

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81-CE-4-AD; Amdt. 39-4233]

Airworthiness Directives; Beech Models 99, 99A, A99A, A99 and B99 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of effective date of final rule.

SUMMARY: This amendment extends, by 60 days, the effective date of the airworthiness directive (AD) which concerns revised operating limitations in the FAA Approved Airplane Flight Manual (AAFM) for Beech Models 99, 99A, A99A, A99 and B99 airplanes.

DATE: Extends effective date of Amendment 39-4196, AD 81-18-08 to December 2, 1981.

FOR FURTHER INFORMATION CONTACT: Airworthiness Standards Program, Room 1639, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-8942.

SUPPLEMENTARY INFORMATION: The FAA issued an airworthiness directive, Amendment 39-4196, AD 81-18-08, on August 17, 1981, effective October 3, 1981, applicable to Beech Models 99, 99A, A99A, A99 and B99 airplanes. The AD requires the deletion of the Minimum Equipment List (MEL) and Configuration Deviation List (CDL) from the FAA Approved Airplane Flight Manual (AAFM) and the insertion

therein of a new document entitled Kinds of Operations Equipment List (KOEL) as operating limitations for these Beech model airplanes. This action was taken pursuant to a notice of proposed rulemaking and is necessary to preclude unsafe operation of the airplanes with certain inoperative equipment. Subsequent to issuance, it was brought to FAA's attention that some owners/operators may still misunderstand the KOEL and its relationship to the MMEL and the MEL being removed from the AFM, and that there may be some inaccuracies in the KOEL, as published. Accordingly, the FAA believes that it is in the public interest to extend the effective date of Amendment 39-4196 for 60 days in order to make any clarification deemed necessary and to correct any inaccuracies noted in the published KOEL. Any such revisions to the KOEL will be made by no later than November 2, 1981.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-4196, AD 81-18-08, as follows:

This amendment extends the effective date of Amendment 39-4196, AD 81-18-08 to December 2, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.89))

Note: Since this document involves a change of effective date of a regulation which is not major, the FAA has determined that it is not major under Executive Order 12291, or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This regulatory action imposes no additional burden on any persons, and the anticipated impact is so minimal that it does not warrant preparation of a regulatory evaluation. Issued in Kansas City, Missouri, on September 30, 1981.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 81-26879 Filed 10-1-81; 8:45 am]

BILLING CODE 4910-13-M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Change in Merit Systems Protection Board Appeals Form

AGENCY: Merit Systems Protection Board.

ACTION: Notice of revised form for filing of appeals with MSPB.

SUMMARY: This notice announces publication of a new MSPB Appeals Form, Appendix I of 5 CFR Part 1201, which has been revised in format to facilitate the filing of appeals with the Board. The Board has arranged for supplies of the new form [Optional Form 283 (5/80)] to be made available to agencies through their normal procurement channels from the General Services Administration, for issuance to potential appellants before the MSPB. Since the revision effects no substantive change in content, the previous Appeals Form (MSPB 20) will remain valid for purposes of filing appeals with the Board, and agencies may continue to utilize the previous form until existing supplies are exhausted.

EFFECTIVE DATE: September 24, 1981.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Secretary, Merit Systems Protection Board, 1717 H Street, NW., Washington, D.C. 20419, (202) 632-4525.

Ersa H. Poston,
Vice Chair.
September 24, 1981.

PART 1201—PRACTICES AND PROCEDURES

Accordingly, 5 CFR Part 1201, Appendix I, is revised as follows:

BILLING CODE 7400-01-M



UNITED STATES MERIT SYSTEMS PROTECTION BOARD

APPEAL

AGENCY USE ONLY

INSTRUCTIONS: The purpose of this form is to help you provide valuable information to the U.S. Merit Systems Protection Board ("The Board") when you file an appeal. You are not required to use this form, and you are not limited to answering the questions on the form if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office will provide you with a copy of these regulations upon request and the Board advises you to review them.

All appellants who elect to use this form should complete Parts I through III. Only those who are appealing Reduction-in-Force (RIF) actions are required to complete Part IV. ALL APPELLANTS should also sign and date the form in the space provided at the end of Page 4 indicating approval of the contents of the entire form.

