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granted permission by the Administrative Law Judge, withdraw the complaint. The Charging Party then may obtain a review of the Regional Director's decision as provided in subpart A of this part.

(2) *Formal settlement procedure: Judge's approval of settlement.* If the Charging Party and the Respondent enter into a formal settlement agreement that is accepted by the Regional Director, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Authority for approval. If the Charging Party fails or refuses to become a party to a formal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the Respondent and the Regional Director. After the Charging Party is given an opportunity to state on the record or in writing the reasons for opposing the formal settlement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Authority for approval.

§ 2423.32 Burden of proof before the Administrative Law Judge.

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

§ 2423.33 Posthearing briefs.

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

be filed absent permission of the Judge. Motions to extend the filing deadline or for permission to file a reply brief shall be filed in accordance with § 2423.21.

§ 2423.34 Decision and record.

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

- (1) A statement of the issues;
- (2) Relevant findings of fact;
- (3) Conclusions of law and reasons therefor;
- (4) Credibility determinations as necessary; and
- (5) A recommended disposition or order.

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

§§ 2423.35–2423.39 [Reserved]

Subpart D—Post-Transmission and Exceptions to Authority Procedures

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

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

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

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

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

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

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

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

[62 FR 40916, July 31, 1997, as amended at 77 FR 26433, May 4, 2012]

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

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

(b) *Authority decision; exceptions filed.* Whenever exceptions are filed in accordance with § 2423.40, the Authority shall issue a decision affirming or reversing, in whole or in part, the deci-

sion of the Administrative Law Judge or disposing of the matter as is otherwise deemed appropriate.

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

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

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

[62 FR 40916, July 31, 1997, as amended at 63 FR 46158, Aug. 31, 1998]

§ 2423.42 Backpay proceedings.

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

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§§ 2423.43–2423.49 [Reserved]

2424.42–2424.49 [Reserved]

PART 2424—NEGOTIABILITY PROCEEDINGS

Subpart F—Criteria for Determining Compelling Need for Agency Rules and Regulations

Subpart A—Applicability of This Part and Definitions

2424.50 Illustrative criteria.

2424.51–2424.59 [Reserved]

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 63 FR 66413, Dec. 2, 1998, unless otherwise noted.

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2424.1 Applicability of this part.

2424.2 Definitions.

2424.3–2424.9 [Reserved]

Subpart B—Alternative Dispute Resolution; Requesting and Providing Allegations Concerning the Duty To Bargain

Subpart A—Applicability of This Part and Definitions

§ 2424.1 Applicability of this part.

This part applies to all petitions for review filed on or after October 12, 2023.

[88 FR 62455, Sept. 12, 2023]

2424.10 Collaboration and Alternative Dispute Resolution Program.

2424.11 Requesting and providing written allegations concerning the duty to bargain.

2424.12–2424.19 [Reserved]

Subpart C—Filing and Responding to a Petition for Review; Conferences

§ 2424.2 Definitions.

In this part, the following definitions apply:

2424.20 Who may file a petition for review.

2424.21 Time limits for filing a petition for review.

2424.22 Exclusive representative's petition for review; purpose; divisions; content; service.

2424.23 Post-petition conferences; conduct and record.

2424.24 Agency's statement of position; purpose; time limits; content; service.

2424.25 Response of the exclusive representative; purpose; time limits; content; severance; service.

2424.26 Agency's reply; purpose; time limits; content; service.

2424.27 Additional submissions to the Authority.

2424.28–2424.29 [Reserved]

Subpart D—Processing a Petition for Review

(a) *Bargaining obligation dispute* means a disagreement between an exclusive representative and an agency concerning whether, in the specific circumstances involved in a particular case, the parties are obligated by law to bargain over a proposal that otherwise may be negotiable. Examples of bargaining obligation disputes include disagreements between an exclusive representative and an agency concerning agency claims that:

(1) A proposal concerns a matter that is covered by a collective bargaining agreement;

(2) Bargaining is not required because there has not been a change in bargaining-unit employees' conditions of employment or because the effect of the change is de minimis; and

(3) The exclusive representative is attempting to bargain at the wrong level of the agency.

