Federal Register
Vol. 48, No. 173
Tuesday, September 6, 1983

Presidential Documents

Title 3—

The President

Proclamation 5086 of September 1, 1983

Death of American Citizens on Board Korean Airlines Flight

By the President of the United States of America

A Proclamation

As a mark of respect for the American citizens and all those who died violently on board the Korean Airlines flight which was ruthlessly shot down by Soviet fighters between Sakhalin and Monoron Islands on September 1, 1983, I hereby order, by virtue of the authority vested in me as President of the United States of America, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions through Sunday, September 4, 1983. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of September, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 83-24443
Filed 9-2-83; 9:20 am]
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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.
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FEDERAL LABOR RELATIONS AUTHORITY AND GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2422, 2426, and 2429

Processing of Cases; General Requirements

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

ACTION: Amendment of rules and regulations.

SUMMARY: These amendments implement the amendment to the memorandum describing the authority and assigned responsibilities of the General Counsel of the Federal Labor Relations Authority which delegates to the Regional Directors the authority to render final decisions in representation matters.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: James J. Shepard, Executive Director, Federal Labor Relations Authority, (202) 382-0711 or David L. Feder, Assistant General Counsel, Office of the General Counsel, (202) 382-0834.

SUPPLEMENTARY INFORMATION: On June 16, 1983, the Federal Labor Relations Authority, pursuant to 5 U.S.C. 7105(e)(1), delegated to its Regional Directors, who are directed and supervised by the General Counsel of the Federal Labor Relations Authority, its authority to determine whether a group of employees is an appropriate unit, to conduct investigations and to provide for hearings, to determine whether a question of representation exists and to direct an election, and to supervise or conduct secret ballot elections and certify the results thereof.

The amendment to the memorandum, published at 48 FR 28814, is effective on October 1, 1983, the date on which the amendments published herein are effective. Thus, the amendment to the memorandum and the amendments to the regulations published herein apply to any referenced petition filed pursuant to sections 7111, 7112(d), 7113, 7115 and 7117(d) of the Statute on or after October 1, 1983.

The parts of the final rules and regulations affected by the amendments are: Parts 2422 and 2426, which, respectively, govern the processing of representation and consultation rights cases by the Authority and the Regional Directors; and Part 2429, which establishes the miscellaneous and general procedural requirements for parties in cases before the Authority.

The amendments implement the delegation to the Regional Directors and provide for a review procedure by the Authority of Decisions and Orders of Regional Directors in representation cases as required by 5 U.S.C. 7105(f).

Analysis of Comments and Changes

On June 23, 1983, the Authority and the General Counsel published the proposed amendments to the Regulations at 48 FR 28814–28820. Parties were afforded an opportunity to submit written comments by July 29, 1983. Two agencies and one labor organization submitted written comments on the proposed regulations. All parties commenting supported the proposed amendments and the delegation to the Regional Directors.

One agency which fully supported the proposed amendments made no recommendation for change. The other agency's only recommendation was that the regulations should provide for an automatic stay during the prescribed sixty (60) day period for filing an application for review with the Authority of a Regional Director's Decision and Order and the prescribed sixty (60) day period during which the Authority will consider whether to undertake to grant review of such a timely application for review. The labor organization commenting opposed any automatic stay of a Regional Director's Decision and Order.

Section 7105(f) of the Statute provides, in part, that the Authority's decision to review a Regional Director's Decision and Order "shall not, unless specifically ordered by the Authority, operate as a stay of action." This statutory mandate is reiterated in §§ 2422.16(b) and 2422.17(g) which, respectively, provide that the filing of an application for review and the granting of an application for review shall not, unless specifically ordered by the Authority, operate as a stay of the Regional Director's Decision and Order. In view of the statutory mandate that stays must be specifically ordered by the Authority, the commenting agency's recommendation must be rejected. Thus, absent a stay ordered by the Authority upon the filing or granting of review of an application for review of a Regional Director's Decision and Order directing an election, Regional Directors will begin preparation for the holding of the election. However, in order to preclude the unnecessary expenditure of funds should the Authority determine to grant review of the Regional Director's Decision and Order directing an election, it is the intent of the Authority and the General Counsel that Regional Directors will not supervise or conduct an election until the Authority has had the opportunity to decide, within the statutory time frame, whether to undertake review based upon the timely filing of an application for review.

