

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2420 through 2423, 2470 and 2472

Regulations Implementing Coverage of Federal Sector Labor Relations Laws to the Executive Office of the President

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Labor Relations Authority (FLRA) proposes to revise portions of its regulations in order to carry out its responsibilities under the Presidential and Executive Office Accountability Act. The FLRA was directed to issue regulations implementing coverage of the Federal Service Labor-Management Relations Statute to the Executive Office of the President no later than October 1, 1998. The FLRA is also providing an opportunity for all interested persons to comment on an issue that has arisen during the consideration of these regulatory revisions.

DATES: Comments must be received on or before July 31, 1998.

ADDRESSES: Mail or deliver written comments to the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW., Washington, DC 20424-0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Office of Case Control, at the address listed above or by telephone # (202) 482-6500.

SUPPLEMENTARY INFORMATION:

1. Background

The Presidential and Executive Office Accountability Act (Pub. L. 104-331) (the EOAA) was enacted on October 26, 1996, extending the coverage of eleven civil rights, labor, and employment laws to the Executive Office of the President (EOP). The EOAA applies Chapter 71 of Title 5, the Federal Service Labor-Management Relations Statute (the Statute), to the EOP and requires the

FLRA to promulgate regulations to implement the EOAA, no later than October 1, 1998.

The EOP is comprised of thirteen separate offices: The White House Office, the Executive Residence at the White House, the Office of the Vice President, the Official Residence of the Vice President, the Office of Policy Development, the Council of Economic Advisors, the Council on Environmental Quality and Office of Environmental Quality, the National Security Council, the Office of Administration, the Office of Management and Budget, the Office of National Drug Control Policy, the Office of Science and Technology, and the Office of the United States Trade Representative.

According to House Report No. 104-820 (110 Stat. 4375), there are roughly 1,700 employees working in the EOP. Less than one-third of these are Title 3 employees, who traditionally serve at the discretion of the President. The Title 3 employees work in the White House Office, the Office of the Vice President, the Office of Policy Development, the Executive Residence, and the Official Residence of the Vice President. The remaining 1,150 employees working in the other eight EOP offices are covered by Title 5, and are civil service employees serving under the same laws and regulations as other career executive branch employees. These Title 5 employees previously covered by Chapter 71 of Title 5, are now covered under the provisions of the EOAA.

2. Requirements placed on the FLRA

The EOAA contains a general requirement that the FLRA issue regulations for the EOP that are the same as the substantive regulations promulgated by the FLRA for all other agencies under its jurisdiction. This general requirement applies differently, however, depending on the EOAA's classification of the EOP offices.

With respect to the first group of five designated offices (the Council on Environmental Quality, the Office of Administration, the Office of Science and Technology Policy, the Office of the U.S. Trade Representative, and the Official Residence of the Vice President), the EOAA requires that the FLRA's regulations be the same as the regulations that apply to other agencies, except to the extent that the Authority determines for good cause, or to avoid a conflict of interest or an appearance of

a conflict of interest, that a modification is required. For the remaining eight EOP offices, the EOAA requires that the FLRA exclude from coverage employees if the FLRA determines that exclusion is required because of a conflict of interest, an appearance of a conflict of interest, or the President's or Vice President's constitutional responsibilities.

3. Prior Federal Register Notice

The FLRA published a **Federal Register** notice (63 FR 16141, Apr. 2, 1998) inviting parties to submit written recommendations on what, if any, modifications to the FLRA's current regulations were necessary to satisfy the requirements of the EOAA. Specifically, the FLRA asked for comments regarding: Appropriate bargaining units under section 7112 of the Statute and section 431(d)(1)(B) of the EOAA; appropriate remedies for statutory violations based upon section 431(a) of the EOAA and sections 7118(a)(7) and 7105(a)(2)(I) of the Statute; possible security issues based upon the FLRA's ability to investigate, prosecute, and adjudicate cases in which non-public information could be at issue or discussed; possible conflict of interest/appearance of conflict of interest issues based upon section 431(d)(1)(B)(i) of the EOAA; possible constitutional issues based upon section 431(d)(1)(B)(ii) of the EOAA; concerns regarding political affiliation; and appropriate designation of the "head of an agency" under sections 7102(1), 7114(c)(1)-(3), and 7117(c)(3) of the Statute for each EOP office. No comments were received specifically in response to the notice.

