recipient is out of the office or otherwise unavailable.

Third, one commenter stated that overseas organizations are sometimes subject to slow delivery of mailed arbitration awards, and suggested that the proposed rule should be revised to state that timeliness of exceptions for overseas parties will be calculated based on the date of receipt, not the date of mailing. The commenter further suggested that the date of receipt could then be established by an affidavit or sworn declaration. According to the commenter, such an approach would "avoid the artificial constructs of mailing dates established by case[s] such as" *United States Immigration and Naturalization Service*, 33 FLRA 885 (1989).

Fourth, and finally, one commenter suggested modifying § 2425.2(c) to add, after "the arbitrator's selected method is

controlling for purposes of calculating the time limit for filing exceptions[.]" the following: "provided that the arbitrator gives the parties advance notice of the service method selected." Similarly, the commenter suggested adding a subparagraph (6) that would state: "If the arbitration award is served by more than one method, and if the parties did not reach an agreement as to an appropriate method(s) of service of the award, and if the arbitrator failed to provide the parties with advance notice of the arbitrator's selected method of service of the award, then the last method of service used will determine the date of service of the arbitration award for purposes of calculating the time limits for exceptions."

With regard to these comments, the Authority purposely drafted the proposed rule to leave to the parties (or, absent agreement by the parties, to the arbitrator) decisions regarding how arbitration awards will be served. If parties have concerns similar to those set forth by the commenters, then the parties can agree to a method of service that does not present such concerns. Given the Authority's view that the determination of appropriate methods of service is best left to the parties, the final rule does not adopt these commenters' suggestions.

Section 2425.3

With regard to § 2425.3(a), one commenter noted that the Authority's current regulations provide that "a" party may file exceptions, and that the use of "[a]ny" party in the proposed rule may create unintended ambiguity. As the proposed rule is not intended to change the Authority's existing standards regarding who may file oppositions (or exceptions), and to avoid any unintended ambiguity, the final rule modifies the proposed rule to state that "[a]" party may file an opposition.

Also with regard to § 2425.3(a), one commenter "assumes that it would continue to allow the agency or primary national subdivision to file oppositions (and exceptions) for its activities." As stated above, the proposed rule is not intended to change the Authority's existing standards with respect to who may file oppositions (or exceptions). No change is necessary to the final rule in this regard.

Section 2425.4

Upon review of the proposed rule, the Authority clarifies § 2425.4(a)(3) to state that the excepting party is required to provide copies of documents that are not readily accessible to the Authority, and to give examples of such

documents. In this connection, as § 2425.4(b) gives examples of the types of documents that are readily accessible to the Authority—and thus not required to be submitted with exceptions—the Authority believes that it will provide further clarity to the parties to also give examples of the types of documents that are not readily accessible to the Authority and, thus, required to be included with exceptions.

In addition, as discussed further below in connection with § 2425.7, the final rule is modified to no longer require parties to jointly request an expedited, abbreviated decision. Rather, the excepting party may request, in its exceptions, such a decision, and the opposing party may state, in its opposition, whether it agrees with or opposes the request. Accordingly, § 2425.4 is modified to create a new subsection (a)(4), which requires the excepting party to provide arguments in support of any request for an expedited, abbreviated decision within the meaning of § 2425.7. As a result, § 2425.4(a)(4) and (5) from the proposed rule have been renumbered § 2425.4(a)(5) and (6) in the final rule.

Further, in § 2425.4(b), the final rule deletes, as unnecessary, the word "actual" before "copies."

Moreover, as discussed further below, one commenter asserted in connection with § 2429.5 that the word "material" implies that the Authority will consider "immaterial" matters that were not raised before an arbitrator. As such, the word "material" has been deleted from both § 2429.5 and § 2425.4(c).

With regard to § 2425.4(a)(3), one commenter stated that the party that files exceptions should be required to serve the other party with copies of any documents that are submitted to the Authority. According to the commenter, without such a requirement, the opposing party may not be able to discern which documents have already submitted and which documents the opposing party will need to submit. However, as § 2429.27 of the Authority's regulations already requires the excepting party to serve such copies on the other party, there is no need to modify the proposed rule in this regard.

With regard to §§ 2425.4(a)(5) and 2425.4(b), commenters approved of these changes. Consistent with the revision to § 2425.4(a)(3) to clarify that an excepting party is required to provide documents that are not readily accessible to the Authority, the wording, "Notwithstanding subsection (a)(3) of this section," has been deleted from § 2425.4(b), as that wording is no longer necessary.

With regard to § 2425.4(c), one commenter supported this change. However, two commenters expressed concerns.

The first commenter did not specifically cite § 2425.4(c), but made comments that relate to it. Specifically, the commenter expressed a concern that the proposed rule would require parties to present “the entire Law Library of Congress” to the arbitrator in order “to avoid something being left out.” The same commenter questioned why an award could not be challenged where an arbitrator has reached a conclusion that is not based on evidence or legal issues presented at arbitration.

The second commenter stated that the proposed rule “expands” the Authority’s current practice of declining to resolve issues that were not raised before an arbitrator. Specifically, the commenter asserted that the wording concerning “challenges to an awarded remedy that could have been, but were not, presented to the arbitrator” is particularly problematic. According to this commenter, in many cases, unions request numerous possible remedies, some of which may not be clear, and frequently request “any and all proper relief[.]” The commenter stated that it may not be reasonable for a responding party to be required to anticipate any remedy that an arbitrator may fashion. In addition, the commenter stated that some agencies have expedited arbitration procedures where there is no transcript or post-hearing brief, and this will make it difficult for a party to demonstrate that a particular argument was submitted before the arbitrator. Accordingly, the commenter suggests adding the following wording to the end of proposed § 2425.4(c): “However, this prohibition does not apply where one party could not reasonably foresee a defect or basis for filing exceptions recognized in § 2425.4(c).”

