# 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 2421, 2423, and 2429

### Meaning of Terms as Used in This Subchapter; Unfair Labor Practice Proceedings; Miscellaneous and General Requirements

**AGENCY:** Office of the General Counsel, Federal Labor Relations Authority.

**ACTION:** Notice of proposed rulemaking; notice of meeting.

**SUMMARY:** The General Counsel of the Federal Labor Relations Authority (FLRA) proposes to revise the regulations regarding the prevention, resolution, and investigation of unfair labor practice (ULP) disputes (part 2423, subpart A). The purpose of the proposed revisions is to facilitate dispute resolution and to simplify, clarify, and improve the processing of ULP charges. Implementation of the proposed changes will enhance the purposes and policies of the Federal Service Labor-Management Relations Statute (Statute) by preventing ULP disputes, resolving disputes that arise, and fully investigating and taking determinative action in disputes that are not resolved. The proposed revisions implement the FLRA's agency-wide collaboration and alternative dispute resolution initiative to assist labor and management parties in developing collaborative relationships, and to provide dispute resolution services in ULP, representation, negotiability, impasses, and arbitration cases pending before the Office of the General Counsel, the three Authority Members, and the Federal Service Impasses Panel. In addition, two definitions of terms used only in subpart A of part 2423 are proposed in part 2421, and it is proposed that one section in part 2429 be clarified in light of the proposed revisions to subpart A of part 2423.

**DATES:** Comments must be received on or before October 19, 1998. See **SUPPLEMENTARY INFORMATION** section for meeting dates.

**ADDRESSES:** Mail or deliver written comments to the Office of the General Counsel, Federal Labor Relations Authority, 607 14th Street, NW, Suite 210, Washington, DC 20424–0001. See **SUPPLEMENTARY INFORMATION** section for meeting addresses.

**FOR FURTHER INFORMATION CONTACT:** *Regulatory Information:* David L. Feder, Deputy General Counsel, at the address for the Office of the General Counsel or by telephone # (202) 482–6680 ext. 203, facsimile # (202) 482–6608. See **SUPPLEMENTARY INFORMATION** for persons to contact for meeting registration.

**SUPPLEMENTARY INFORMATION:** The Office of the General Counsel (OGC) of the FLRA proposes modifications to the existing rules and regulations in subpart A of part 2423 of title 5 of the Code of Federal Regulations regarding the prevention of ULPs. These proposed revisions are part of the FLRA's initiative to facilitate dispute resolution and to simplify, clarify, and improve the processing of ULP charges. On July 31, 1997, the Authority Members published final regulations (62 FR 40911), which became effective on October 1, 1997, on the processing of ULP complaints from the issuance of a complaint through the transfer of the case to the Authority Members after the issuance of a decision and recommended order of an Administrative Law Judge. These proposed revisions concern the prevention of ULP disputes and the investigation, resolution, and disposition of ULP charges.

Subpart A of the regulations has not been reexamined in its entirety since the regulations were enacted in 1980. Since that time, the OGC has established internal policies to assist parties in preventing and resolving ULP disputes and in investigating ULP charges. Recent examples of these policies concern Settlement; Prosecutorial Discretion; Injunctions; Scope of Investigations; Intervention; Quality in ULP Investigations; and Facilitation, Intervention, Training, and Education. In November 1997, the FLRA undertook a comprehensive Customer Service Survey. The General Counsel also has held over 30 Town Hall Meetings throughout the country, open to all parties, to discuss the manner in which the OGC: (1) prevents ULPs by assisting parties in avoiding ULP disputes and resolving those disputes which precipitate the filing of a ULP charge; and (2) investigates and takes disposition on the merits in those disputes which are not resolved. Many of the proposed revisions are driven by the discussions during those Town Hall meetings and the preliminary results of the Customer Service Survey. These proposed revisions provide parties with alternative dispute resolution (ADR) processes to avoid ULP disputes as well as to resolve any ULP disputes that materialize prior to the filing of a ULP charge and prior to issuance of a complaint.