2424.30 Procedure through which the petition for review will be resolved.

2424.31 Hearings and other appropriate action.

2424.32 Parties' responsibilities; failure to raise, support, or respond to arguments; failure to participate in conferences or respond to Authority orders.

2424.33–2424.39 [Reserved]

Subpart E—Decision and Order

(b) *Collaboration and Alternative Dispute Resolution Program* refers to the Federal Labor Relations Authority's program that assists parties in reaching agreements to resolve disputes.

(c) *Negotiability dispute* means a disagreement between an exclusive representative and an agency concerning the legality of a proposal or provision. A negotiability dispute exists when an exclusive representative disagrees with

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an agency contention that (without regard to any bargaining obligation dispute) a proposal is outside the duty to bargain, including disagreement with an agency contention that a proposal is bargainable only at its election. A negotiability dispute also exists when an exclusive representative disagrees with an agency head's disapproval of a provision as contrary to law. A negotiability dispute may exist where there is no bargaining obligation dispute. Examples of negotiability disputes include disagreements between an exclusive representative and an agency concerning whether a proposal or provision:

- (1) Affects a management right under 5 U.S.C. 7106(a);
- (2) Affects bargaining-unit employees' conditions of employment;
- (3) Enforces an "applicable law," within the meaning of 5 U.S.C. 7106(a)(2);
- (4) Concerns a matter negotiable at the election of the agency under 5 U.S.C. 7106(b)(1);
- (5) Constitutes a "procedure" or "appropriate arrangement," within the meaning of 5 U.S.C. 7106(b)(2) and (3), respectively;
- (6) Is consistent with a Government-wide rule or regulation; and
- (7) Is negotiable notwithstanding agency rules or regulations because:
 - (i) The proposal or provision is consistent with agency rules or regulations for which a compelling need exists under 5 U.S.C. 7117(a)(2);
 - (ii) The agency rules or regulations violate applicable law, rule, regulation, or appropriate authority outside the agency;
 - (iii) The agency rules or regulations were not issued by the agency or by any primary national subdivision of the agency;
 - (iv) The exclusive representative represents an appropriate unit including not less than a majority of the employees in the rule- or regulation-issuing agency or primary national subdivision; or
 - (v) No compelling need exists for the rules or regulations to bar negotiations.
- (d) *Petition for review* means an appeal filed with the Authority by an exclusive representative requesting resolution

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of a negotiability dispute. An appeal that concerns only a bargaining obligation dispute may not be resolved under this part.

(e) *Proposal* means any matter offered for bargaining that has not been agreed to by the parties. If a petition for review concerns more than one proposal, then the term "proposal" includes each proposal concerned.

(f) *Provision* means any matter that has been disapproved by the agency head on review pursuant to 5 U.S.C. 7114(c). If a petition for review concerns more than one provision, then the term "provision" includes each provision concerned.

(g) *Service* means the delivery of copies of documents filed with the Authority to the other party's principal bargaining representative and, in the case of an exclusive representative, also to the head of the agency. Compliance with part 2429 of this subchapter is required.

(h) *Severance* means the division of a proposal or provision into separate parts having independent meaning, for the purpose of determining whether any of the separate parts is within the duty to bargain or is contrary to law. In effect, severance results in the creation of separate proposals or provisions. Severance applies when some parts of the proposal or provision are determined to be outside the duty to bargain or contrary to law.

(i) *Written allegation concerning the duty to bargain* means an agency allegation that the duty to bargain in good faith does not extend to a proposal.

[63 FR 66413, Dec. 2, 1998, as amended at 88 FR 62455, Sept. 12, 2023; 88 FR 69873, Oct. 10, 2023]

§§ 2424.3–2424.9 [Reserved]

Subpart B—Alternative Dispute Resolution; Requesting and Providing Allegations Concerning the Duty To Bargain

§ 2424.10 Collaboration and Alternative Dispute Resolution Program.

Where an exclusive representative and an agency are unable to resolve disputes that arise under this part, they may request assistance from the Collaboration and Alternative Dispute

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Resolution (CADR) Program or the Office of Case Intake and Publication (CIP), which will refer requests to the CADR Program. Upon request, as resources permit, and as agreed upon by the parties, CADR representatives will attempt to assist the parties to resolve these disputes. Parties seeking information or assistance under this part may call the CADR Office at (771) 444-5802 or the Office of CIP at (771) 444-5805, or write those offices at 1400 K Street NW, Washington, DC 20424-0001. A brief summary of CADR activities is available on the internet at www.flra.gov.