With regard to the concerns raised by these two commenters, § 2425.4(c) is intended merely to incorporate in regulations—not to expand—the Authority’s existing practice under the current version of § 2429.5 of the Authority’s regulations. Under that practice, parties are required to raise arguments—including challenges to remedies—only to the extent that they could reasonably know to do so. *See, e.g., U.S. DHS, U.S. Customs & Border Prot., JFK Airport, Queens, N.Y.*, 64 FLRA 841, 843 (2010) (as agency challenged potential award of overtime on one ground before arbitrator, it could not challenge award of overtime on another ground for the first time before Authority). Thus, if a party could not reasonably know to raise an argument or

a challenge to an awarded remedy, then the party would not be precluded from filing an exception raising that argument or challenge. With regard to the latter commenter’s concern regarding proving that an issue was raised below in an expedited proceeding with no record, the party could assert in its exceptions that it raised an issue below and explain why it cannot provide evidence to support that assertion. *Cf. U.S. DOJ, Fed. Bureau of Prisons, U.S. Penitentiary, Atlanta, Ga.*, 57 FLRA 406, 408–09 (2001) (Chairman Cabaniss dissenting on other grounds) (agency stated in exceptions that it raised argument before arbitrator, and Authority found, “absent evidence in the record to the contrary,” that argument was properly before Authority). Thus, there is no need to modify the proposed rule in the manner suggested by the latter commenter.

With regard to § 2425.4(d), one commenter supported the use of forms, particularly when expedited, abbreviated decisions are requested under § 2425.7.

Section 2425.5

One commenter recommended that the requirements for oppositions be as explicit as the requirements for filing exceptions. According to the commenter, the proposed rule as written provides for interpretation by the opposing party as to what should be included in and with an opposition filing.

However, unlike exceptions, which are provided for by 5 U.S.C. 7122, oppositions are entirely optional. As such, the Authority purposely worded § 2425.5 to not impose specific, mandatory filing requirements, and there is no basis for modifying the rule as suggested.

Nevertheless, the Authority has decided that § 2425.5 can be clarified. In this connection, the final rule adds a statement that the opposing party should submit copies of documents only if they are not readily accessible (such as those discussed in the revision to § 2425.4(a)), not copies of readily accessible documents (such as those discussed in § 2425.4(b)).

In addition, as discussed above in connection with § 2425.4 and below in connection with § 2425.7, the final rule has been modified to eliminate the requirement of joint requests for expedited, abbreviated decisions. Instead, the final rule allows an excepting party to request such a decision, and § 2425.5 has been modified to provide that the opposing party should state whether it supports

or opposes such a request and to provide supporting arguments.

Section 2425.6

As an initial matter, the final rule corrects a typographical error from the proposed rule. Specifically, the final rule states “through (b)(2)(iv)[.]” rather than “through (iv)[.]”

In addition, the Authority has decided to change § 2425.6 to reflect the fact that a party’s failure to support a properly raised ground for review may be subject to “denial” rather than “dismissal[.]” As such, the final rule adds the words: (1) “or denial” after “or dismissal[.]” and “or support” after “raise[.]” in the title of § 2425.6; and (2) “or denial” after the word “dismissal” in the text of § 2425.6(e).

With regard to § 2425.6(b)(2), commenters generally supported listing the private-sector grounds for finding arbitration awards deficient. However, two commenters raised questions about two of those grounds.

The first commenter stated that the ground of “incomplete, ambiguous, or contradictory” set forth in § 2425.6(b)(2)(iii) appears to be inconsistent with controlling Supreme Court precedent, citing *United States Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960). In this connection, the commenter stated that ambiguity or imprecision in a private-sector arbitration award is not an appropriate basis for judicial review. The commenter suggested deleting this reference from the regulations, alleging that it represents a significant expansion of the Authority’s role in reviewing arbitration awards beyond what was contemplated by Congress. In addition, the commenter asserted that adding this reference is bad policy because it will undermine the finality of the arbitration process and result in additional appeals and costs to the parties. In this connection, the commenter stated that, even if Authority decisions set forth this ground, setting it forth in regulations will result in an “undesirable expansion of the Authority’s interference in the arbitration process,” which will result in more, not less, litigation and expense. Alternatively, the commenter suggested that the Authority add the word “materially” before “incomplete, ambiguous, or contradictory” in order to make clear that *de minimis* errors or omissions in arbitration awards will not serve as the basis for submitting exceptions. The commenter further stated that the regulation is somewhat ambiguous because it is unclear whether it is aimed at empowering the Authority to correct arbitrator decisions that are

incomplete, ambiguous, or contradictory, or merely arbitrator awards (*i.e.*, remedies) that are unclear. The commenter suggested that, if the Authority keeps the provision, then it would be appropriate to clarify its intent.

In response to that commenter, the private-sector ground of “incomplete, ambiguous, or contradictory” that the Authority has discussed in its decisions requires that the award be so incomplete, ambiguous, or contradictory as to make implementation of the award impossible. *E.g.*, *AFGE, Local 1395*, 64 FLRA 622, 624 (2010). As such, minor incompleteness, ambiguity, or imprecision in the award would not provide a basis for setting aside the award, as long as the award is sufficiently clear so that the parties know how to implement it. Nevertheless, as clarification is warranted in this regard, and in an attempt to avoid an increase in the number of exceptions that allege that an award is deficient merely because it is incomplete, ambiguous, or contradictory in some manner, the final rule adds, after “contradictory[.]” the words “as to make implementation of the award impossible.”