Additionally, the FLRA informally invited comment directly from interested persons. In response, one comment noted that during the FLRA's investigation, prosecution, and adjudication of cases involving the EOP, the FLRA may receive documents that otherwise would not be subject to public disclosure through the Freedom of Information Act (FOIA). As the FLRA continues to review its regulations to determine whether modifications are necessary in light of the EOAA, the FLRA is requesting comments on this issue of information disclosure and the interests of the EOP. Once the FLRA receives comments, it will consider rulemaking on this issue, if necessary.

4. Summary of Amendments

As a result of the enactment of the EOAA, a number of amendments to the FLRA's regulations are necessary.

A. Section 2420.1 Purpose and scope

The FLRA proposes to amend this section to reflect the fact that the EOAA has made applicable Chapter 71 of Title 5 to the EOP.

B. Section 2421.2 Terms defined in 5 U.S.C. 7103(a)

The FLRA proposes to amend this section to incorporate applicable definitions found in the EOAA.

C. Section 2421.14 Appropriate unit

The FLRA proposes to amend this section to reflect that when making bargaining unit determinations for the eight offices listed in 3 U.S.C. 431(d)(2), pursuant to section 431 of the EOAA, the Regional Director shall exclude employees if it is determined that such exclusion is required because of a conflict of interest, an appearance of a conflict of interest, or the President's or Vice President's constitutional duties.

D. Section 2422.34(b) Rights and obligations during the pendency of representation proceedings

The FLRA proposes to amend this section to include 3 U.S.C. 431(d)(2) as one of the statutory grounds for a party to take action regarding the bargaining unit status of individual employees.

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

The FLRA proposes to amend this section to reflect that, with regard to employees covered by section 431 of the EOAA, on finding a violation, the Authority may not issue an order of reinstatement.

F. Section 2470.1 Purpose

The FLRA proposes to amend this section to reflect the fact that the EOAA has made applicable chapter 71 of title 5 to the Executive Office of the President.

G. Section 2470.2 Definitions

The FLRA proposes to amend this section to incorporate applicable definitions found in the EOAA.

H. Section 2472.1 Purpose

The FLRA proposes to amend this section to clarify that the regulations contained in this part do not apply to employing offices, employees, and representatives of those employees, who are subject to the provisions of the EOAA.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant economic impact on a substantial number of small entities. The amendments are required so that the FLRA can carry out its responsibilities under the EOAA.

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 government. 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 requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Parts 2420, 2421, 2422, 2423, 2470, and 2472

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

For the reasons stated in the preamble, the FLRA proposes to amend parts 2420, 2421, 2422, 2423, 2470, and 2472 of chapter XIV, title 5 of the Code of Federal Regulations as follows:

PART 2420—PURPOSE AND SCOPE

1. The authority citation for part 2420 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. The introductory text of § 2420.1 is revised to read as follows:

§ 2420.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement the provisions of chapter 71 of title 5 and, where applicable, section 431 of title 3 of the United States Code. They prescribe the procedures, basic principles or criteria under which the Federal Labor Relations Authority or the General Counsel of the Federal Labor Relations Authority, as applicable, will:

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PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

1. The authority citation for part 2421 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. In § 2421.2, paragraph (a) is revised to read as follows:

§ 2421.2 Terms defined in 5 U.S.C. 7103(a); General Counsel; Assistant Secretary.

(a) The terms *person, employee, agency, labor organization, dues, Authority, Panel, collective bargaining agreement, grievance, supervisor, management official, collective bargaining, confidential employee, conditions of employment, professional employee, exclusive representative, firefighter, and United States*, as used herein shall have the meanings set forth in 5 U.S.C. 7103(a). The *terms* covered employee, employee, employing office, and *agency*, when used in connection with the Presidential and Executive Office Accountability Act, 3 U.S.C. 401 *et seq.*, shall have the meaning set out in 3 U.S.C. 401(b), 431(b) and (d)(2). Employees who are employed in the eight offices listed in 3 U.S.C. 431(d)(2) are excluded from coverage if the Authority determines that such exclusion is required because of a conflict of interest, an appearance of a conflict of interest, or the President's or Vice President's constitutional responsibilities, in addition to the exemptions currently set forth in 5 U.S.C. 7103(a).