To obtain additional input from our customers, meetings to discuss these proposed revisions will be held in each of the seven Regional Office cities and at OGC Headquarters at the following locations, dates and times:

| Office | Location of meeting | Date | Time |
|---|---|---|---|
| Boston | Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, 1st Floor Auditorium, Boston, MA. | Sept. 17, 1998 | 9:30 a.m. |
| Washington, DC | 1730 M Street, NW, Suite 300, Conference Room, Washington, DC | Sept. 17, 1998 | 9:30 a.m. |
| Atlanta | Summit Building, 401 West Peachtree Street, 31st Floor, Atlanta, GA | Sept. 17, 1998 | 9:30 a.m. |
| Chicago | Ralph H. Metcalfe Federal Building, 77 West Jackson Blvd., Room 328, Chicago, IL. | Oct. 6, 1998 | 9:00 a.m. |
| Dallas | A. Maceo Smith Federal Building, 525 Griffin Street, Room 502, Dallas, TX. | Sept. 17, 1998 | 9:30 a.m. |
| Denver | 1244 Speer Blvd., Room 700, Denver, CO | Sept. 17, 1998 | 9:30 a.m. |
| San Francisco | Oakland Federal Building, 1301 Clay Street, North Tower, 2nd Floor, Conference Rooms A and B, Oakland, CA. | Oct. 8, 1998 | 9:00 a.m. |

| Office | Location of meeting | Date | Time |
|---|---|---|---|
| OGC HQ, Washington, DC ..... | 607 14th Street, NW, 2nd Floor Agenda Room, Washington, DC ..... | Sept. 17, 1998 .... | 9:30 a.m. |

Persons interested in attending any of these Regional Office City meetings on this proposed rulemaking should write or call the following persons at the addresses and telephone numbers listed to confirm attendance at the selected site: Gary J. Lieberman, Boston Regional Office, 99 Summer Street, Suite 1500, Boston, MA 02110–1200, telephone # (617) 424–5731 ext. 20, facsimile # (617) 424–5743; Barbara S. Liggett, Washington Regional Office, 1255 22nd Street, NW, Suite 400, Washington, DC 20037–1206, telephone # (202) 653–8502 ext. 23, facsimile # (202) 653–5091; Gail R. Hitchcock, Atlanta Regional Office, Marquis Two Tower, Suite 701, 285 Peachtree Center Ave., Atlanta, GA 30303–1270, telephone # (404) 331–5212 ext. 17, facsimile # (404) 331–5280; Philip T. Roberts, Chicago Regional Office, 55 West Monroe Street, Suite 1150, Chicago, IL 60603–9727, telephone # (312) 886–3465 ext. 20, facsimile # (312) 866–5977; Billie Jean Faulks, Dallas Regional Office, 525 South Griffin Street, Suite 926, LB 107, Dallas, TX 75202–5093, telephone # (214) 767–6266 ext. 10, facsimile # (214) 767–0156; Timothy J. Sullivan, Denver Regional Office, 1244 Speer Blvd., Suite 100, Denver, CO 80204–3581, telephone # (303) 844–5226 ext. 12, facsimile # (303) 844–2774; Lisa C. Vandenberg, San Francisco Regional Office, 901 Market St., Suite 220, San Francisco, CA 94103–1791, telephone # (415) 356–5002 ext. 18, facsimile # (415) 356–5017; and Nancy Speight, Office of the General Counsel, 607 14th Street, NW, Suite 210, Washington, DC 20424–0001, telephone # (202) 482–6680 ext. 205, facsimile # (202) 482–6608.

Copies of all written comments will be available for inspection and photocopying between 8:00 a.m. and 5:00 p.m., Monday through Friday, at the Office of General Counsel, Suite 210, 607 14th St., NW, Washington, DC 20424–0001.

Sectional analyses of the proposed amendments to Part 2421—Meaning of Terms As Used in This Subchapter, Part 2423—ULP Proceedings, and Part 2429—Miscellaneous and General Requirements are as follows:

## Part 2421—Meaning of Terms as Used in This Subchapter

*Section 2421.23*

The term Charging Party, which appears only in subpart A of part 2423, is not defined in the current regulations. This section now defines *Charging Party*.

*Section 2421.24*

The term *Charged Party*, which appears only in subpart A of part 2423, is not defined in the current regulations. This section now defines *Charged Party*.

## Part 2423—Unfair Labor Practice Proceedings

*Section 2423.1*

ULP charges filed on or after January 11, 1979, have been processed under this part. Since there are no charges pending that were filed before that date, this section is no longer required to serve as a transitional guide and is therefore proposed to be deleted.