[88 FR 62456, Sept. 12, 2023]

§ 2424.11 Requesting and providing written allegations concerning the duty to bargain.

(a) *General.* An exclusive representative may file a petition for review after receiving a written allegation concerning the duty to bargain from the agency. An exclusive representative also may file a petition for review if it requests in writing that the agency provide it with a written allegation concerning the duty to bargain and the agency does not respond to the request within ten (10) days.

(b) *Agency allegation in response to request.* The agency has an obligation to respond within ten (10) days to a written request by the exclusive representative for a written allegation concerning the duty to bargain. The agency's allegation in response to the exclusive representative's request must be in writing and must be served in accord with § 2424.2(g).

(c) *Unrequested agency allegation.* If an agency provides an exclusive representative with an unrequested written allegation concerning the duty to bargain, then the exclusive representative may either file a petition for review under this part, or continue to bargain and subsequently request in writing a written allegation concerning the duty to bargain, if necessary. If the exclusive representative chooses to file a petition for review based on an unrequested written allegation concerning the duty to bargain, then the time limit in § 2424.21(a)(1) applies.

[88 FR 62456, Sept. 12, 2023; 88 FR 69873, Oct. 10, 2023]

§§ 2424.12–2424.19 [Reserved]

Subpart C—Filing and Responding to a Petition for Review; Conferences

§ 2424.20 Who may file a petition for review.

A petition for review may be filed by an exclusive representative that is a party to the negotiations.

§ 2424.21 Time limits for filing a petition for review.

(a) A petition for review must be filed within fifteen (15) days after the date of service of either:

(1) An agency's written allegation that the exclusive representative's proposal is not within the duty to bargain, or

(2) An agency head's disapproval of a provision.

(b) If the agency has not served a written allegation on the exclusive representative within ten (10) days after the agency's principal bargaining representative has received a written request for such allegation, as provided in § 2424.11(a), then the petition may be filed at any time, subject to the following:

(1) If the agency serves a written allegation on the exclusive representative more than ten (10) days after receiving a written request for such allegation, then the petition must be filed within fifteen (15) days after the date of service of that allegation on the exclusive representative.

(2) [Reserved]

[88 FR 62456, Sept. 12, 2023]

§ 2424.22 Exclusive representative's petition for review; purpose; divisions; content; service.

(a) *Purpose.* The purpose of a petition for review is to initiate a negotiability proceeding and provide the agency with notice that the exclusive representative requests a decision from the Authority that a proposal or provision is within the duty to bargain or not contrary to law, respectively.

(b) *Divisions.* The petition will be resolved according to how the exclusive representative divides matters into proposals or provisions. If the exclusive

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representative seeks a negotiability determination on particular matters standing alone, then the exclusive representative must submit those matters as distinct proposals or provisions. However, the exclusive representative will have an opportunity to divide proposals or provisions into separate parts when the exclusive representative files a response under § 2424.25.

(c) *Content.* You must file a petition for review on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your petition electronically through use of the eFiling system on the FLRA's website at *www.flra.gov*. That website also provides copies of petition forms. You must date the petition, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file the petition, you must ensure that it includes the following:

(1) The exact wording and explanation of the meaning of the proposal or provision, including an explanation of special terms or phrases, technical language, or other words that are not in common usage, as well as how the proposal or provision is intended to work;

(2) Specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority that you rely on in your argument or that you reference in the proposal or provision, and a copy of any such material that the Authority cannot easily access (which you may upload as attachments if you file the petition electronically through use of the FLRA's eFiling system);

(i) An explanation of how the cited law, rule, regulation, section of a collective bargaining agreement, or other authority relates to your argument, proposal, or provision;

(ii) [Reserved]

(3) A statement as to whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter, and whether any other petition for review has been filed con-

cerning a proposal or provision arising from the same bargaining or the same agency head review;

(i) Documents relevant to the statement, including a copy of any related unfair labor practice charge, grievance, request for impasse assistance, or other petition for review; and

(ii) [Reserved]

(4) Any request for a hearing before the Authority and the reasons supporting such request, with the understanding that the Authority rarely grants such requests.