The labor organization which submitted written comments recommended that the time period to file briefs with the Authority set forth in § 2422.17(g), if the Authority grants an application for review, should be extended beyond the seven (7) days proposed. It was decided to extend the period to ten (10) days, which is the same time period parties have had to file an opposition to a request for review under the existing regulations. In this regard, past experience has indicated that this ten (10) day time period is adequate and thus should be retained in § 2422.17(d) with respect to filing an opposition with the Authority to an application for review. In view of the limited statutory time frames established in section 7105(f) of the Statute, it is intended that the limited time frames in which to file an opposition to an application for review and briefs with the Authority, should review be granted, will allow the Authority to rule expeditiously on applications for review.

As to the labor organization's comment recommending a procedure for reconsideration of a Regional Director's Decision and Order, it was decided that

such procedure is unnecessary in that upon the filing of an application for review (which must be served on the Regional Director under § 2422.17(a)), the Regional Director on his/her own initiative, may treat the application for review as a request for reconsideration and request the Authority to remand the case for further appropriate action. With respect to the labor organization's comment regarding the bar contained in § 2422.17(e) with respect to relitigating representation issues in any related subsequent unfair labor practice proceeding, it is the intent of the amendment that an issue which was, or could have been, raised in an application for review in a representation proceeding is precluded from being litigated by a party as an affirmative defense in any related subsequent unfair labor practice proceeding. As to the labor oranization's comment that Administrative Law Judges, rather than Hearing Officers, should conduct hearings on objections and challenges as well as in national consultation rights and consultation rights cases, the Statute in section 7105(e)(1), and the Authority's delegation pursuant thereto, 48 FR 28814, provide only for delegation to the Regional Directors in representation cases. Hence, the labor organization's recommendation must be rejected.

List of Subjects in 5 CFR Parts 2422, 2426, and 2429

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

Accordingly, the final rules and regulations of the Authority and the General Counsel of the Authority are amended as follows:

PART 2422—[AMENDED]

1. Section 2422.2 is amended by revising paragraphs (f), (g), and (h)(6) and (h)(7)(iii) to read as follows:

§ 2422.2 Contents of petition; procedures for consolidation of existing exclusively recognized units; filing and service of petition; challenges to petition.

* * * * *

(f) *Adequacy and validity of showing of interest or showing of membership.* (1) The Regional Director shall determine the adequacy of the showing of interest or the showing of membership administratively, and such determination shall not be subject to collateral attack at a unit or representation hearing. A Regional Director's Decision and Order dismissing a petition or denying intervention shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17.

(2) Any party challenging the validity of any showing of interest or showing of membership of a petitioner, or of a cross-petitioner filing pursuant to § 2422.5(b), or of a labor organization seeking to intervene pursuant to § 2422.5, must file its challenge with the Regional Director, with respect to the petitioner or a cross-petitioner, within ten (10) days after the initial date of posting of the notice of petition as provided in § 2422.4(a), and with respect to any labor organization seeking to intervene, within ten (10) days of service of copy of the request for intervention on the challenging party. The challenge shall be supported with evidence including signed statements of employees and any other written evidence. The Regional Director shall investigate the challenge and thereafter shall take such action as the Regional Director deems appropriate which shall be final and not subject to the filing of an application for review with the Authority unless the Regional Director issues a Decision and Order dismissing a petition or denying intervention on the basis of the challenge. Such a Regional Director Decision and Order shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17.

(g) Challenge to status of a labor organization. Any party challenging the status of a labor organization under chapter 71 of title 5 of the United States Code must file its challenge with the Regional Director and support the challenge with evidence. With respect to the petitioner or a cross-petitioner filing pursuant to § 2422.5(b), such a challenge must be filed within ten (10) days after the initial date of posting of the notice of petition as provided in § 2422.4(a), and with respect to a labor organization seeking to intervene pursuant to § 2422.5, within ten (10) days after service of a copy of the request for intervention on the challenging party. The Regional Director shall investigate the challenge and thereafter shall take such action as the Regional Director deems appropriate. A Regional Director's Decision and Order on such challenge shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17.