It is proposed that current § 2423.2 be renumbered as 2423.1. The current section encourages the parties to meet and resolve ULP disputes prior to filing ULP charges. The proposed revisions continue to encourage and further support such dispute resolution activities by clarifying that the parties may jointly request or agree to have the OGC assist them in this endeavor. This proposed revision is consistent with a revision made to the processing of representation petitions in 1995 (60 FR 67288) (Dec. 29, 1995). The proposed revision also highlights that Regional Office representatives may assist parties in informally resolving their ULP dispute as part of the investigation.

Since Regional Office representatives are available to assist parties in resolving ULP disputes both prior to the filing of a charge and during the course of the investigation, there is no longer a need to require a 15-day delay before a Regional Office begins processing a charge. Accordingly, it is proposed that paragraph (c) be deleted.

*Section 2423.2*

Since the enactment of the Statute, the OGC has assisted employees, labor organizations, and agencies in avoiding and resolving labor-management disputes and enhancing labor-management relationships as governed by the Statute. The use of a problem-solving approach and the provision of facilitation, intervention, training, and education services to the parties provide the participants in the Federal sector labor-management relations program with an alternative to adversarial litigation.

The preliminary results of the Customer Service Survey reveal that improved relationships between labor and management result in the filing of fewer ULP charges. The provision of ADR services to parties promotes the purposes and policies of the Statute by: improving and enhancing parties' labor-management relationships, enabling parties to avoid ULP disputes, and assisting the parties in resolving ULP disputes among themselves.

This proposed new section sets forth the purpose for providing ADR services and the types of services that are available to the parties. Parties may request assistance or a Region may suggest that the parties may benefit from such ADR programs. In either situation, ADR programs under this section are voluntary and undertaken only upon agreement by both parties.

*Section 2423.3*

This section, which identifies who may file a ULP charge, is substantially unchanged.

*Section 2423.4*

This section, describing the content of a ULP charge, is substantially unchanged. Sometimes, the individual signing a charge, or the individual upon whom a charge is served, is not the point of contact for the Charging or Charged Party, respectively. To avoid any delay in commencement of the investigation, this section clarifies that a charge also identifies the points of contact for both parties. This section also requires facsimile numbers, when such equipment is available, to be supplied on the charge form. The section continues to require that the charge contain a clear and concise statement of the facts alleged to constitute a ULP. However, it is proposed that a party filing a charge need not be required to specifically cite what subsection(s) of 5 U.S.C. 7116(a) or (b) are being alleged. Sometimes parties filing charges are uncertain which subsection to allege and thus list all or inapplicable subsections, which only confuses the parties and delays the investigation. The section clarifies that a charge is a self-contained document which describes the alleged ULP without the need to refer to other documents. This section also provides further guidance to parties filing charges as to what constitutes the supporting evidence and documents which are submitted to the Region when filing a charge.

*Section 2423.5*

The current section, which provides for initial selection of the ULP procedure or the negotiability procedure when the same issue is involved, is identical to the provision in part 2424, section 2424.5. The Chair and Members of the Authority published a **Federal Register** notice (63 FR 19413, 19414) (Apr. 20, 1998), stating their intent to review, and where appropriate, implement mechanisms to improve the manner in which negotiability appeals are processed, and to revise the regulations governing review of these appeals. One issue the Authority requested comments on concerns the relationship between issues arising under the negotiability appeals process and the ULP process. Accordingly, since the substance of section 2423.5 is currently under review, this section is proposed to be removed and reserved.

*Section 2423.6*

This section continues to describe the requirements for filing and serving ULP charges and is substantially unchanged. One proposed change is to allow filing of a charge with a Regional Office by facsimile transmission. It is proposed that supporting evidence and documents will continue to be required to be submitted by mail or delivered in person, not by facsimile transmission. When a charge is filed by facsimile transmission, an original of the charge need not also be sent to the Region. Charges also may be served on Charged Parties by facsimile transmission, if that equipment is available.

*Section 2423.7*

This proposed new section establishes an alternative case processing procedure to attempt to resolve the allegations in the charge after it is filed. This procedure is voluntary and may be undertaken only upon agreement by both parties. When utilized, the Region undertakes a problem-solving approach to assist the parties in resolving the dispute underlying the charge in lieu of initially investigating the particular facts and determining the merits of the charge. This alternative case processing procedure allows the parties to attempt to resolve their underlying dispute prior to the Region taking evidence. Thus, the Region does not gather any testimonial or documentary evidence or positions on the merits of the charge during the alternative case processing procedure. Should the parties be unable to resolve their dispute, an agent of the Region who was not involved in the alternative case processing procedure conducts an investigation.