The second commenter questioned whether the “public policy” ground set forth in § 2425.6(b)(2)(iv) has any place in Federal-sector arbitration review because “[a]t best, it is redundant, mirroring the ‘contrary to law, rule, or regulation’” ground. In this regard, the commenter asserted that the “public policy” ground must be well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general consideration of supposed public interests. According to the commenter—citing *United Paperworkers International Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987), and *W.R. Grace & Co. v. Local Union 759, International Union of United Rubber Workers*, 461 U.S. 757, 766 (1983)—courts’ refusal to enforce an arbitrator’s interpretation of a contract that contravenes public policy has its roots in the general common-law doctrine that courts may refuse to enforce contracts that violate law or public policy. The commenter noted that, in the Federal sector, parties are not required to bargain over proposals that are inconsistent with Federal law or government-wide regulation, and both the negotiability appeal process and the agency-head review process are intended to ensure that unlawful provisions do not end up in contracts. Thus, the commenter asserted that there is “no real need” to set forth this ground, and if it is listed

as an independent ground, then the Authority should clarify how an award found deficient as contrary to public policy would not also be found to be contrary to law.

In response to that commenter, the Authority is required to assess whether awards are deficient on private-sector grounds. *See* 5 U.S.C. 7122(a)(2). Although the public-policy ground likely overlaps to some degree with the “contrary to law, rule, or regulation” ground that the Authority applies, it is not clear that they are entirely coextensive. As such, it is appropriate to list it as a ground, and to provide guidance as to its meaning through Authority decisional law and informal guidance. Accordingly, no change is necessary to the final rule in this regard.

With regard to § 2425.6(e)(1), one commenter suggested deleting the word “or” and adding, after the word “award”: “, or fails to meet any statutory or regulatory time limit[.]” In effect, the commenter’s suggestion would add a statement that untimely exceptions will be dismissed. However, the purpose of § 2425.6 is to set forth the substantive grounds for review, and to provide that an exception is subject to dismissal or denial either if a party fails to raise and support a recognized ground, or if the award involves a matter over which the Authority lacks jurisdiction. Discussing timeliness and other types of deficiencies would be outside the scope of this purpose. Accordingly, no change is made to the final rule in this regard.

Another commenter suggested that § 2425.6 should clarify that no exception may be based on an argument or claim that was not advanced to the arbitrator, unless the arbitrator’s award initially “injects” the basis for the exception. This point is sufficiently made in §§ 2425.4(c) and 2429.5, and there is no need to repeat it in § 2425.6. Accordingly, no change is made to the final rule in this regard.

Finally, one commenter stated that the Authority should provide arbitrators and parties with the types of arbitration awards over which the Authority lacks jurisdiction, “so that the arbitrator’s award is final without the option of an appeal” if the Authority lacks jurisdiction over the case. To the extent that the commenter has suggested that the regulation should provide that those types of awards automatically become final, without allowing any filing of exceptions, there must be some mechanism for the Authority to determine whether an award concerns a matter over which the Authority lacks jurisdiction. Accordingly, it is inappropriate to modify § 2425.6 to provide that any type of award

automatically becomes final without an opportunity to file exceptions with the Authority. Thus, no change is made to the final rule in this regard. However, under the final rule and consistent with current practice, the Authority will continue to dismiss exceptions in cases where it lacks jurisdiction.

Section 2425.7

As an initial matter, the Authority has decided to delete the use of the term “short-form” from the final rule because that term is used internally at the Authority and is unlikely to have meaning to many people outside the Authority. Instead, § 2425.7 and other pertinent sections of the final rule refer to “expedited, abbreviated” decisions.

One commenter suggested deleting the word “briefly” because even an expedited, abbreviated decision will fully resolve the parties’ arguments; it will just do so without a full explanation of the background, award, arguments, and analysis of those arguments. In the alternative, the commenter suggested substituting the word “summarily” for “briefly.” The final rule adopts the commenter’s suggested deletion of the word “briefly” because it is redundant.

Another commenter suggested a more fundamental change to § 2425.7. Specifically, the commenter suggested that, rather than requiring a joint request for an expedited, abbreviated decision, “a request from one party (*i.e.* the excepting party)” should be sufficient. The commenter also noted that the proposed rule does not address how the Authority will expedite the process and issue a decision and provides no timeline, even if only a target, for the issuance of this type of decision.

Upon consideration of the commenter’s suggestion that the proposed rule delete the requirement of a joint request, the final rule provides that the excepting party may request an expedited, abbreviated decision, and that the opposing party may state whether it agrees with or opposes the request. In this connection, particularly given that the Authority may issue this type of decision without *any* request from the parties, it is appropriate to delete the requirement of a joint request. As such, the final rule allows the excepting party to state whether it is willing to accept an abbreviated Authority decision in exchange for a more expedited decision. An added benefit to deleting the requirement of a joint request is that it reduces the possibility for procedural deficiencies that may attend the creation of a new filing, which could delay the processing of this type of case, contrary to the

intent of § 2425.7. Accordingly, the final rule deletes the requirement of a joint request and makes clear that the excepting party may make this request.

With regard to the commenter's statement that the proposed rule does not state how the Authority will expedite the process and provides no timeline for when it will issue a decision, these matters are best left for development through practice, rather than regulation. Thus, no change is made to the final rule in this regard.

Another commenter suggested that § 2425.7 be modified to make the sentence beginning, "Even absent the parties' joint request," the first sentence of a second paragraph that would then state: "Parties are encouraged to provide a short position statement as to why a short-form decision is appropriate or inappropriate for that particular case. The Authority will consider factors such as: (1) The novelty of the disputed issues; (2) the potential impact of the decision on other cases; (3) the need, if any, to clarify previously issued decisions; (4) the impact an extended timeline for decision will have on labor-management relations."