In filling out this form, wherever the space provided is insufficient you may add additional pages. If you do so, please put your name and Social Security Number at the top of the page, and indicate by number which question you are answering.

WHERE TO FILE—You or your representative are required to file one original and three copies of this form, together with its attachments with the Board's field office identified in the decision notice provided by the Agency. Filing must be made either by personal delivery during normal business hours to the appropriate Board field office or by mail addressed to that office. The Board recommends but does not require that you use certified mail.

PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1. NAME (Last, first, middle)	2. SOCIAL SECURITY NUMBER
3. PRESENT ADDRESS (Number and street, city, state, and ZIP code)	4. HOME PHONE (Include area code)
	5. OFFICE PHONE (Include area code)

PART II. APPEALED ACTION

6. BRIEFLY DESCRIBE AGENCY ACTION YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS

7. NAME AND ADDRESS OF ACTING AGENCY (Including Bureau, or other Division as well as street address, city, state, and ZIP code)			8. APPELLANT'S POSITION TITLE AT TIME OF ACTION	
			9. GRADE AT TIME OF ACTION	10. SALARY AT TIME OF ACTION \$ PER
11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN? ☐ NO ☐ YES	12. TYPE OF APPOINTMENT ☐ Temporary ☐ Applicant ☐ Permanent ☐ Term	13. TYPE OF SERVICE ☐ Competitive ☐ Excepted	14. LENGTH OF GOVERNMENT SERVICE	15. LENGTH OF SERVICE WITH ACTING AGENCY
16. ARE YOU RETIRED? ☐ NO ☐ YES	16A. IF YES, DATE OF RETIREMENT (Month, day, year)		17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT TIME ACTION WAS TAKEN BY THE AGENCY? ☐ NO ☐ YES	
18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED (Month, day, year) (Attach copy)	19. DATE FINAL DECISION NOTICE RECEIVED (Month, day, year)		20. EFFECTIVE DATE OF ACTION (Month, day, year)	

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? (Explain briefly)

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. HAVE YOU, OR ANYONE ON YOUR BEHALF, FILED A FORMAL GRIEVANCE OR COMPLAINT, INCLUDING AN UNFAIR LABOR PRACTICE CHARGE, WITH YOUR AGENCY OR ANY OTHER AGENCY CONCERNING THIS MATTER?

☐ NO

☐ YES (Attach copy)

23A. IF YES, DATE FILED (Month, day, year)

23B. PLACE FILED (Agency and location)

23C. HAS DECISION BEEN ISSUED?

☐ NO

☐ YES

23D. IF YES, DATE ISSUED (Month, day, year)

23E. NAME OF ISSUING OFFICIAL

23F. TITLE OF ISSUING OFFICIAL

24. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST.

25. HAVE YOU FILED A DISCRIMINATION COMPLAINT WITH YOUR AGENCY OR ANY OTHER AGENCY?

☐ NO

☐ YES (Attach copy)

25A. IF YES, DATE FILED (Month, day, year)

25B. PLACE FILED (Agency and location)

25C. HAS THERE BEEN A DECISION?

☐ NO

☐ YES

PART III. HEARING

26. YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENTS YOU AND THE AGENCY SUBMIT. DO YOU WANT A HEARING?

☐ NO☐ YES

IF YOU CHOOSE TO HAVE A HEARING, THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL IF HE/SHE AGREES TO DO SO. THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A. "I HEREBY DESIGNATE _____ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THIS APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B. YOUR SIGNATURE

27C. DATE

27D. REPRESENTATIVE'S SIGNATURE (if any)

27E. DATE

27F. REPRESENTATIVE'S ADDRESS

27G. REPRESENTATIVE'S EMPLOYER

28. YOU MAY BE PERMITTED TO CALL WITNESSES AT A HEARING UPON THE APPROVAL OF THE PRESIDING OFFICIAL. IF YOU INTEND TO DO SO, PROVIDE THEIR NAMES AND A BRIEF STATEMENT OF THEIR RELATIONSHIP TO THE CASE. YOU WILL BE PERMITTED TO REQUEST OTHER WITNESSES LATER IF YOU DO NOT LIST THEM NOW.