Preliminary results of the Customer Service Survey confirm that a majority of charges are resolved during the investigatory process. This alternative case processing procedure allows the parties to agree to attempt to resolve their dispute prior to attempting to prove their allegations or defenses. The use of this procedure will assist the parties in resolving disputes earlier in the process, even if a charge is filed.

*Section 2423.8*

This section, similar to proposed § 2423.1, deletes the requirement to delay an investigation for 15 days since Regional Office representatives are available to assist parties in resolving ULP disputes both prior to the filing of a charge and during the course of the investigation. This section continues the requirement that all persons are expected to fully cooperate with the Regional Director in the investigation of charges. The term ''fully cooperate'' is not currently defined in the regulations. The proposed regulation delineates what is included within the requirement to cooperate. The cooperation requirement is identical for all parties, whether a Charging Party or a Charged Party. The section provides that cooperation includes, as deemed appropriate by the Regional Director: (1) making union officials, employees, and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation; (2) producing documentary evidence pertinent to the matters under investigation; and (3) providing statements of position in the matters under investigation. This is the same standard of cooperation that always has been applied to Charging Parties and that always has been expected of Charged Parties. In addition, the preliminary results of the Customer Service Survey reveal that a significant majority of agency and labor organization respondents and individual respondents believes that parties should be required to cooperate during an investigation. A party is only required to cooperate to that degree deemed appropriate by the Regional Director, as determined on a case-by-case basis. However, any party may submit evidence to the Region during an investigation even if that evidence was not requested by the Region. In those situations where a Charging Party fails or refuses to cooperate and such cooperation has been deemed appropriate by the Regional Director, the Region may dismiss the charge. In those situations where a Charged Party fails or refuses to cooperate and such cooperation has been deemed appropriate by the Regional Director, the General Counsel may, in appropriate circumstances, exercise existing authority to issue an investigative subpoena under 5 U.S.C. 7132(a) of the Statute and enforce an investigative subpoena in an appropriate United States district court under 5 U.S.C. 7132(b).

This section also continues the General Counsel's policy to protect the identity of individuals who submit statements and information during the investigation, and to protect against the disclosure of documents obtained during the investigation, as a means of assuring the General Counsel's continuing ability to obtain all relevant information. The section also notes the new prehearing disclosure requirement in § 2423.23 that requires parties, after issuance of complaint but before a ULP hearing, to exchange identification of witnesses, a synopsis of their expected testimony and documents proposed to be offered into evidence at the hearing.

*Section 2423.9*

This section, providing for the amendment of charges, is unchanged.

*Section 2423.10*

This section, describing the actions that can be taken by a Regional Director on a charge and the processing of requests for appropriate temporary relief under 5 U.S.C. 7123(d), remains unchanged except for editorial modifications.

*Section 2423.11*

This section describes the process for appealing Regional Director decisions not to issue a complaint. Aside from editorial modifications, the section deletes the requirement that a Charging Party serve notice of an appeal or a request for an extension of time on the other party(ies). The current section provides that the failure to fulfill this service requirement does not affect the validity of the appeal. Since the OGC notifies the Charged Party of an appeal and a request for extension of time when confirming receipt of an appeal, there is no need to continue this service requirement. In addition, a new subsection (e) is added which sets forth the grounds upon which an appeal may be granted by the General Counsel. The General Counsel may grant an appeal if a party establishes that one of the following five grounds exists:

1. The Regional Director's decision did not consider material facts that would have resulted in issuance of a complaint;

2. The Regional Director's decision is based on a material fact that is clearly erroneous;

3. The Regional Director's decision is based on an incorrect statement of the applicable rule of law;

4. There is no Authority precedent on the legal issue in the case; or

5. The manner in which the Region conducted the investigation has resulted in prejudicial error.

These standards, which were first announced in 1996, set forth a fair and consistent approach to the decisional analysis that is conducted in each appeal case. Their publication as part of the regulations puts all persons on notice of the standards needed to be established to sustain an appeal. In an effort to further promote the parties' application of the appeals standards in fashioning their appeal, every dismissal letter issued by a Regional Director routinely will include an attachment which provides an explanation of the appeals process and the manner in which each of the standards for review can be established. The proposed regulation also adds a subsection to codify the current practice with respect to motions to reconsider decisions on appeal. Motions are granted only if extraordinary circumstances are established in the moving papers.