As discussed previously, § 2425.4(a)(4) has been modified to state that the excepting party must provide supporting arguments for any request for an expedited, abbreviated decision under this section, and § 2425.5 has been modified to state that the opposing party should state whether it supports or opposes such a request and provide supporting arguments. With regard to the commenter's suggestion regarding the factors that the Authority should consider, § 2425.7 is broadly worded to state that the Authority will consider "all of the circumstances of the case," and sets forth certain examples. It is unnecessary to modify the proposed rule to list additional examples, although parties may provide in their briefs whatever arguments that they believe support issuing or not issuing this type of decision. No change is made to the final rule in this regard.

One commenter stated that Authority decisions in arbitration cases may be subject to further review, for example by the Equal Employment Opportunity Commission. Thus, the commenter suggested that § 2425.7 should specify that if a case involves an alleged violation of a civil-rights statute, then an expedited, abbreviated decision would not be appropriate. However, as discussed above, the proposed rule is broadly worded and does not preclude parties from listing these sorts of reasons why an abbreviated decision would not be appropriate in a particular

case. Accordingly, no change is made to the final rule in this regard.

Finally, one commenter agreed with the proposed rule, but suggested that the Authority should decide all of its cases in chronological order. This suggestion is contrary to the intent of § 2425.7, which is to provide for a mechanism for quickly deciding newly filed cases. Accordingly, no change is made to the final rule in this regard.

Section 2425.8

One commenter supported the provision of assistance from the Authority's Collaboration and Alternative Dispute Resolution Program (CADR), "as long as that is a final step and the end of the appeal process by either party." To the extent that the commenter has suggested that parties' decision to use CADR should waive their ability to have the Authority resolve their exceptions, this suggestion would discourage parties from using CADR. Accordingly, no change is made to the final rule in this regard.

Another commenter stated that, after reviewing exceptions and any opposition, if the Authority determines that CADR would be appropriate in a particular case, then the Authority should contact the parties and encourage or suggest the use of CADR, rather than waiting for parties to jointly request it. According to the commenter, parties will rarely jointly request CADR on their own, which will result in missed opportunities to save government resources that could be saved through greater and more effective use of CADR.

It is unnecessary to specify in regulations how the Authority will proceed with regard to contacting parties in appropriate cases. The Authority's current negotiability regulations do not specify how contacts between CADR and parties proceed, and it is appropriate not to so specify here. Accordingly, no change is made to the final rule in this regard. However, the Authority will seek to develop a practice or process that encourages the use of CADR in arbitration cases.

One commenter approved of the opportunity for CADR but suggested that "the requirements and relevant material regarding alternative dispute resolution be set forth explicitly in the regulation rather than an exterior source such as a website." The commenter also suggested that, to avoid delay on the part of the opposing party "after an opposition has been filed," CADR "should have the right to stop the tolling and require the submission of the opposing party's opposition." In this connection, the commenter stated that

requiring an opposing party to place its position "on the table" can assist in the settlement process.

With regard to the commenter's suggestion that the regulation set forth "the requirements and relevant material regarding alternative dispute resolution[.]" the proposed rule is intentionally modeled after the Authority's negotiability regulations concerning CADR. Accordingly, no change is made to the final rule in this regard.

With regard to the commenter's suggestion that CADR should have the authority to stop the tolling and require the submission of the opposing party's opposition, to the extent that the commenter has suggested that CADR should have the authority to immediately demand an opposition statement, this suggestion could discourage some parties from choosing to use CADR because it could result in some opposing parties forfeiting a portion of their time for filing an opposition. Accordingly, no change is made to the final rule in this regard.

Finally, one commenter suggested clarifying how long the time limits will be tolled in cases where CADR assists the parties, and asked whether the party filing an opposition would get a full thirty days in the event that CADR's efforts prove unsuccessful. In negotiability cases where parties agree to use CADR, their case is held in abeyance and their filing deadlines are tolled, but the negotiability regulations do not set forth the details of this practice. Rather, the Authority has found it appropriate to let these details be worked out through practice, and it is appropriate to do so in the arbitration context as well. Accordingly, no change is made to the final rule in this regard.

Section 2425.9

One commenter approved of this regulation but suggested that the Authority reference its "subpoena and enforcement power[.]" It is unnecessary to reference any Authority "powers" in this section. Accordingly, no change is made to the final rule in this regard.

Another commenter stated that the Authority should be circumspect in implementing this section so as not to provide the excepting party a second chance to fully meet the requirements of § 2425.4 and thereby supplement the record. In this connection, the commenter did not object to the Authority seeking clarification where administrative errors are identified, but stated that providing an excepting party an opportunity to "more effectively formulate its exception" could undercut the finality of the arbitration process.

Although the commenter has raised valid concerns, there is no need to modify the rule. Instead, as the commenter's own comment suggests, these concerns are appropriately taken into account in "implementing" this regulation. Accordingly, no change is made to the final rule in this regard.

Finally, one commenter suggested that arbitrators should be qualified to review parties' documentation and testimony to determine whether they are "FLRA worthy." The commenter stated that, if an arbitrator is not trained to make this determination, then: Training should be provided; any decisions about the adequacy of evidence should be resolved during the formal arbitration proceedings; and the arbitrator should ensure that the parties provide adequate evidence prior to an exception being filed with the Authority.

To the extent that the commenter has suggested that the Authority should regulate how the arbitration process works and/or provide arbitrators with the authority to determine the content of filings with the Authority, the former would be an unwarranted intrusion by the Authority in the arbitration process, and the latter would be an unwarranted intrusion by the arbitrator in the exceptions process. Accordingly, no change is made to the final rule in this regard.