(h) Petition and procedures for consolidation of existing exclusively recognized units. * * *

(6) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall issue and serve on the labor organization(s) and activity(ies) or agency involved a Decision and Order with respect to the petition to consolidate existing exclusively recognized units. The Regional Director's Decision and Order shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17. If no application for review is filed, or if one is filed and denied, or if the Authority does not undertake to grant review of the action within sixty (60) days after the filing of an application for review, the Regional Director shall take such action as may be appropriate, which may include issuance of a certification on consolidation of units: *Provided, however,* That where the Regional Director approves a withdrawal request, or determines to supervise or conduct an election, or to issue a notice of hearing, no such Decision and Order shall be issued and such action shall not be subject to the filing of an application for review with the Authority. The Regional Director, if appropriate, may cause a notice of hearing to be issued where substantial factual issues exist warranting a hearing. Hearings shall be conducted by Hearing Officers in accordance with §§ 2422.9 through 2422.15 and after the close of the hearing a Decision and Order shall be issued by the Regional Director in accordance with § 2422.16.

(7) Agreement for Unit Consolidation Election: * * *

(iii) If the Regional Director approves the agreement, the election by secret ballot shall be conducted by the activity(ies) or agency, as appropriate, under the supervision of the Regional Director, in accordance with §§ 2422.18 (a), (b), (c), and (f), 2422.19, 2422.20, and 2422.21. There shall be no runoff elections.

* * * * *

2. Section 2422.4 is amended by revising paragraphs (f), (g) and (h) to read as follows:

§ 2422.4 Investigation of petition and posting of notice of petition; action by Regional Director.

* * * *

(f) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter

shall take action which may consist of the following, as appropriate:

(1) Approve an agreement for consent election in an agreed-upon appropriate unit as provided under § 2422.7;

(2) Approve a withdrawal request;

(3) Issue a Decision and Order dismissing the petition;

(4) Issue a notice of hearing; or

(5) Issue a Decision and Order where the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists.

(g) In processing a petition for clarification of unit or for amendment of recognition or certification, or dues allotment, where appropriate, the Regional Director shall issue and serve a Decision and Order upon all parties to the proceedings which shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17. If no application for review is filed, or if one is filed and denied, or if the Authority does not undertake to grant review of the action within sixty (60) days after the filing of an application for review, the Regional Director shall take such action as may be appropriate, which may include issuing a clarification of unit, an amendment of recognition or certification, or a determination of eligibility for dues allotment.

(h) a determination by the Regional Director to issue a notice of hearing shall not be subject to the filing of an application for review with the Authority.

3. Section 2422.6 is revised to read as follows:

§ 2422.6 Withdrawal, dismissal or deferral of petitions; consolidation of cases; denial of intervention.

(a) If the Regional Director determines, after such investigation as the Regional Director deems necessary, that the petition has not been timely filed, or the claimed unit is not appropriate, or the petitioner has not made a sufficient showing of interest, or the petition is not otherwise actionable, or an intervention is not appropriate, the Regional Director may request the petitioner or intervenor to withdraw the petition or the request for intervention. In the absence of such withdrawal within a reasonable period of time, the Regional Director may issue a Decision and Order dismissing the petition or denying the request for intervention.

(b) If the Regional Director determines, after investigation, that a valid issue has been raised by a challenge under § 2422.2 (f) or (g), the Regional Director may take action which may consist of the following, as appropriate:

(1) Request the petitioner or intervenor to withdraw the petition or the request for intervention;

(2) Issue a Decision and Order dismissing the petition and/or denying the request for intervention if a withdrawal request is not submitted within a reasonable period of time;

(3) Defer action on the petition or request for intervention until such time as issues raised by the challenges have been resolved pursuant to this part; or

(4) Consolidate such issues with the representation matter for resolution of all issues.

(c) If the Regional Director issues a Decision and Order dismissing the petition and/or denying the request for intervention, such Decision and Order shall be served on the petitioner, the party requesting intervention, the activity and other intervenors, as appropriate. Such a Regional Director's Decision and Order shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17.