*Section 2423.12*

This section describes the settlement of ULP charges after a Regional Director determination to issue a complaint but prior to the actual issuance of a complaint. This section differs from proposed § 2423.1 which concerns resolving ULP disputes both before and after a charge is filed, but in any event before the Regional Director makes a determination to issue a complaint. This section, which provides for both unilateral and bilateral settlement agreements, remains unchanged except for editorial modifications.

**Part 2429—Miscellaneous and General Requirements**

*Section 2429.24*

Paragraph (e) of this section, which generally concerns the manner in which parties may file documents, is revised to reference that ULP charges are filed pursuant to § 2423.6, and that supporting evidence and documents may not be submitted to the Region by facsimile transmission.

**Regulatory Flexibility Act Certification**

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the General Counsel of the FLRA has determined that this regulation, as amended, will not have a significant economic impact on a substantial number of small entities, because this rule applies 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 requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

**List of Subjects in 5 CFR Parts 2421, 2423, and 2429**

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

For the reasons discussed in the preamble, the General Counsel of the Federal Labor Relations Authority proposes to amend 5 CFR Parts 2421, 2423, and 2429 as follows:

## PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

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

**Authority:** 5 U.S.C. 7134.

2. Part 2421 is amended by adding §§ 2421.23 and 2421.24 to read as follows:

**§ 2421.23 Charging Party.**

*Charging Party* means the individual, labor organization, activity or agency filing an unfair labor practice charge with a Regional Director under part 2423 of this subchapter.

**§ 2421.24 Charged Party.**

*Charged Party* means the activity, agency or labor organization charged with allegedly having engaged in, or engaging in, an unfair labor practice under part 2423 of this subchapter.

## PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

3. The authority citation for part 2423 continues to read as follows:

**Authority:** 5 U.S.C. 7134.

3a. Section 2423.1 is removed.

4. Subpart A of part 2423 is revised to read as follows:

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

Sec.
2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination to issue a complaint.
2423.2 Alternative Dispute Resolution (ADR) services.
2423.3 Who may file charges.
2423.4 Contents of the charge; supporting evidence and documents.
2423.5 [Reserved]
2423.6 Filing and service of copies.
2423.7 Alternative case processing procedure.
2423.8 Investigation of charges.
2423.9 Amendment of charges.
2423.10 Action by the Regional Director.
2423.11 Determination not to issue complaint; review of action by the Regional Director.
2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.
2423.13–2423.19 [Reserved]

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

**§ 2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination to issue a complaint.**

(a) *Resolving unfair labor practice disputes prior to filing a charge.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the collaborative efforts of all persons covered by that law. The General Counsel encourages all persons to meet and, in good faith, attempt to resolve unfair labor practice disputes prior to filing unfair labor practice charges. If requested or agreed to by both parties, a representative of the Regional Office, in appropriate circumstances, may participate in these meetings to assist the parties in identifying the issue and their interests and in resolving the dispute.

(b) *Resolving unfair labor practice disputes after filing a charge.* The General Counsel encourages the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the issuance of a complaint by a Regional Director. A representative of the appropriate Regional Office, as part of the investigation, may assist the parties in informally resolving their dispute.

**§ 2423.2 Alternative Dispute Resolution (ADR) services.**

(a) *Purpose of ADR services.* The Office of the General Counsel furthers its mission by promoting stable and productive labor-management relationships governed by the Federal Service Labor-Management Relations Statute and by providing services which assist labor organizations and agencies, on a voluntary basis: to develop collaborative labor-management relationships; to avoid unfair labor practice disputes; and to resolve any unfair labor practice disputes informally.

(b) *Types of ADR Services.* Agencies and labor organizations may request the Office of the General Counsel to provide any of the following services:

(1) *Facilitation.* Assisting the parties in improving their labor-management relationship as governed by the Federal Service Labor-Management Relations Statute;

(2) *Intervention.* Intervening when parties are experiencing or expect significant unfair labor practice disputes;

(3) *Training.* Training labor organization officials and agency representatives on their rights and responsibilities under the Federal Service Labor-Management Relations Statute and how to avoid litigation over those rights and responsibilities, and on utilizing problem solving and ADR skills, techniques, and strategies to resolve informally unfair labor practice disputes; and

(4) *Education.* Working with the parties to recognize the benefits of, and establish processes for, avoiding unfair labor practice disputes, and resolving any unfair labor practice disputes that arise by consensual, rather than adversarial, methods.