Section 2425.10

One commenter acknowledged that this regulation merely restates the Authority's current regulations, but suggested deleting the words "and making such recommendations" because the commenter did not recall ever seeing an Authority decision where the Authority made a "recommendation" regarding an award. In this connection, the commenter stated that the Authority denies an exception, remands an arbitration award, or sets the award aside in whole or in part. However, 5 U.S.C. 7122 expressly provides that the Authority may "make such recommendations concerning the award as it considers necessary," and it is appropriate to include the discussion of "recommendations" in § 2425.10 as well. Accordingly, no change is made to the final rule in this regard.

Part 2429—Miscellaneous and General Requirements

Section 2429.5

One commenter asserted that clarification is needed because the word "material" implies that the Authority will consider "immaterial" evidence. The commenter recommended changing the first sentence of § 2429.5 to the

following: "The Authority will not consider any evidence, issue, assertion, argument, affirmative defense, remedy, or challenge to an awarded remedy, that could have been but was not presented * * *".

The commenter's statement that the use of "material" implies that the Authority will consider "immaterial" evidence is correct. As the Authority did not intend to imply that it will consider immaterial evidence, the final rule deletes the word "material[.]" To the extent that the commenter's suggested wording would result in other, minor changes to the wording of the existing regulation, there is no basis for modifying the remaining wording, and that wording remains unchanged in the final rule.

One commenter repeated the arguments that the commenter made in connection with § 2425.4(c), specifically, that the proposed rule expands the Authority's basis for refusing to decide arguments raised on appeal if those arguments were not previously made to the arbitrator; that it may not always be reasonable for a party to anticipate an awarded remedy; and that parties often have expedited arbitration procedures that do not provide for records that will enable a party to demonstrate that it raised an issue before the arbitrator. For the reasons discussed in connection with § 2425.4(c), it is unnecessary to modify § 2429.5 in response to these concerns.

Another commenter stated that the Authority should entirely withdraw the proposed amendment to § 2429.5. According to the commenter, the amended wording will greatly increase the litigation burden associated with arbitration and undermine Congress's intent in 5 U.S.C. 7121 that Federal workplace disputes be resolved through a quick, efficient, and inexpensive negotiated grievance procedure. In this connection, the commenter asserted that many negotiated grievance procedures provide for the simultaneous submission of post-hearing briefs and do not provide for reply briefs, which minimizes parties' time and expense in connection with litigation but results in parties not challenging remedies that are sought only in post-hearing briefs. The commenter also asserted that the proposed rule's use of the word "could" in connection with whether a challenge "could" have been presented to an arbitrator will force parties whose agreements do not provide for reply briefs to arbitrators to choose between: (1) Moving for permission to file, and filing, a reply brief with the arbitrator, which would prolong litigation and impose additional costs; or (2) filing

exceptions with the Authority to challenge an awarded remedy, and run the risk of the opposing party asserting that the challenge should be dismissed because it could have been, but was not, presented to the arbitrator. According to the commenter, parties could modify their collective bargaining agreements to expressly permit reply briefs in arbitration, but reopening and modifying agreements may only be done at certain times and under certain conditions, and would impose time and expense. According to the commenter, the proposed amendment would discourage the use of faster, less costly, expedited arbitration procedures because parties will be encouraged to raise arguments that they otherwise would not raise. The commenter also asserted that the proposed wording will impose new burdens on the Authority because it will require the Authority to develop case law addressing when a challenged remedy "could" have been presented to an arbitrator. Further, the commenter stated that parties are unable to determine what an awarded remedy will be before an award actually issues, and questioned whether the wording "challenges to an awarded remedy" would require parties to file reply briefs (as discussed above) as well as post-award briefs to the arbitrator to challenge an awarded remedy. The commenter also asserted that the proposed wording imposes burdens not only in the arbitration context, but also in other processes where simultaneous briefs are filed, which would require greater expenditures of time for parties to file motions and for triers of fact to rule on those motions.

With regard to the commenter's concerns, as discussed previously, the proposed amendments to § 2429.5 merely incorporate into regulation the Authority's existing practice under § 2429.5. Thus, they do not impose any new, additional burdens on parties. With regard to the commenter's concern about the fact that post-hearing briefs often are submitted simultaneously, the Authority takes, and will continue to take, this factor into account in determining whether a party could have raised an issue before an arbitrator. *E.g., U.S. Dep't of Labor*, 60 FLRA 737, 738 (2005) (agency could file exception regarding issue that was raised for the first time in union's post-hearing brief to arbitrator, which was submitted at the same time as agency's post-hearing brief). The proposed revisions to § 2429.5 would not change this practice, and would not impose a new burden on parties to move to request an opportunity for additional filings or to

file post-award requests with an arbitrator. With regard to the commenter's statement that the proposed amendment will prolong litigation by encouraging parties to submit additional arguments to arbitrators that they otherwise would not submit, parties should be raising any arguments that they wish to raise to an arbitrator and giving the arbitrator the opportunity to resolve those issues. The Authority believes that clarifying the meaning of § 2429.5 will encourage the finality of arbitration awards and preclude parties from prolonging litigation by filing exceptions with the Authority on issues that they could, and should, have raised to an arbitrator. As for the commenter's assertion regarding other, non-arbitration contexts, as discussed previously, the proposed amendment to § 2429.5 merely incorporates into regulation the Authority's existing practice.