(d) *Service.* The petition for review, including all attachments, must be served in accord with § 2424.2(g).

[88 FR 62456, Sept. 12, 2023; 88 FR 69873, Oct. 10, 2023, as amended at 88 FR 77883, Nov. 14, 2023]

§ 2424.23 Post-petition conferences; conduct and record.

(a) *Scheduling a post-petition conference.* The FLRA will, in its discretion, schedule a post-petition conference to be conducted by an FLRA representative by telephone, in person, or through other means. Unless the Authority or an FLRA representative directs otherwise, parties must observe all time limits in this part, regardless of whether a post-petition conference is conducted or may be conducted.

(b) *Conduct of conference.* The post-petition conference will be conducted with representatives of the exclusive representative and the agency, who must be prepared and authorized to discuss, clarify, and resolve matters including the following:

(1) The meaning of the proposal or provision in dispute;

(2) Any disputed factual issue(s);

(3) Negotiability dispute objections and bargaining obligation claims regarding the proposal or provision; and

(4) Status of any proceedings—including an unfair labor practice charge under part 2423 of this subchapter, a grievance under the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter—that are directly related to the negotiability petition.

(c) *Discretionary extension of time limits.* The FLRA representative may, on determining that it will effectuate the purposes of the Federal Service Labor-

Management Relations Statute, 5 U.S.C. 7101 *et seq.*, and this part, extend the time limits for filing the agency's statement of position and any subsequent filings.

(d) *Record of the conference.* After the post-petition conference has been completed, the FLRA representative will prepare, and the FLRA will serve on the parties, a written record that includes whether the parties agree on the meaning of the disputed proposal or provision, the resolution of any disputed factual issues, and any other appropriate matter.

(e) *Hearings.* Instead of, or in addition to, conducting a post-petition conference, the Authority may exercise its discretion under §2424.31 to hold a hearing or take other appropriate action to aid in decision making.

[88 FR 62457, Sept. 12, 2023; 88 FR 69873, Oct. 10, 2023]

§ 2424.24 Agency's statement of position; purpose; time limits; content; service.

(a) *Purpose.* The purpose of the agency's statement of position is to inform the Authority and the exclusive representative why a proposal or provision is outside the duty to bargain or contrary to law, respectively, and whether the agency disagrees with any facts or arguments made by the exclusive representative in the petition.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to §2424.23 or part 2429 of this subchapter, the agency must file its statement of position within thirty (30) days after the date the head of the agency receives a copy of the petition for review.

(c) *Content.* You must file your statement of position on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your statement electronically through use of the eFiling system on the FLRA's website at www.flra.gov. That website also provides copies of statement forms. You must date your statement, unless you file it electronically through use of the eFiling system. And, regardless of how you file your statement, your statement must:

(1) Withdraw either:

(i) The allegation that the duty to bargain in good faith does not extend to the exclusive representative's proposal, or

(ii) The disapproval of the provision under 5 U.S.C. 7114(c); or

(2) Set forth in full your position on any matters relevant to the petition that you want the Authority to consider in reaching its decision, including: A statement of the arguments and authorities supporting any bargaining obligation or negotiability claims; any disagreement with claims that the exclusive representative made in the petition for review; specific citation to, and explanation of the relevance of, any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your statement of position electronically through use of the FLRA's eFiling system). Your statement of position must also include the following:

(i) If different from the exclusive representative's position, an explanation of the meaning the agency attributes to the proposal or provision and the reasons for disagreeing with the exclusive representative's explanation of meaning;

(ii) If different from the exclusive representative's position, an explanation of how the proposal or provision would work, and the reasons for disagreeing with the exclusive representative's explanation;

(3) Status of any proceedings—including an unfair labor practice charge under part 2423 of this subchapter, a grievance under the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter—that are directly related to the negotiability petition, and whether any other petition for review has been filed concerning a proposal or provision arising from the same bargaining or the same agency head review;

(i) If they have not already been provided with the petition, documents relevant to the status updates, including

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a copy of any related unfair labor practice charge, grievance, request for impasse assistance, or other petition for review; and

(ii) [Reserved]

(4) Any request for a hearing before the Authority and the reasons supporting such request, with the understanding that the Authority rarely grants such requests.