4. Section 2422.7 is amended by revising paragraphs (d) and (e) and by adding paragraph (g) to read as follows:

§ 2422.7 Agreement for consent election.

* * * * *

(d) In the event that the parties cannot agree on the matters contained in paragraph (c) of this section, the Regional Director, acting on behalf of the Authority, shall decide these matters without prejudice to the right of a party to file objections to the procedural conduct of the election under § 2422.21(b).

(e) If the Regional Director approves the agreement, the election shall be conducted by the activity or agency, as appropriate, under the supervision of the Regional Director, in accordance with § 2422.18.

* * * * *

(g) As part of the consent election agreement, the parties may waive their right to file an application for review of a Regional Director's Decision and Order which may issue on objections and/or determinative challenged ballots.

5. Section 2422.10 is amended by revising paragraphs (b)(2) and (c) and by adding paragraph (b)(3) to read as follows:

§ 24422.10 Motions.

* * * * *

(b) *Filing of motions.* * * *

(2) After the close of the hearing, except as otherwise provided, motions and responses thereto shall be filed with the Regional Directors, *Provided,* That following the close of a hearing, motions to correct the transcript should be filed with the Hearing Officer within ten (10) days after the transcript is received in the regional office.

(3) If an application for review is filed with the Authority, all subsequent motions and responses thereto shall be filed with the Authority.

(c) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them, or they may refer them to the Hearing Officer. A Regional Director's Decision and Order granting a motion to dismiss a petition is final: *Provided, however,* That an application for review of the Regional Director's Decision and Order my be filed with the Authority in accordance with the procedure set forth in § 2422.17.

(2) Hearing Officers shall rule, either orally on the record or in writing, on all motions made at the hearing or referred to them, except that a motion to dismiss a petition shall be refered for appropriate action at such time as the record is considered by the Regional Director. Rulings by a Hearing Officer reduced to writing shall be served on the parties.

(3) The Regional Director shall consider the rulings by the Hearing Officer when the case is before the Regional Director for decision.

6. Section 2422.14 is revised to read as follows:

§ 2422.14 Filing of briefs.

A party desiring to file a brief with the Regional Director shall file the original and one (1) copy within thirty (30) days from the close of the hearing. Copies thereof shall be served on all other other parties to the proceeding. Requests for extensions of time pursuant to § 2429.23(a) to file briefs shall be submitted to the Regional Director, in writing, and copies thereof shall be served on the other parties and a statement of such service shall be filed with the Regional Director. Requests for extensions of time shall be in writing and received by the Regional Director not later than five (5) days before the date such briefs are due. No reply brief may be filed in any proceeding except by special permission of the Regional Director.

7. Section 2422.15 is revised to read as follows:

§ 2422.15 Contents of record.

The record of the proceeding shall include the petition, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing with any corrections thereto, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence, and any briefs or other documents submitted by the parties.

8. Section 2422.16 is revised to read as follows:

§ 2422.16 Decision and Order of the Regional Director.

(a) Upon the close of the hearing, or based upon a stipulation by the parties where the Regional Director has determined that no material issue of fact exists, the Regional Director shall issue a Decision and Order determining the appropriate unit, directing an election or dismissing the petition, or making other disposition of the matters before the Regional Director. The Regional Director's Decision and Order shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17.

(b) The filing of an application for review shall not, unless specifically ordered by the Authority, operate as a stay of the election or any other action taken by the Regional Director.

9. A new section 2422.17 is added to read as follows:

§ 2422.17 Application for review of a Decision and Order of the Regional Director.

(a) A Regional Director's Decision and Order shall be final: *Provided, however,* That a party may file an application for review of the Regional Director's Decision and Order with the Authority within sixty (60) days of the date of such action. Copies of the application for review shall be served on the Regional Director and all other parties, and a statement of service shall be filed with the application for review. The sixty (60) day time limit provided for in 5 U.S.C. 7105(f) for the filing of an application for review may not be extended or waived.

(b) Any application for review must be a self-contained document enabling the Authority to rule on the basis of its contents without the necessity of recourse to the record; however, the Authority may, in its discretion, examine the record in evaluating the application. An application must contain a summary of all evidence or rulings relating to the issue(s) raised together with page citations from the transcript, if applicable, and supporting argument. An application may not raise any issue or allege any facts not timely presented to the Regional Director.