Section 2429.21

One commenter suggested eliminating the last sentence of § 2429.21(a) and inserting the following new subparagraph: "(b) When the period of time prescribed or allowed under this subchapter is 7 days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations." However, the Authority's current regulations already have a § 2429.21(b), and there is no need to separate out this one sentence from the rest of § 2429.21(a). Further, the wording set forth in the proposed rule is identical to the existing wording of § 2429.21(a), with the exception of the deletion of "except as to the filing of exceptions to an arbitrator's award under § 2425.1 of this subchapter," which merely reflects the change in how the Authority will calculate the timeliness of exceptions. For these reasons, the final rule as promulgated is the same as the proposed rule.

Section 2429.22

As an initial matter, the final rule corrects a typographical error from the proposed rule. Specifically, the final rule states that "5 days shall be added to the prescribed period[.]" rather than "5 days shall be added to the proscribed period[.]"

One commenter stated that mail to many government offices is subjected to off-site screening for hazardous substances, which sometimes delays mail for as long as a month. In fact, the commenter asserted that this occurred in connection with a recent Authority decision to which the commenter was a party. The commenter recommended adding the following wording: "; and

further provided that if a party certifies under oath that it did not actually receive a notice or other paper until more than 5 days after the date of mailing or deposit with the commercial delivery service, that larger number of days shall be added to the pr[e]scribed period."

The commenter's statement raises valid concerns regarding off-site irradiation of mail. However, as discussed in connection with § 2425.2, the determination of how an award should be served is left to the agreement of the parties, and parties that have concerns regarding receipt of regular mail can make arrangements to have an award served by some other method that does not present the same concerns. Accordingly, a change to the wording is not warranted, and the final rule does not incorporate the commenter's suggestion.

Other Regulatory Requirements

Two commenters made additional suggestions that do not pertain to particular regulations.

The first commenter stated that if "an arbitration award has been previously awarded by the FLRA to Union employees at a similar facility," then that award should be precedential, and the Authority should, "within the five day screening process by FLRA staff[.]" automatically deny any exceptions to a second, similar award. In this connection, the commenter stated that, during the arbitration process, the arbitrator could review the previous, similar case(s) and subsequent Authority decision(s), and include those findings in the "Opinion and Award."

To the extent that the commenter has suggested that the Authority should automatically deny exceptions to an arbitration award merely because that award resolves issues similar to those that were resolved in a previous arbitration award, it is well established that arbitration awards are not precedential. *E.g., U.S. Dep't of Veterans Affairs, Med. Ctr., W. Palm Beach, Fla., 63 FLRA 544, 548 (2009)*. Accordingly, there is no basis for modifying the proposed rule in this connection.

The second commenter suggested that the Authority post a "Q&A" or "FAQ" on the Authority's Web site that might assist agency and union representatives in avoiding procedural mistakes. The Authority does not believe that the commenter's suggestion warrants any modifications to the proposed rule, but will take the suggestion into account in developing other, non-regulatory guidance for parties and arbitrators.

Executive Order 12866

The Authority is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

Executive Order 13132

The Authority is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Authority has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies only to Federal employees, Federal agencies, and labor organizations representing Federal employees.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Parts 2425 and 2429

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

■ For the reasons stated in the preamble, the Authority amends 5 CFR chapter XIV as follows:

■ 1. Part 2425 is revised to read as follows:

PART 2425—REVIEW OF ARBITRATION AWARDS

Sec.

- 2425.1 Applicability of this part.
 2425.2 Exceptions—who may file; time limits for filing, including determining date of service of arbitration award for the purpose of calculating time limits; procedural and other requirements for filing.
 2425.3 Oppositions—who may file; time limits for filing; procedural and other requirements for filing.
 2425.4 Content and format of exceptions.
 2425.5 Content and format of opposition.
 2425.6 Grounds for review; potential dismissal or denial for failure to raise or support grounds.
 2425.7 Requests for expedited, abbreviated decisions in certain arbitration matters that do not involve unfair labor practices.
 2425.8 Collaboration and Alternative Dispute Resolution Program.
 2425.9 Means of clarifying records or disputes.
 2425.10 Authority decision.

Authority: 5 U.S.C. 7134.

§ 2425.1 Applicability of this part.

This part is applicable to all arbitration cases in which exceptions are filed with the Authority, pursuant to 5 U.S.C. 7122, on or after October 1, 2010.

§ 2425.2 Exceptions—who may file; time limits for filing, including determining date of service of arbitration award for the purpose of calculating time limits; procedural and other requirements for filing.

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

(b) *Timeliness requirements—general.* The time limit for filing an exception to an arbitration award is thirty (30) days after the date of service of the award. This thirty (30)-day time limit may not be extended or waived. In computing the thirty (30)-day period, the first day counted is the day after, not the day of, service of the arbitration award. Example: If an award is served on May 1, then May 2 is counted as day 1, and May 31 is day 30; an exception filed on May 31 would be timely, and an exception filed on June 1 would be untimely. In order to determine the date of service of the award, *see* the rules set forth in subsection (c) of this section, and for additional rules regarding computing the filing date, *see* 5 CFR 2429.21 and 2429.22.

(c) *Methods of service of arbitration award; determining date of service of arbitration award for purposes of calculating time limits for exceptions.* If the parties have reached an agreement as to what is an appropriate method(s) of service of the arbitration award, then that agreement—whether expressed in a collective bargaining agreement or otherwise—is controlling for purposes of calculating the time limit for filing exceptions. If the parties have not reached such an agreement, then the arbitrator may use any commonly used method—including, but not limited to, electronic mail (hereinafter “e-mail”), facsimile transmission (hereinafter “fax”), regular mail, commercial delivery, or personal delivery—and the arbitrator's selected method is controlling for purposes of calculating the time limit for filing exceptions. The following rules apply to determine the date of service for purposes of calculating the time limits for filing exceptions, and assume that the method(s) of service discussed are either consistent with the parties' agreement or chosen by the arbitrator absent such an agreement:

(1) If the award is served by regular mail, then the date of service is the postmark date or, if there is no legible postmark, then the date of the award; for awards served by regular mail, the excepting party will receive an additional five days for filing the exceptions under 5 CFR 2429.22.