(d) *Service.* A copy of the agency's statement of position, including all attachments, must be served in accord with § 2424.2(g).

[88 FR 62457, Sept. 12, 2023; 88 FR 69873, Oct. 10, 2023]

§ 2424.25 Response of the exclusive representative; purpose; time limits; content; severance; service.

(a) *Purpose.* The purpose of the exclusive representative's response is to inform the Authority and the agency why, despite the agency's arguments in its statement of position, the proposal or provision is within the duty to bargain or not contrary to law, respectively, and whether the exclusive representative disagrees with any facts or arguments in the agency's statement of position.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the exclusive representative receives a copy of an agency's statement of position, the exclusive representative must file a response.

(c) *Content.* You must file your response on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your response electronically through use of the eFiling system on the FLRA's website at www.flra.gov. That website also provides copies of response forms. With the exception of severance under paragraph (d) of this section, you must limit your response to the matters that the agency raised in its statement of position. You must date your response, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your response, you must ensure that it identifies any disagreement with the agency's bargaining obligation or nego-

tiability claims. You must: State the arguments and authorities supporting your opposition to any agency argument; include specific citation to, and explanation of the relevance of, any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and provide a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your response electronically through use of the FLRA's eFiling system). You are not required to repeat arguments that you made in your petition for review. If not included in the petition for review, then you must state the arguments and authorities supporting your position on all of the relevant bargaining obligation and negotiability matters identified in § 2424.2(a) and (c), respectively.

(d) *Severance.* The exclusive representative may, of its own accord, accomplish the severance of a previously submitted proposal or provision. To accomplish severance, the exclusive representative must identify the proposal or provision that the exclusive representative is severing and set forth the exact wording of the newly severed portion(s). Further, as part of the exclusive representative's explanation and argument about why the newly severed portion(s) are within the duty to bargain or not contrary to law, the exclusive representative must explain how the severed portion(s) stand alone with independent meaning, and how the severed portion(s) would operate. The explanation and argument in support of the severed portion(s) must meet the same requirements for specific information set forth in paragraph (c) of this section, and must satisfy the exclusive representative's burdens under § 2424.32.

(e) *Service.* A copy of the response of the exclusive representative, including all attachments, must be served in accord with § 2424.2(g).

[63 FR 66413, Dec. 2, 1998, as amended at 74 FR 51745, Oct. 8, 2009; 77 FR 26434, May 4, 2012; 88 FR 62458, Sept. 12, 2023; 88 FR 69873, Oct. 10, 2023; 88 FR 70579, Oct. 12, 2023; 88 FR 71731, Oct. 18, 2023]

§ 2424.26 Agency's reply; purpose; time limits; content; service.

(a) *Purpose.* The purpose of the agency's reply is to inform the Authority and the exclusive representative whether and why it disagrees with any facts or arguments made for the first time in the exclusive representative's response.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the agency receives a copy of the exclusive representative's response to the agency's statement of position, the agency may file a reply.

(c) *Content.* You must file your reply on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your reply electronically through use of the eFiling system on the FLRA's website at www.flra.gov. That website also provides copies of reply forms. You must limit your reply to matters that the exclusive representative raised for the first time in its response. You must date your reply, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your reply, you must ensure that it identifies any disagreement with the exclusive representative's assertions in its response, including your disagreements with assertions about the bargaining obligation and negotiability matters identified in § 2424.2(a) and (c), respectively. You must: State the arguments and authorities supporting your position; include specific citation to, and explanation of the relevance of, any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and provide a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your reply electronically through use of the FLRA's eFiling system). You are not required to repeat arguments that you made in your statement of position.

(d) *Service.* A copy of the agency's reply, including all attachments, must be served in accord with § 2424.2(g).

[88 FR 62458, Sept. 12, 2023]

§ 2424.27 Additional submissions to the Authority.

The Authority will not consider any submission filed by any party other than those authorized under this part, provided however that the Authority may, in its discretion, grant permission to file an additional submission based on a written request showing extraordinary circumstances by any party. The additional submission must be filed with the written request. All documents filed under this section must be served in accord with § 2424.2(g).

