PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43.

2. In § 430.208, paragraphs (a)(1), (a)(2), (a)(3) and (i) are added; paragraph (h) is redesignated as paragraph (j) and a new paragraph (h) is added to read as follows:

§ 430.208 Rating performance.

(a) * * *

(1) A rating of record shall be based only on the evaluation of actual job performance for the designated appraisal period.

(2) An agency shall not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee's performance.

(3) Except as provided in § 430.208(i), a rating of record is final when it is issued to an employee with all appropriate reviews and signatures.

* * * * *

(h) Each rating of record shall cover a specified appraisal period. Agencies shall not carry over a rating of record prepared for a previous appraisal period to a subsequent appraisal period(s).

(i) When either a regular appraisal period or an extended appraisal period ends and a performance plan has been established for a subsequent appraisal period with no rating of record issued for the earlier appraisal period, an agency shall not produce a rating of record to cover that period retroactively. Once issued, ratings of record shall not be changed retroactively except that a rating of record may be changed—

(1) Within 60 days of issuance based upon an informal request by the employee;

(2) As a result of a grievance, complaint, or other formal proceeding permitted by law that results in a final determination by appropriate authority that the rating of record must be changed; or

(3) Where the agency determines that a rating of record was incorrectly recorded or calculated.

PART 534—PAY UNDER OTHER SYSTEMS

3. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

4. In § 534.505, paragraph (b) is revised to read as follows:

§ 534.505 Pay related matters.

* * * * *

(b) *Performance awards.* Performance awards may be paid under 5 U.S.C. chapter 45 and § 451.104(a)(3) of this chapter.

[FR Doc. 98–10266 Filed 4–17–98; 8:45 am]
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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2424 and 2429

Processing of Negotiability Petitions: Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Federal Labor Relations Authority intends to revise its regulations concerning the processing of negotiability appeals (part 2424). The Federal Labor Relations Authority established a Task Force to study and evaluate part 2424 of its regulations. The Task Force proposes to conduct focus groups to solicit and consider customers' views prior to undertaking these revisions.

DATES: Written comments must be received on or before May 29, 1998. A meeting will be held at 10:00 a.m. on May 12, 1998, in Washington, DC.

ADDRESSES: Mail or deliver written comments to the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW, Washington, DC 20424–0001. The meeting will be held at the Federal Labor Relations Authority, 607 14th Street, NW, Second Floor Agenda Room, Washington, D.C.

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

SUPPLEMENTARY INFORMATION:

1. Background

The Chair and Members of the Federal Labor Relations Authority (the Authority) intend 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. The Authority has established an internal Task Force to study this matter.

Part 2424 of chapter XIV of Title 5 of the Code of Federal Regulations (1997) contains, among other things, the current regulations which govern all matters relating to the processing of negotiability appeals. Part 2429 contains general regulatory requirements which also govern these appeals. The regulations apply to petitions for review of negotiability issues that concern union proposals for bargaining as well as petitions for review of negotiability issues that arise from disapprovals of collective bargaining provisions that have been agreed on by parties.

In conjunction with its review of the procedures for processing negotiability appeals, the Task Force is requesting oral and/or written comments concerning issues to be addressed in the regulatory revisions it is developing. A focus group meeting has been scheduled for Tuesday, May 12, 1998, at 10:00 a.m. in Washington, DC to discuss matters relevant to the negotiability appeal process. Persons interested in attending this meeting on the proposed rulemaking should call or write the point of contact listed in the preceding section to confirm attendance. If appropriate, other discussions may be scheduled.

The Task Force will make written recommendations to the Chair and Members of the Authority, who will, as determined appropriate, issue proposed amendments to the existing negotiability and miscellaneous regulations. All agencies, unions, and interested persons will be afforded an opportunity to submit further comments on any proposed specific modifications to the existing regulations. The Task Force will conduct additional focus group meetings after the Authority proposes its revisions to the existing regulations.

2. The Federal Service Labor-Management Relations Statute (the Statute)

Section 7117 of Title 5, United States Code, empowers the Authority to consider negotiability appeals under the conditions prescribed by section 7117(b) and (c), directs the Authority to expedite these appeals to the extent practicable, and instructs the Authority to issue a written decision at the earliest practicable date.

The appeal process is set forth in Section 7117(c) of the Statute. Under this process, the exclusive representative may ''institute an appeal'' by ''filing a petition with the Authority.'' 5 U.S.C. 7117(c)(2). Once an exclusive representative institutes a negotiability appeal, section 7117(c)(3)(A) and section 7117(c)(4) provide that an agency involved in a negotiability dispute ''shall file with the Authority'' a statement of position responding to the petition for review,

and that an exclusive representative ''shall file with the Authority its response to the statement.'' Consistent with section 7117(c)(5), the Authority, in its discretion, may hold a hearing on the petition for review before making a determination.