(c) The Authority may grant an application for review only where it appears that compelling reasons exist therefor. Accordingly, an application for review may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, Authority precedent;

(2) That there are extraordinary circumstances warranting reconsideration of an Authority policy;

(3) That the conduct of the hearing held or any ruling made in connection with the proceeding has resulted in prejudicial error; or

(4) That the Regional Director's decision on a substantial factual issue is clearly erroneous and such error prejudicially affects the rights of a party.

(d) Any party may file an opposition to an application for review with the Authority within ten (10) days after service of the application for review. Copies of the opposition to the application for review shall be served on the Regional Director and the other parties, and a statement of service shall be filed with the opposition to the application for review. The Authority may deny the application for review without awaiting a statement in opposition thereto.

(e) The parties may, at any time, waive the right to file an application for review. Failure to file an application for review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. The denial of an application for review by the Authority, the failure of the Authority to undertake to grant review of a Regional Director's Decision and Order within sixty (60) days after the date of the filing of the application, or the granting of review and affirming by the Authority of the Regional Director's Decision and Order shall preclude relitigating any such issue in any related subsequent unfair labor practice proceeding.

(f) A Decision and Order of a Regional Director becomes the action of the Authority when:

(1) No application for review is filed within sixty (60) days after the date of the Regional Director's Decision and Order; or

(2) A timely application for review is filed with the Authority and the Authority does not undertake to grant review of the Regional Director's Decision and Order within sixty (60) days after the date of the filing of the application; or

(3) The Authority denies an application for review of the Regional Director's Decision and Order.

(g) The Authority may rule upon the issue(s) in its order granting the application for review. The granting of an application for review shall not stay the Regional Director's Decision and Order unless otherwise ordered by the Authority. Except where the Authority rules upon the issue(s) in the order granting review, the parties may, within ten (10) days after issuance of an order granting review, file briefs with the Authority. Such briefs may be reproductions of those previously filed with the Regional Director and/or other briefs shall be limited to the issue(s) raised in the application for review. Where review has been granted, the Authority will consider the entire record in the light of the grounds relied upon for review. Any application for review may be withdrawn with the permission of the Authority at any time prior to the issuance of the decision of the Authority thereon. Upon granting review of a timely application, the Authority may issue a decision or ruling affirming, modifying or reversing any action reviewed.

§ 2422.17 [Redesignated as § 2422.18]

10. Section 2422.17 is redesignated as § 2422.18 and is amended by revising paragraph (g) to read as follows:

§ 2422.18 Election procedure; request for authorized representation election observers.

* * * * *

(g) A party's request to the Regional Director for named observers shall be in writing and filed with the Regional Director not less than fifteen (15) days prior to an election to be supervised or conducted pursuant to this part. The request shall name and identify the authorized representation election observers sought, and state the reasons therefor. Copies thereof shall be served on the other parties and a written statement of such service shall be filed with the Regional Director. Within five (5) days after service of a copy of the request, a party may file objections to the request with the Regional Director and state the reasons therefor. Copies thereof shall be served on the other parties and a written statement of such service shall be filed with the Regional Director. The Regional Director shall rule upon the request not later than five (5) days prior to the date of the election. However, for good cause shown by a party, or on the Regional Director's own

motion, the Regional Director may vary the time limits prescribed in this paragraph. The Regional Director's ruling is not subject to the filing of an application for review with the Authority.

§ 2422.18 [Redesignated as § 2422.19]

11. Section 2422.18 is redesignated as § 2422.19.

§ 2422.19 [Redesignated as § 2422.20]

12. Section 2422.19 is redesignated as § 2422.20.

§ 2422.20 [Redesignated as § 2422.21]

13. Section 2422.20 is redesignated as § 2422.21 and is amended by revising paragraphs (d), (e), (f), (g) and (i) read as follows:

§ 2422.21 Certification; objections to election; determination on objections and challenged ballots.