[88 FR 62458, Sept. 12, 2023]

§§ 2424.28–2424.29 [Reserved]**Subpart D—Processing a Petition for Review****§ 2424.30 Procedure through which the petition for review will be resolved.**

(a) *Exclusive representative has filed related unfair labor practice charge or grievance alleging an unfair labor practice.* Except for proposals or provisions that are the subject of an agency's compelling need claim under 5 U.S.C. 7117(a)(2), the Authority will dismiss a petition for review when an exclusive representative files an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance alleging an unfair labor practice under the parties' negotiated grievance procedure, and the charge or grievance concerns issues directly related to the petition for review filed pursuant to this part. The dismissal will be without prejudice to the right of the exclusive representative to refile the petition for review after the unfair labor practice charge or grievance has been resolved administratively, including resolution pursuant to an arbitration award that has become final and binding. No later than thirty (30) days after the date on which the unfair labor practice charge or grievance is resolved administratively, the exclusive representative may refile the petition for review, and the Authority will determine whether resolution of the petition is still required. For purposes of this subsection, a grievance is resolved administratively when:

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(1) The exclusive representative withdraws the grievance;

(2) The parties mutually resolve the grievance;

(3) An arbitrator has issued an award resolving the grievance, and the 30-day period under 5 U.S.C. 7122(b) has passed without an exception being filed; or

(4) An arbitrator has issued an award resolving the grievance, a party has filed an exception to that award, and the Authority has issued a decision resolving that exception.

(b) *Exclusive representative has not filed related unfair labor practice charge or grievance alleging an unfair labor practice.* The petition will be processed as follows:

(1) *No bargaining obligation dispute exists.* The Authority will resolve the petition for review under the procedures of this part.

(2) *A bargaining obligation dispute exists.* The exclusive representative may have an opportunity to file an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance under the parties' negotiated grievance procedure concerning the bargaining obligation dispute, and, where the exclusive representative pursues either of these courses, the Authority will proceed in accord with paragraph (a) of this section. If the exclusive representative does not file an unfair labor practice charge or grievance concerning the bargaining obligation dispute, then the Authority will proceed to resolve all disputes necessary for disposition of the petition unless, in its discretion, the Authority determines that resolving all disputes is not appropriate because, for example, resolution of the bargaining obligation dispute under this part would unduly delay resolution of the negotiability dispute, or the procedures in another, available administrative forum are better suited to resolve the bargaining obligation dispute.

[88 FR 62458, Sept. 12, 2023]

§ 2424.31 Hearings and other appropriate action.

When necessary to resolve disputed issues of material fact in a negotiability or bargaining obligation dispute, or when it would otherwise aid in decision making, the Authority, or its des-

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ignated representative, may, in its discretion:

(a) Direct the parties to provide specific documentary evidence;

(b) Direct the parties to provide answers to specific factual questions;

(c) Refer the matter to a hearing pursuant to 5 U.S.C. 7117(b)(3) or (c)(5); or

(d) Take any other appropriate action.

[63 FR 66413, Dec. 2, 1998, as amended at 88 FR 62459, Sept. 12, 2023; 88 FR 69873, Oct. 10, 2023]

§ 2424.32 Parties' responsibilities; failure to raise, support, or respond to arguments; failure to participate in conferences or respond to Authority orders.

(a) *Responsibilities of the exclusive representative.* The exclusive representative has the burden of explaining the meaning, operation, and effects of the proposal or provision; and raising and supporting arguments that the proposal or provision is within the duty to bargain, within the duty to bargain at the agency's election, or not contrary to law, respectively.

(b) *Responsibilities of the agency.* The agency has the burden of explaining the agency's understanding of the meaning, operation, and effects of the proposal or provision, if the agency disagrees with the exclusive representative's explanations; and raising and supporting arguments that the proposal or provision is outside the duty to bargain or contrary to law, respectively.

(c) *Responsibilities to sufficiently explain.* Each party has the burden to give sufficiently detailed explanations to enable the Authority to understand the party's position regarding the meaning, operation, and effects of a proposal or provision. A party's failure to provide such explanations may affect the Authority's decision in a manner that is adverse to the party.

(d) *Failure to raise, support, or respond to arguments.*

(1) Failure to raise and support an argument may, in the Authority's discretion, be deemed a waiver of such argument. Absent good cause:

(i) Arguments that could have been but were not raised by an exclusive