A. NAME

B. RELATIONSHIP TO CASE

PART IV. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

29. TENURE OF SUB-GROUP

30. SERVICE COMPUTATION DATE

31. HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU?

☐ NO☐ YES

32. TITLE OF OFFERED POSITION

33. GRADE OF POSITION OFFERED

34. SALARY OF POSITION OFFERED

\$

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35. LOCATION OF OFFERED POSITION

36. DID YOU ACCEPT THIS POSITION?

☐ NO☐ YES

37. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE. (Explanations could include: You were placed in the wrong tenure subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower tenure subgroup; or any other reasons. Please provide as much information as possible regarding each reason.)

(Continue on the next page)

OPTIONAL FORM 283 (3/80) PAGE 3

37. (Continued from Page 3.)

ATTENTION—THIS APPEAL MUST BE SIGNED

I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.

SIGNATURE OF APPELLANT

DATE SIGNED

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2430

General Counsel of the Federal Labor Relations Authority; Equal Access to Justice Act; Implementation

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

ACTION: Interim rules and regulations; request for comments.

SUMMARY: These interim rules and regulations are required by and designed to implement the Equal Access to Justice Act, 5 U.S.C. 504. As applied to the Federal Labor Relations Authority, the Act, which takes effect October 1, 1981, authorizes the award of fees and other expenses to eligible parties who prevail in defending against the General Counsel of the authority in adversary adjudications conducted by the Authority. An eligible prevailing party in such a situation would, upon application, be entitled to an award of allowable fees and expenses incurred in connection with the adversary adjudication, unless an adjudicative officer finds that the position of the General Counsel as a party to the proceeding was substantially justified or that special circumstances make an award unjust. These interim rules and regulations describe the eligibility criteria for a party to apply for an award of fees and other expenses in adversary proceedings of the Authority; identify the Authority proceedings covered by the Act; and set forth the procedures for the submission and consideration of an application for an award. The interim rules and regulations will expire no later than March 15, 1982.

DATES: Effective Date: October 1, 1981. Comment date: Written comments received by November 15, 1981, will be considered in promulgation of final rules and regulations on this subject.

ADDRESS: Comments should be mailed to James J. Shepard, Executive Director, Federal Labor Relations Authority, Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT: Jerome P. Hardiman, Director, Office of Operations and Technical Assistance, Federal Labor Relations Authority, Washington, D.C. 20424, (202) 254-7362.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act, 5 U.S.C. 504, effective October 1, 1981, provides that an agency which conducts an adversary adjudication shall award to

an eligible party (other than the United States) that prevails against the agency in defending against or seeking review of the agency's action certain fees and other expenses incurred by that party in connection with the proceeding, unless the adjudicative officer of the agency finds that the position of the agency as a party to the proceeding was substantially justified or that special circumstances make an award unjust.

An adversary adjudication is an adjudication under section 554 of the Administrative Procedure Act, 5 U.S.C. 554, in which the position of the United States is represented by counsel or otherwise. The adversary adjudications of the Federal Labor Relations Authority that are covered by the Act are unfair labor practice proceedings pending on complaint against a labor organization at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final Authority action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Authority action occurs.

Applicants eligible to receive an award in connection with such an unfair labor practice proceeding conducted by the Authority are identified with specificity in the interim regulations at § 2430.2(b).

Fees and other expenses that may be awarded include the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees.

Under the Act, an adjudicative officer is the deciding official who presided at the adversary proceeding upon which the application for an award of fees and other expenses is based. As applied to the Federal Labor Relations Authority, the adjudicative officer is the Administrative Law Judge who presided at the hearing on the unfair labor practice complaint against the labor organization involved. These interim regulations provide at § 2430.7 that in the event the Administrative Law Judge who presided at the proceeding is unavailable, or the proceeding was not heard by an Administrative Law Judge, an application for an award will be referred to the Chief Administrative Law Judge for designation of a Judge for consideration and decision on the application. The regulations also provide at § 2430.13 for the filing of exceptions to an Administrative Law Judge's decision with the Authority and a final decision on the matter by the Authority.

As already indicated, the Equal Access to Justice Act requires each agency to establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. These interim rules and regulations, designed to implement the provisions of the Act, follow the model rules recommended by the Administrative Conference of the United States (46 FR 32900, June 25, 1981) which we understand have been submitted to the Office of Management and Budget in order to facilitate any review that may be warranted under the Paperwork Reduction Act.