(c) *ADR services after initiation of an investigation.* As part of processing an unfair labor practice charge, the Office of the General Counsel may suggest to the parties, as appropriate, that they may benefit from these ADR services.

**§ 2423.3 Who may file charges.**

Any person may charge an activity, agency or labor organization 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) *What to file.* The Charging Party may file a charge alleging a violation of 5 U.S.C. 7116 by completing a form prescribed by the General Counsel, or on a substantially similar form, that contains the following information:

(1) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charging Party;

(2) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charged Party;

(3) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charging Party's point of contact;

(4) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charged Party's point of contact;

(5) A clear and concise statement of the facts alleged to constitute an unfair labor practice including the date and place of occurrence of the particular acts; and

(6) 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 Office of the Special Counsel 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) *Declaration of truth and statement of service.* A 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. A charge shall also contain a statement that the Charging Party served the charge on the Charged Party, and shall list the person's name, title, location, date of service and method of service.

(c) *Self-contained document.* A charge shall be a self-contained document describing the alleged unfair labor practice without a need to refer to other documents.

(d) *Supporting evidence and documents and potential witnesses.* When filing a charge, the Charging Party shall submit to the Regional Director any supporting evidence and documents, including, but not limited to, correspondence and memoranda, records, reports, applicable collective bargaining agreement clauses, memoranda of understanding, minutes of meetings, applicable regulations, statements of position and other documentary evidence. The Charging Party also shall identify potential witnesses and shall provide a brief synopsis of their expected testimony.

**§ 2423.5 [Reserved]**

**§ 2423.6 Filing and service of copies.**

(a) *Where to file.* A Charging Party shall file the charge 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 in any of those regions.

(b) *Filing date.* A charge is deemed filed when it is received by a Regional Director.

(c) *Method of filing.* A Charging Party may file a charge with a Regional Office in person or by commercial delivery, first-class mail, or certified mail. A Charging Party also may file a charge by facsimile transmission if the charge does not exceed 5 pages. If filing by facsimile transmission, the Charging Party is not required to file an original copy of the charge with the Region. Supporting evidence and documents may not be submitted by facsimile transmission.

(d) *Service of the charge.* The Charging Party shall serve a copy of the charge (without supporting evidence and documents) on the Charged Party. Where facsimile equipment is available, the charge may be served by facsimile transmission in accordance with paragraph (c) of this section. The Region routinely serves a copy of the charge on the Charged Party, but the Charging Party remains responsible for serving the charge in accordance with this paragraph.

**§ 2423.7 Alternative case processing procedure.**

(a) *Alternative case processing procedure.* The Region may utilize an alternative case processing procedure to assist the parties in resolving their unfair labor practice dispute, if the parties agree, by facilitating a problem-solving approach, rather than initially investigating the particular facts and determining the merits of the charge.

(b) *No evidence is taken.* The purpose of the alternative case processing procedure is to resolve the underlying unfair labor practice dispute without determining the merits of the charge. The role of the agent is to assist the parties in that endeavor by facilitating a solution rather than conducting an investigation. No testimonial or documentary evidence or position on the merits of the charge may be gathered during the alternative case processing procedure or entered into the case file.

(c) *Investigation is not waived.* If the parties are unable to resolve the dispute, the Region conducts an investigation on the merits of the charge. The agent who is involved in the alternative case processing procedure may not be involved in any subsequent investigation on the merits of the charge.

**§ 2423.8 Investigation of charges.**

(a) *Investigation.* The Regional Director, on behalf of the General Counsel, conducts such investigation of the charge as the Regional Director deems necessary. During the course of the investigation, all parties involved are afforded an opportunity to present their evidence and views to the Regional Director.

(b) *Cooperation.* 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 timely submission of all potentially relevant information from all potential sources during the course of the investigation. All persons are expected to cooperate fully with the Regional Director in the investigation of charges. Cooperation includes any of the following actions, when deemed appropriate by the Regional Director:

(1) Making union officials, employees and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation;

(2) Producing documentary evidence pertinent to the matters under investigation; and

(3) Providing statements of position on the matters under investigation.