* * * * *

(d) When the Regional Director determines that no relevant question of fact exists, the Regional Director:

(1) Shall find whether improper conduct occurred of such a nature as to warrant the setting aside of the election, and/or

(2) Shall rule on determinative challenged ballots, if any. The Regional Director shall issue a Decision and Order on objections and/or determinative challenged ballots which shall be served upon all parties to the proceeding. Such Decision and Order shall contain therein any additional matter such as an Order to rerun the election or count ballots at a specified date, time, and place, and if appropriate, that the Regional Director will cause to be issued a revised tally of ballots.

(e) The Regional Director's Decision and Order shall be final: *Provided however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17. *Provided, however,* That a determination by a Regional Director to issue a notice of hearing shall not be subject to the filing of an application for review.

(f) Any party filing an application for review of the Regional Director's Decision and Order when no hearing is conducted may support its submission to the Authority by appending thereto copies of documentary evidence, including copies of any affidavits, it had timely submitted to the Regional Director. Documentary evidence so appended shall thereupon become part of the record in the proceeding. Failure to timely submit such documentary evidence to the Regional Director, or to append that evidence to its submission to the Authority in the representation proceedings as provided above, shall preclude a party from relying on such evidence in any subsequent unfair labor practice proceeding.

(g) Where it appears to the Regional Director that the objections or determinative challenged ballots raise any relevant question of fact which may have affected the results of the election, the Regional Director shall cause to be issued a notice of hearing. Hearings shall be conducted by a Hearing Officer in accordance with §§ 2422.9 through 2422.15 and after the close of the hearing a Decision and Order shall be issued by the Regional Director in accordance with § 2422.16. *Provided, however,* That in any proceeding wherein a representation case has been consolidated with an unfair labor practice case for purposes of hearing, such a consolidated hearing shall be conducted and decisions issued by Administrative Law Judges and exceptions and related submissions shall be filed with the Authority in accordance with §§ 2423.14 through 2423.28 of this subchapter. *Provided, however,* That with regard to the representation case:

(1) Sections 2423.18 and 2423.19(j) will not be applicable;

(2) The Administrative Law Judge may not recommend remedial action to be taken or notices to be posted, as provided under § 2423.26(a); and

(3) Reference to "charge, complaint" in § 2423.26(b) shall be omitted.

* * * * *

(i) Upon the close of a hearing conducted by an Administrative Law Judge pursuant to paragraph (g) of this section, the Authority shall issue a decision adopting, modifying or reversing the Administrative Law Judge's decision.

§ 2422.21 [Redesignated as § 2422.22]

14. Section 2422.21 is redesignated as § 2422.22.

§ 2422.22 [Redesignated as § 2422.23]

15. Section 2422.22 is redesignated as § 2422.23.

PART 2426—NATIONAL CONSULTATION RIGHTS AND CONSULTATION RIGHTS ON GOVERNMENT-WIDE RULES OR REGULATIONS

16. Section 2426.2 is amended by revising paragraph (b)(3)(vii) to read as follows:

§ 2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.

* * * * *

(b) * * *

(3) * * *

(vii) The Regional Director shall make such investigations as the Regional Director deems necessary and thereafter shall issue and serve on the parties a Decision and Order with respect to the eligibility for national consultation rights which shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17 of this subchapter. A determination by the Regional Director to issue a notice of hearing shall not be subject to the filing of an application for review. The Regional Director, if appropriate, may cause a notice of hearing to be issued to all interested parties where substantial factual issues exist warranting a hearing. Hearings shall be conducted by a Hearing Officer in accordance with §§ 2422.9 through 2422.15 of this subchapter and after the close of the hearing a Decision and Order shall be issued by the Regional Director in accordnce with § 2422.16 of this subchapter.

17. Section 2426.12 is amended by revising paragraph (b)(3)(vii) to read as follows:

§ 2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.

* * * * *

(b) * * *

(3) * * *

(vii) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall issue and serve on the parties a Decision and Order with respect to the eligibility for consultation rights which shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17 of this subchapter. A determination by the Regional Director to issue a notice of hearing shall not be subject to the filing of an application for review. The Regional Director, if appropriate, may cause a notice of hearing to be issued where substantial factual issues exist warranting a hearing. Hearings shall be conducted by a Hearing Officer in accordance with §§ 2422.9 through 2422.15 of this chapter and after the close of the hearing a Decision and Order shall be issued by

the Regional Director in accordance with § 2422.16 of this subchapter.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

18. Section 2429.1 is revised to read as follows:

§ 2429.1 Transfer of cases to the Authority.