In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Authority and the General Counsel of the Authority have determined that these interim rules and regulations will not have a significant economic impact upon a substantial number of small entities and, therefore, preparation of a regulatory flexibility analysis is not required.

Accordingly, Chapter XIV of Title 5 of the Code of Federal Regulations is revised to add a new Part 2430 to read as follows:

PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES

- Sec.
- 2430.1 Purpose.
 - 2430.2 Proceedings affected; eligibility for award.
 - 2430.3 Standards for awards.
 - 2430.4 Allowable fees and expenses.
 - 2430.5 Rulemaking on maximum rates for attorney fees.
 - 2430.6 Contents of application; net worth exhibit; documentation of fees and expenses.
 - 2430.7 When an application may be filed; referral to administrative law judge; stay of proceeding.
 - 2430.8 Filing and service of documents.
 - 2430.9 Answer to application; reply to answer; comments by other parties; extensions of time to file documents.
 - 2430.10 Settlement.
 - 2430.11 Further proceedings.
 - 2430.12 Administrative Law Judge's decision; contents; service; transfer of case to the Authority; contents of record in case.
 - 2430.13 Exceptions to administrative law judge's decision; briefs; action of Authority.
 - 2430.14 Payment of award.
- Authority: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

§ 2430.1 Purpose.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney, agent, or witness fees and other expenses to eligible individuals and entities who are parties to agency

adversary adjudications. An eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards, and the Authority proceeding that is covered. They also set forth the procedures for applying for such awards, and the procedures by which the Authority will rule on such applications.

§ 2430.2 Proceedings affected; eligibility for award.

(a) The provisions of this part apply to unfair labor practice proceedings pending on complaint against a labor organization at any time between October 1, 1981, and September 30, 1984. They apply to proceedings begun before October 1, 1981, if final Authority action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Authority action occurs.

(b) A respondent in an unfair labor proceeding which has prevailed in the proceeding, or in a significant and discrete portion of the proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of attorneys fees and other expenses allowable under the provisions of § 2430.4 of these rules.

(1) Applicants eligible to receive an award in proceedings conducted by the Authority are any partnership, corporation, association, or public or private organization with a net worth of not more than \$5 million and not more than five hundred (500) employees.

(2) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the complaint was issued.

(3) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(4) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 2430.3 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete portion of the proceeding, unless the position of the General Counsel over which the applicant has prevailed was

substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that its position in initiating the proceeding was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 2430.4 Allowable fees and expenses.

(a) No award for the fee of an attorney or agent under these rules may exceed \$75.00 per hour. No award to compensate an expert witness may exceed the highest rate which the Authority pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the following matters may be considered:

(1) If the attorney, agent or witness is in practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) The reasonable cost of any study, analysis, engineering report, test, project or similar matters prepared on behalf of an applicant may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 2430.5 Rulemaking on maximum rates for attorney fees.

Any person may file with the Authority a petition under § 2429.28 of these rules for rulemaking to increase the maximum rate for attorney fees. The petition should specify the rate the petitioner believes should be established and explain fully the reasons why the higher rate is warranted.

§ 2430.6 Contents of application; net worth exhibit; documentation of fees and expenses.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall state the particulars in which the applicant has prevailed and identify the positions of the General Counsel in the proceeding that the applicant alleges were not substantially justified. The application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall include a statement that the applicant's net worth does not exceed \$5 million.

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Authority to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true.

(f) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The Administrative Law Judge may require an applicant to file additional information to determine its eligibility for an award.

(g) The application shall be accompanied by full documentation of the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Administrative Law Judge may require the applicant to provide vouchers, receipts, or other

substantiation for any expenses claimed.

§ 2430.7 When an application may be filed; referral to Administrative Law Judge; stay of proceeding.

(a) An application may be filed after entry of the final order establishing that the applicant has prevailed in the proceeding, or in a significant and discrete substantive portion of the proceeding, but in no case later than thirty (30) days after the entry of the Authority's final order in the proceeding. The application for an award shall be filed with the Authority in Washington, D.C., in an original and four copies, and served on all parties to the unfair labor practice proceeding. Service of the application shall be in the same manner as prescribed in §§ 2429.22 and 2429.27. Upon filing, the application shall be referred by the Authority to the Administrative Law Judge who heard the proceeding upon which the application is based, or, in the event the proceeding had not previously been heard by an Administrative Law Judge, it shall be referred to the Chief Administrative Law Judge for designation of an Administrative Law Judge, to consider the application. When the Administrative Law Judge to whom the application has been referred is or becomes unavailable, the provisions of § 2423.20 shall be applicable.