(2) If the award is served by commercial delivery, then the date of service is the date on which the award was deposited with the commercial delivery service or, if that date is not indicated, then the date of the award; for awards served by commercial delivery, the excepting party will receive an additional five days for filing the exceptions under 5 CFR 2429.22.

(3) If the award is served by e-mail or fax, then the date of service is the date of transmission, and the excepting party will not receive an additional five days for filing the exceptions.

(4) If the award is served by personal delivery, then the date of personal delivery is the date of service, and the excepting party will not receive an additional five days for filing the exceptions.

(5) If the award is served by more than one method, then the first method of service is controlling when determining the date of service for purposes of calculating the time limits for filing exceptions. However, if the award is served by e-mail, fax, or personal delivery on one day, and by mail or commercial delivery on the same day, the excepting party will not receive an

additional five days for filing the exceptions, even if the award was postmarked or deposited with the commercial delivery service before the e-mail or fax was transmitted.

(d) *Procedural and other requirements for filing.* Exceptions must comply with the requirements set forth in 5 CFR 2429.24 (Place and method of filing; acknowledgment), 2429.25 (Number of copies and paper size), 2429.27 (Service; statement of service), and 2429.29 (Content of filings).

§ 2425.3 Oppositions—who may file; time limits for filing; procedural and other requirements for filing.

(a) *Who may file.* A party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an opposition to an exception that has been filed under § 2425.2 of this part.

(b) *Timeliness requirements.* Any opposition must be filed within thirty (30) days after the date the exception is served on the opposing party. For additional rules regarding computing the filing date, *see* 5 CFR 2425.8, 2429.21 and 2429.22.

(c) *Procedural requirements.* Oppositions must comply with the requirements set forth in 5 CFR 2429.24 (Place and method of filing; acknowledgment), 2429.25 (Number of copies and paper size), 2429.27 (Service; statement of service), and 2429.29 (Content of filings).

§ 2425.4 Content and format of exceptions.

(a) *What is required.* An exception must be dated, self-contained, and set forth in full:

(1) A statement of the grounds on which review is requested, as discussed in § 2425.6 of this part;

(2) Arguments in support of the stated grounds, including specific references to the record, citations of authorities, and any other relevant documentation;

(3) Legible copies of any documents referenced in the arguments discussed in subsection (a)(2) of this section, if those documents are not readily available to the Authority (for example, internal agency regulations or provisions of collective bargaining agreements);

(4) Arguments in support of any request for an expedited, abbreviated decision within the meaning of § 2425.7 of this part;

(5) A legible copy of the award of the arbitrator; and

(6) The arbitrator's name, mailing address, and, if available and authorized for use by the arbitrator, the arbitrator's e-mail address or facsimile number.

(b) *What is not required.* Exceptions are not required to include copies of

documents that are readily accessible to the Authority, such as Authority decisions, decisions of Federal courts, current provisions of the United States Code, and current provisions of the Code of Federal Regulations.

(c) *What is prohibited.* Consistent with 5 CFR 2429.5, an exception may not rely on any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy that could have been, but were not, presented to the arbitrator.

(d) *Format.* The exception may be filed on an optional form provided by the Authority, or in any other format that is consistent with subsections (a) and (c) of this section. A party's failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing an exception.

§ 2425.5 Content and format of opposition.

If a party chooses to file an opposition, then the party should address any assertions from the exceptions that the opposing party disputes, including any assertions that any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy were raised before the arbitrator. If the excepting party has requested an expedited, abbreviated decision under § 2425.7 of this part, then the party filing the opposition should state whether it supports or opposes such a decision and provide supporting arguments. The party filing the opposition must provide copies of any documents upon which it relies unless those documents are readily accessible to the Authority (as discussed in § 2425.4(b) of this part) or were provided with the exceptions. The opposition may be filed on an optional form provided by the Authority, or in any other format that is consistent with this section. A party's failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing an opposition.

§ 2425.6 Grounds for review; potential dismissal or denial for failure to raise or support grounds.

(a) The Authority will review an arbitrator's award to which an exception has been filed to determine whether the award is deficient—

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

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

(b) If a party argues that an award is deficient on private-sector grounds under paragraph (a)(2) of this section, then the excepting party must explain how, under standards set forth in the decisional law of the Authority or Federal courts:

(1) The arbitrator:

(i) Exceeded his or her authority; or

(ii) Was biased; or

(iii) Denied the excepting party a fair hearing; or

(2) The award:

(i) Fails to draw its essence from the parties' collective bargaining agreement; or

(ii) Is based on a nonfact; or

(iii) Is incomplete, ambiguous, or contradictory as to make implementation of the award impossible; or

(iv) Is contrary to public policy; or

(v) Is deficient on the basis of a private-sector ground not listed in paragraphs (b)(1)(i) through (b)(2)(iv) of this section.

(c) If a party argues that the award is deficient on a private-sector ground raised under paragraph (b)(2)(v) of this section, the party must provide sufficient citation to legal authority that establishes the grounds upon which the party filed its exceptions.

(d) The Authority does not have jurisdiction over an award relating to:

(1) An action based on unacceptable performance covered under 5 U.S.C. 4303;

(2) A removal, suspension for more than fourteen (14) days, reduction in grade, reduction in pay, or furlough of thirty (30) days or less covered under 5 U.S.C. 7512; or

(3) Matters similar to those covered under 5 U.S.C. 4303 and 5 U.S.C. 7512 which arise under other personnel systems.