(c) *Confidentiality.* It is the General Counsel's policy to protect the identity of individuals who submit statements and information during the investigation, and to protect against the disclosure of documents obtained during the investigation, as a means of assuring the General Counsel's continuing ability to obtain all relevant information. After issuance of a complaint and in preparation for a hearing, however, identification of witnesses, a synopsis of their expected testimony and documents proposed to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements in § 2423.23.

**§ 2423.9 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.

**§ 2423.10 Action by the Regional Director.**

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

(1) Approving a request to withdraw a charge;

(2) Refusing to issue a complaint;

(3) Approving a written settlement agreement in accordance with the provisions of § 2423.12;

(4) Issuing a complaint; or

(5) Withdrawing a complaint.

(b) *Request for appropriate temporary relief.* 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 may 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 to seek such temporary relief is final and may not be appealed to the Authority.

(c) *General Counsel requests to the Authority.* When a complaint issues and the Authority approves the General Counsel's request to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the General Counsel may 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. Temporary relief will be sought if the record establishes probable cause that an unfair labor practice is being committed. Temporary relief will not be sought if it will interfere with the ability of the agency to carry out its essential functions.

(d) *Actions subsequent to obtaining appropriate temporary relief.* The General Counsel informs the district court which granted temporary relief pursuant to 5 U.S.C. 7123(d) whenever an Administrative Law Judge recommends dismissal of the complaint, in whole or in part.

**§ 2423.11 Determination not to issue complaint; review of action by the Regional Director.**

(a) *Opportunity to withdraw a charge.* 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.

(b) *Dismissal letter.* If the Charging Party does not withdraw the charge within a reasonable period of time, the Regional Director may dismiss the charge and provide the parties with a written statement of the reasons for not issuing a complaint.

(c) *Appeal of a dismissal letter.* The Charging Party may obtain 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.

(d) *Extension of time.* The Charging Party may file a request, in writing, for an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.* The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

(1) The Regional Director's decision did not consider material facts that would have resulted in issuance of complaint;

(2) The Regional Director's decision is based on a material fact that is clearly erroneous;

(3) The Regional Director's decision is based on an incorrect statement of the applicable rule of law;

(4) There is no Authority precedent on the legal issue in the case; or

(5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's refusal to issue a complaint, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds for denying or granting the appeal and is served on all the parties. The decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary

circumstances in its moving papers. The motion shall be filed within 10 days after service of the General Counsel's final decision. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations.

**§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.**

(a) *Bilateral informal settlement agreement.* Prior to issuing a complaint, the Regional Director may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(b) *Unilateral informal settlement agreement.* If the Charging Party elects not to become a party to an informal settlement agreement which the Regional Director concludes effectuates the policies of the Federal Service Labor-Management Relations Statute, the agreement may be between the Charged Party and the Regional Director. The Regional Director issues a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel takes action on the appeal as set forth in § 2423.11(f) and (g).

**§§ 2423.13–2423.19 [Reserved]**

## PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

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

**Authority:** 5 U.S.C. 7134.

6. 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; except for unfair labor practice charges filed in accordance with § 2423.6 of this subchapter. 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; except for supporting evidence and documents submitted pursuant to §§ 2423.4 and 2423.6 of this subchapter, 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.

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Dated: August 19, 1998.

**Joseph Swerdzewski,**

*General Counsel, Federal Labor Relations Authority.*

[FR Doc. 98–22645 Filed 8–21–98; 8:45 am]

BILLING CODE 6727–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–106177–97]**

**RIN 1545–AV18**

## Qualified State Tuition Programs

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to qualified State tuition programs (QSTPs). These proposed regulations reflect changes to the law made by the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997. The proposed regulations affect QSTPs established and maintained by a State or agency or instrumentality of a State, and individuals receiving distributions from QSTPs. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments must be received by November 23, 1998. Outlines of topics to be discussed at the public hearing scheduled for Wednesday, January 6, 1999, at 10 a.m. must be received by December 16, 1998.

**ADDRESSES:** Send submissions to CC:DOM:CORP:R (REG–106177–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–106177–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Monice Rosenbaum, (202) 622–6070; concerning the proposed estate and gift tax regulations, Susan Hurwitz (202) 622–3090; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by October 23, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the *Internal Revenue Service,* including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase or services to provide information.

The collection of information in this proposed regulation is in §§ 1.529–