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3. Section 2421.14 is revised to read as follows:

§ 2421.14 Appropriate unit.

Appropriate unit means that grouping of employees found to be appropriate for purposes of exclusive recognition under 5 U.S.C. 7111, and for purposes of allotments to representatives under 5 U.S.C. 7115(c), and consistent with the provisions of 5 U.S.C. 7112. For the eight offices listed in 3 U.S.C. 431(d)(2), in determining whether particular employees are to be included in an appropriate unit in a proceeding under part 2422 of this chapter, the Regional

Director shall exclude employees if it is determined that such exclusion is required because of a conflict of interest or appearance of a conflict of interest or because of the President's or Vice President's constitutional responsibilities, in addition to the standards set out in 5 U.S.C. 7112.

PART 2422—REPRESENTATION PROCEEDINGS

1. The authority citation for part 2422 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. In § 2422.34, paragraph (b) is revised to read as follows:

§ 2422.34 Rights and obligations during the pendency of representation proceedings.

* * * * *

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, pursuant to 3 U.S.C. 431(d)(2), 5 U.S.C. 7103(a)(2), and 7112(b) and (c): *Provided, however,* that its actions may be challenged, reviewed, and remedied where appropriate.

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for part 2423 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. In § 2423.41, paragraph (c) is amended to read as follows:

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

* * * * *

(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. With regard to employees covered by 3 U.S.C. 431, upon finding a violation, the Authority's order may not include an order of reinstatement, in accordance with 3 U.S.C. 431(a).

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PART 2470—GENERAL

1. The authority citation for part 2470 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7119, 7134.

2. Section 2470.1 is revised to read as follows:

§ 2470.1 Purpose.

The regulations contained in this subchapter are intended to implement the provisions of section 7119 of title 5 and, where applicable, section 431 of title 3 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiation impasses when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediator, fail to resolve the disputes. It is the policy of the Panel to encourage labor and management to resolve disputes on terms that are mutually agreeable at any stage of the Panel's procedures.

3. In § 2470.2, paragraph (a) is revised to read as follows:

§ 2470.2 Definitions.

(a) The terms *agency, labor organization, and conditions of employment* as used herein shall have the meaning set forth in 5 U.S.C. 7103(a). When used in connection with 3 U.S.C. 431, the term *agency* as used in the Panel's regulations means an employing office as defined in 3 U.S.C. 401(a)(4).

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

1. The authority citation for part 2472 is revised to read as follows:

Authority: 5 U.S.C. 6131.

2. Section 2472.1 is revised to read as follows:

§ 2472.1 Purpose.

The regulations contained in this part are intended to implement the provisions of section 6131 of title 5 of the United States Code, but are not applicable to actions covered by section 431 of title 3 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiations impasses arising from agency determinations not to establish or to terminate flexible and compressed work schedules.

Dated: June 26, 1998.

Kevin Kopper,

Director, Budget & Finance Division.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-29-AD]

Airworthiness Directives; First Technology Fire and Safety Ltd. Toilet Compartment Fire Extinguishers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to First Technology Fire and Safety Ltd. toilet compartment fire extinguishers. This proposal would require inspection of suspect fire extinguishers for leakage, and removal from service and replacement with serviceable parts if found leaking. This proposal is prompted by reports of leakage at the fire extinguisher's eutectic tip due to a design change. The actions specified by the proposed AD are intended to prevent fire extinguisher failure due to leakage, which in the event of a toilet compartment fire could result in an uncontained fire and damage to the aircraft.

DATES: Comments must be received by August 31, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-29-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ad-engineprop@faa.dot.gov". Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Percival Aviation Ltd., The Sidings, Knowle, Fareham, Hampshire PO17 5LZ England; telephone 011 44 1329 833814, fax 011 44 1329 834013. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.