(b) Proceedings for the award of fees and other expenses, but not the time limit of this section for filing an application for an award, shall be stayed pending final disposition of the case, in the event any persons seeks Authority reconsideration or court review of the Authority decision that forms the basis for the application for fees and expenses.

§ 2430.8 Filing and service of documents.

All pleadings or documents after the time the case is referred by the Authority to an Administrative Law Judge, until the issuance of the Judge's decision, shall be filed in an original and four copies with the Administrative Law Judge and served on all parties to the proceeding. Service of such documents shall be in the same manner as prescribed in §§ 2429.22 and 2429.27.

§ 2430.9 Answer to application; reply to answer; comments by other parties; extensions of time to file documents.

(a) Within 30 days after service of an application, the General Counsel may file an answer to the application. The filing of a motion to dismiss the application shall stay the time for filing an answer to a date thirty (30) days after issuance of any order denying the motion.

(b) If the General Counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate toward a settlement. The filing of such a statement shall extend the time for filing an answer for an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested, and identify the facts relied on in support of the General Counsel's position. If the answer is based on alleged facts not already in the record of the proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.

(d) Within fifteen (15) days after service of an answer, the applicant may file a reply. If the reply is based on alleged facts not already in the record of the proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.

(e) Any party to a proceeding other than the applicant and the General Counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in the proceeding on the application unless the Administrative Law Judge determines that such participation is required in order to permit full exploration of matters raised in the comments.

(f) Motions for extensions of time to file documents permitted by this section or § 2430.11 shall be filed with the Administrative Law Judge not less than five (5) days before the due date of the document.

§ 2430.10 Settlement.

The applicant and the General Counsel may agree on a proposed settlement of the award before final action on the application. If an applicant and the General Counsel agree on a proposed settlement of an award before an application has been filed, the proposed settlement shall be filed with the application. All such settlements shall be subject to approval by the Authority.

§ 2430.11 Further proceedings.

(a) The determination of an award may be made on the basis of the documents in the record, or the Administrative Law Judge, upon request of either the applicant or the General Counsel, or on his or her own initiative, may order further proceedings. Such further proceedings may include, but shall not be limited to, an informal conference, oral argument, additional written submissions, or an evidentiary hearing.

(b) A request that the Administrative Law Judge order further proceedings under this section shall specifically identify the disputed issues and the evidence sought to be adduced, and shall explain why the additional proceedings are necessary to resolve the issues.

(c) An order of the Administrative Law Judge scheduling oral argument, additional written submissions, or an evidentiary hearing, shall specify the issues to be considered in such argument, submission, or hearing.

(d) Any evidentiary hearing held pursuant to this section shall be conducted not earlier than forty-five (45) days after the date on which the application is served. In all other respects, such hearing shall be conducted in accordance with §§ 2423.14, 2423.16, 2423.17, 2423.19 through 2423.21, 2423.23, and 2423.24, insofar as these sections are consistent with the provisions of this part.

§ 2430.12 Administrative Law Judge's decision; contents; service; transfer of case to the Authority; contents of record in case.

(a) Upon conclusion of proceedings under §§ 2430.6 to 2430.11, the Administrative Law Judge shall prepare a decision. The decision shall include written findings and conclusions on the applicant's status as a prevailing party and eligibility, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Authority, including the judge's decision and the record. Service of the Administrative Law Judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

(b) The record in a proceeding on an application for an award of fees and expenses shall consist of the application for an award of fees and expenses and any amendments or attachments thereto, the net worth exhibit, the answer and any amendments or attachments thereto, any reply to the answer, any comments by other parties, motions, rulings, orders, stipulations, written submissions, the stenographic transcript of oral argument, the stenographic transcript of the hearing,

exhibits and depositions, together with the Administrative Law Judge's decision, and the exceptions and briefs as provided in § 2430.13, and the record of the unfair labor practice proceeding upon which the application is based.