3. Issues on Which Comments Are Requested

Following are several groups of subjects on which the Task Force is seeking comments. This is not intended to be an exclusive list; comment on any matter relevant to the processing of petitions for review in negotiability appeals is invited.

a. Alternative Dispute Resolution (ADR) in the Negotiability Appeal Process

Should the Authority require and/or offer ADR services to the parties as part of the negotiability appeal process? If the Authority requires the parties to participate in ADR in connection with the negotiability appeal process, are there any particular issues that the Authority should consider in the drafting of its amendments to the negotiability regulations?

b. Compliance With Procedural Requirements

What consequences, if any, should result from either an agency's failure to file a statement of position, as required by section 7117(c)(3)(A) of the Statute or an exclusive representative's failure to file a response to this statement, as required by section 7117(c)(4) of the Statute?

Under what circumstances, if any, should the Authority exercise its authority under section 7117(c)(5) of the Statute to hold hearings?

Are there any general requirements, in addition to those set forth in part 2429 of the Authority's regulations, that the Authority should consider in drafting its amendments to the negotiability regulations?

c. The Meaning of a Proposal or Provision

What burdens should the Authority place on the parties with respect to the meaning of proposals or provisions, the factual record, and the arguments? Where the Authority is unable to determine the meaning of a proposal or provision, what action should the Authority take?

d. The Relationship Between Issues Arising Under the Negotiability Appeal Process and the Unfair Labor Practice Process

Should the Authority modify its procedure for processing complaints alleging unfair labor practices and negotiability petitions? If so, how should the Authority process cases involving alleged unfair labor practices and negotiability petitions?

How should ''duty to bargain issues'' (such as whether a matter is ''covered by'' an existing agreement or whether a union has waived its right to bargain) as opposed to ''scope of bargaining'' issues (whether a proposal is consistent with law, rule, or regulation) be addressed when arising in connection with a negotiability appeal?

e. Authority Orders in Decisions on Review of Negotiability Appeals; Compliance With the Authority's Orders

Part 2424.10 of the Authority's regulations currently provides that, if in a decision the Authority finds that the duty to bargain extends to ''a matter proposed to be bargained,'' then the Authority shall include a bargaining order and, if the Authority finds that the duty to bargain does not extend to the matter, or that the duty extends to the matter ''only at the election of the agency,'' then the Authority shall dismiss the petition for review.

Should the regulations be modified to include other orders? If so, what other orders should be included and in what circumstances should they be used?

Should the Authority's regulations concerning compliance with negotiability orders be modified? If so, how should the Authority address a party's failure to comply with the Authority's negotiability order?

f. Proposals for Bargaining and Provisions Subject to Agency-Head Review

Should the Authority's negotiability regulations differ depending on whether the petition for review concerns a proposal for bargaining or a provision that has been agreed on and subsequently disapproved?

g. Other Issues

The foregoing questions are not intended to exclude any other subjects relevant to the negotiability appeal process. What other subjects relevant to the negotiability appeal process should the Authority consider in developing amendments to the existing negotiability regulations?

(Authority: 5 U.S.C. 7105(a)(2)(E) and (I)).

Dated: April 15, 1998.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–97–17]

Tobacco Inspection—Growers Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This document announces that a referendum will be conducted by mail during the period of April 27–May 1, 1998, for producers of flue-cured tobacco who sell their tobacco at auction in Tabor City-Whiteville, North Carolina, and Loris, South Carolina, to determine producer approval of the designation of the Tabor City-Whiteville and Loris tobacco markets as one consolidated auction market.

DATES: The referendum will be held April 27–May 1, 1998.

FOR FURTHER INFORMATION CONTACT: William Coats, Associate Deputy Administrator, Tobacco Programs, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456; telephone number (202) 205–0508.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Tabor City-Whiteville, North Carolina, and Loris, South Carolina. Tabor City-Whiteville, North Carolina, was designated on June 5, 1997, (7 CFR 29.8001) as flue-cured tobacco auction market and Loris, South Carolina, was designated on August 16, 1941, under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act those markets have been receiving mandatory grading services from USDA.

On September 11, 1997, an application was made to the Secretary of Agriculture to consolidate the designated markets of Tabor City-Whiteville, North Carolina, and Loris, South Carolina. The application, filed by warehouse operators on those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR Part 29.1–29.3). On November 5, 1997, a public hearing was held in Tabor City, North Carolina, pursuant to the regulations. A Review Committee, established pursuant to § 29.3(h) of the regulations 7 CFR 29.3(h), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other