(a) In any unfair labor practice case under Part 2423 of this subchapter in which, after the issuance of a complaint, the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists, the Regional Director may upon agreement of all parties transfer the case to the Authority; and the Authority may decide the case on the basis of the formal documents alone. Briefs in the case must be filed with the Authority within thirty (30) days from the date of the Regional Director's order transferring the case to the Authority. The Authority may also remand any such case to the Regional Director for further processing. Orders of transfer and remand shall be served on all parties.

(b) In any case under Part 2423 of this subchapter in which it appears to the Regional Director that the proceedings raise questions which should be decided by the Authority, the Regional Director may, at any time, issue an order transferring the case to the Authority for decision or other appropriate action. Such an order shall be served on the parties.

19. Section 2429.12 is amended by revising paragraph (a) to read as follows:

§ 2429.12 Service of process and papers by the Authority.

(a) *Methods of service.* Notices of hearings, Decisions and Orders of Regional Directors, decisions of Administrative Law Judges, complaints, written rulings on motions, decisions and orders, and all other papers required by this subchapter to be issued by the Authority, the General Counsel, Regional Directors, Hearing Officers and Administrative Law Judges, shall be served personally or be certified mail or by telegraph.

* * * * *

20. Section 2429.22 is revised to read as follows:

§ 2429.22 Additional time after service by mail.

Except as to the filing of an application for review to a Regional Director's Decision and Order under § 2422.17 of this subchapter, whenever a party has the right or is required to do some act pursuant to this subchapter within a prescribed period after service of a notice or other paper upon such party, and the notice or paper is served on such party by mail, five (5) days shall be added to the prescribed period: Provided, however, That five (5) days shall not be added in any instance where an extension of time has been granted.

21. Section 2429.23 is amended by revising paragraph (d) to read as follows:

§ 2429.23 Extension; waiver.

* * * * *

(d) Time limits established in 5 U.S.C. *7105(f),* 7117(c)(2) and 7122(b) may not be extended or waived under this section.

(5 U.S.C. 7134)

Note.—In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority have determined that this document does not require preparation of a Regulatory Flexibility Analysis.

Dated: August 31, 1983.

Federal Labor Relations Authority.

Barbara J. Mahone,

Chairman.

Ronald W. Haughton,

Member.

Henry B. Frazier III,

Member.

John C. Miller,

General Counsel.

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BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

Revision of School Food Service Accountability Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations for the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to permanently restructure the financial accountability requirements for these programs. This rule finalizes interim regulations which were published on July 20, 1982 at 47 FR 31371. Under this rule, the determination of nonprofit status, as a condition for program participation, is made by determining the financial status of the school food service as a whole rather than the financial status of each Federal program and nongrant activity separately. This rule sets forth definitions for nonprofit school food service and for revenue to such food service and requires School Food Authorities (SFAs) to maintain appropriate revenue and expenditure records in order to substantiate the nonprofit status of their school food service. State agencies (SAs) are responsible for establishing financial management systems for SFAs to use and for monitoring nonprofit school food service net cash resources. SAs are also responsible for establishing systems for determining and monitoring SBP costs for the purpose of establishing eligibility for and determining the amount of severe need SBP payments.

This rule simplifies Federal program requirements, reduces federally required reporting and recordkeeping burdens and, by removing most program specific restrictions on Federal reimbursement, provides added flexibility to SFAs in financing school food service operations. The rule also provides SAs with additional flexibility in administering the National School Lunch and School Breakfast Programs.

EFFECTIVE DATE: October 6, 1983 except for the reporting and recordkeeping requirements in § 210.14(a–1) and § 210.14(g)(3) which are not effective until OMB approval has been obtained.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, FNS, USDA, Alexandria, Virginia, 22302 (703)756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. It does not have an annual effect on the economy of $100 million or more, nor does it result in major increases in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Furthermore, it does not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Robert E. Leard, Administrator of the