§ 2430.13 Exceptions to administrative law judge's decision; briefs; action of Authority.

Procedures before the Authority, including the filing of exceptions to the administrative law judge's decision rendered pursuant to § 2430.12, and action by the Authority, shall be in accordance with §§ 2423.26(c), 2423.27, and 2423.28 of these rules. The Authority's review of the matter shall be in accordance with § 2423.29(a).

§ 2430.14 Payment of award.

To obtain payment of an award made by the Authority the applicant shall submit to the Executive Director of the Authority a copy of the Authority's final decision granting the award, accompanied by a statement that the applicant will not seek court review of the decision. The amount awarded will then be paid unless judicial review of the award, or of the underlying decision, has been sought by the applicant or any other party to the proceeding.

Dated: September 30, 1981.

Ronald W. Haughton,
Chairman.

Henry B. Frazier III,
Member.

Leon B. Applewhite,
Member.

H. Stephan Gordon,
General Counsel.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

Citrus Blackfly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document removes the citrus blackfly quarantine and regulations which imposed restrictions on the movement of regulated articles from portions of three counties in Florida and from two counties in Texas into or through other States, Territories, or Districts of the United States. The quarantine and regulations were established for the purpose of preventing economic damage to citrus

crops. The quarantine and regulations are removed because it appears that they are no longer necessary for this purpose.

EFFECTIVE DATE: October 2, 1981.

FOR FURTHER INFORMATION CONTACT: Gary E. Moorehead, Staff Officer, Pest Program Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 630 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8745.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act

This final rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been determined to be not a "major rule." The final rule removes the citrus blackfly quarantine and regulations and thereby removes restrictions on the movement of regulated articles from regulated areas in Florida and Texas. Based on information compiled by the Department, it has been determined that removal of such restrictions would have no significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It appears that the only alternative to this action is to retain the current Federal quarantine and regulations. Based on information compiled by the Department, it is estimated that the cost for effectively administering the Federal quarantine and regulations and corresponding State laws would be at least \$4 million annually. The Federal cost would be at least \$2 million annually; however, no funds have been appropriated for this purpose for fiscal year 1982. Parasites of citrus blackfly have proven to be effective to prevent economic damage to citrus crops. If the citrus blackfly were to spread interstate from Florida or Texas to other citrus producing areas in the United States, it is anticipated that parasites of the citrus blackfly would be released and established in such areas by affected States or political subdivisions thereof, and thereby prevent economic damage to citrus crops. Parasites could be made available at relatively low cost;

however, should it become necessary to establish a parasite rearing and release program on a State-wide basis, it is estimated that this could be accomplished by a State or political subdivision thereof at the cost of approximately \$100,000 per year for the period of operation. Further, once parasites become established, the parasite program could be discontinued since the parasites are self-perpetuating.

Dr. H. C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that, under the circumstances explained above, it is anticipated that the removal of the citrus blackfly quarantine and regulations will not have a significant economic impact on a substantial number of small entities.

Background

In a document published in the Federal Register on August 17, 1981 (46 FR 41519-41520), the Department proposed to remove the citrus blackfly quarantine and regulations contained in 7 CFR 301.86 through 301.86-10. The quarantine and regulations imposed restrictions on the movement of regulated articles from portions of three counties in Florida and from two counties in Texas into or through other States, Territories or Districts of the United States. The document of August 17, 1981, provided that written comments were to be received on or before September 16, 1981. No comments were received in response to the proposal. Based on the reasons set forth in the proposal, it is necessary to remove the citrus blackfly quarantine and regulations.

The final rule relieves restrictions which have been found to be unnecessary. Accordingly, prompt action should be taken to delete the restrictions. Therefore, in accordance with the provisions of 5 U.S.C. 553 the final rule is made effective upon publication.

PART 301—DOMESTIC QUARANTINE NOTICES

§§ 301.86—301.86-10 (Subpart—"Citrus Blackfly") [Removed]

Accordingly, 7 CFR Part 301 is amended by removing "Subpart-Citrus Blackfly" (7 CFR 301.86 through 301.86-10).

(Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C. 161, 162); sections 105 and 106, 71 Stat. 32, 71 Stat. 33 (7 U.S.C. 150dd, 150ee); 37 FR 28464, 28477, as amended; 45 FR 8564, 8565)