(e) An exception may be subject to dismissal or denial if:

(1) The excepting party fails to raise and support a ground as required in paragraphs (a) through (c) of this section, or otherwise fails to demonstrate a legally recognized basis for setting aside the award; or

(2) The exception concerns an award described in paragraph (d) of this section.

§ 2425.7 Requests for expedited, abbreviated decisions in certain arbitration matters that do not involve unfair labor practices.

Where an arbitration matter before the Authority does not involve allegations of unfair labor practices under 5 U.S.C. 7116, and the excepting party wishes to receive an expedited Authority decision, the excepting party may

request that the Authority issue a decision that resolves the parties' arguments without a full explanation of the background, arbitration award, parties' arguments, and analysis of those arguments. In determining whether such an abbreviated decision is appropriate, the Authority will consider all of the circumstances of the case, including, but not limited to: whether any opposition filed under § 2425.3 of this part objects to issuance of such a decision and, if so, the reasons for such an objection; and the case's complexity, potential for precedential value, and similarity to other, fully detailed decisions involving the same or similar issues. Even absent a request, the Authority may issue expedited, abbreviated decisions in appropriate cases.

§ 2425.8 Collaboration and Alternative Dispute Resolution Program.

The parties may request assistance from the Collaboration and Alternative Dispute Resolution Program (CADR) to attempt to resolve the dispute before or after an opposition is filed. Upon request, and as agreed to by the parties, CADR representatives will attempt to assist the parties to resolve these disputes. If the parties have agreed to CADR assistance, and the time for filing an opposition has not expired, then the Authority will toll the time limit for filing an opposition until the CADR process is completed. Parties seeking information or assistance under this part may call or write the CADR Office at 1400 K Street, NW., Washington, DC 20424. A brief summary of CADR activities is available on the Internet at <http://www.flra.gov>.

§ 2425.9 Means of clarifying records or disputes.

When required to clarify a record or when it would otherwise aid in disposition of the matter, the Authority, or its designated representative, may, as appropriate:

(a) Direct the parties to provide specific documentary evidence, including the arbitration record as discussed in 5 CFR 2429.3;

(b) Direct the parties to respond to requests for further information;

(c) Meet with parties, either in person or via telephone or other electronic communications systems, to attempt to clarify the dispute or matters in the record;

(d) Direct the parties to provide oral argument; or

(e) Take any other appropriate action.

§ 2425.10 Authority decision.

The Authority shall issue its decision and order taking such action and

making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

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

Authority: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2122(a).

■ 3. Section § 2429.5 is revised to read as follows:

§ 2429.5 Matters not previously presented; official notice.

The Authority will not consider any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy that could have been, but were not, presented in the proceedings before the Regional Director, Hearing Officer, Administrative Law Judge, or arbitrator. The Authority may, however, take official notice of such matters as would be proper.

■ 4. Section 2429.21(a) is revised to read as follows:

§ 2429.21 Computation of time for filing papers.

(a) In computing any period of time prescribed by or allowed by this subchapter, except in agreement bar situations described in § 2422.12(c), (d), (e), and (f) of this subchapter, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. *Provided, however,* in agreement bar situations described in § 2422.12(c), (d), (e), and (f), if the 60th day prior to the expiration date of an agreement falls on a Saturday, Sunday, or a Federal legal holiday, a petition, to be timely, must be filed by the close of business on the last official workday preceding the 60th day. When the period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations.

* * * * *

■ 5. Section 2429.22 is revised to read as follows:

§ 2429.22 Additional time after service by mail or commercial delivery.

Except as to the filing of an application for review of a Regional Director's Decision and Order under § 2422.31 of this subchapter, and subject to the rules set forth in § 2425.2 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 or commercial delivery, 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.

Dated: July 14, 2010.

Carol Waller Pope,
Chairman.

[FR Doc. 2010-17648 Filed 7-20-10; 8:45 am]

BILLING CODE 6727-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AI88

[NRC-2010-0183]

List of Approved Spent Fuel Storage Casks: NAC-MPC System, Revision 6

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International Inc. (NAC) NAC-MPC System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 6 to Certificate of Compliance (CoC) Number 1025. Amendment No. 6 to the NAC-MPC System CoC will include the following changes to the configuration of the NAC-MPC storage system as noted in Appendix B of the Technical Specifications (TS): Incorporation of a single closure lid with a welded closure ring for redundant closure into the Transportable Storage Canister (TSC) design; modification of the TSC and basket design to accommodate up to 68 La Crosse Boiling Water Reactor (LACBWR) spent fuel assemblies (36 undamaged Exxon fuel assemblies and up to 32 damaged fuel cans (in a preferential loading pattern)) that may contain undamaged Exxon fuel assemblies and damaged Exxon and Allis Chalmers fuel assemblies and/or

fuel debris; the addition of zirconium alloy shroud compaction debris to be stored with undamaged and damaged fuel assemblies; minor design modifications to the Vertical Concrete Cask (VCC) incorporating design features from the MAGNASTOR system for improved operability of the system while adhering to as low as is reasonably achievable (ALARA) principles; an increase in the concrete pad compression strength from 4,000 psi to 6,000 psi; added justification for the 6-ft soil depth as being conservative; and other changes to incorporate minor editorial corrections in CoC No. 1025 and Appendices A and B of the TS. Also, the Definitions in TS 1.1 will be revised to include modifications and newly defined terms; the Limiting Conditions for Operation and associated Surveillance Requirements in TS 3.1 and 3.2 will be revised; and editorial changes will be made to TS 5.2 and 5.4.

DATES: The final rule is effective October 4, 2010, unless significant adverse comments are received by August 20, 2010. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0183. Address questions about NRC dockets to Carol Gallagher at 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-899-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. An electronic