

(2) Defer a decision on the request for an addendum proceeding. Except as provided in paragraph (e) of this section, the addendum proceeding will be held after issuance of a final decision in the proceeding on the merits. As used in this section, a "final decision in the proceeding on the merits" has the same meaning as in § 1201.203(b) of this part.

(d) *Initiation of addendum proceeding.* If a decision on a request for consequential damages or compensatory damages has been deferred for an addendum proceeding, the judge will schedule the proceeding after issuance of an initial decision that becomes final or a final Board decision.

(e) *Discretion of Board to order addendum proceeding.* Notwithstanding paragraphs (a) through (d) of this section, the Board, at its discretion, may order that an addendum proceeding to decide a request for consequential damages or compensatory damages be held prior to the issuance of a final decision on the merits. If the Board exercises this discretion, the Board order will provide for initiation of the addendum proceeding.

(f) *Hearing; applicability of subpart B.* The judge may hold a hearing on a request for consequential damages or compensatory damages and may apply appropriate provisions of subpart B of this part to the addendum proceeding.

(g) *Review by the Board.* (1) An initial decision issued by a judge under this section, whether in accordance with paragraph (c)(1) of this section or in an addendum proceeding, shall be subject to the provisions for a petition for review by the Board under subpart C of this part.

(2) A recommended decision issued by an administrative law judge in accordance with paragraph (c)(1) of this section shall be subject to the provisions of subpart D of this part.

(h) *EEOC review of decision on compensatory damages.* A final decision of the Board on a request for compensatory damages pursuant to the Civil Rights Act of 1991 shall be subject to review by the Equal Employment Opportunity Commission as provided under subpart E of this part.

§ 1201.205 Judicial review.

A final Board decision under this subpart is subject to judicial review as provided under 5 U.S.C. 7703.

Dated: April 1, 1997.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 97-8643 Filed 4-8-97; 8:45 am]

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1209

Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure for whistleblower appeals to implement the provisions of Public Law 103-424 (MSPB and Office of Special Counsel reauthorization of 1994) that: Added a new personnel action and amended another in the statutory provisions governing prohibited personnel practices; and added a requirement that the Board refer its findings to the Special Counsel when it determines in a whistleblower proceeding that a current Federal employee may have committed a prohibited personnel practice. The Board is also amending its rules of practice and procedure for whistleblower appeals to include a cross-reference to subpart H of part 1201 regarding awards of attorney fees and consequential damages. The purpose of these amendments is to provide guidance to the parties to MSPB cases and their representatives regarding the new and amended personnel actions, to refer parties and their representatives to subpart H of part 1201 for the procedures governing requests for attorney fees and consequential damages, and to provide public notice of the requirement that the Board refer certain prohibited personnel practice findings to the Special Counsel. The Board is implementing other provisions of Public Law 103-424 through an amendment to its rules at 5 CFR part 1201, which is being published simultaneously with this amendment.

DATES: Effective date April 9, 1997. Submit written comments on or before June 9, 1997.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: Public Law 103-424, which reauthorized the Board and the Office of Special Counsel

in October 1994, also included a number of provisions that affect cases involving prohibited personnel practices, especially actions based on whistleblowing. This amendment to the Board's rules at 5 CFR part 1209 reflects two of those provisions.

New and Amended Personnel Actions

Section 5 of Public Law 103-424 amended 5 U.S.C. 2302(a)(2)(A), the list of personnel actions that may form the basis for a prohibited personnel practice, to: (1) add a new personnel action, "a decision to order psychiatric testing or examination;" and (2) replace the existing provision, "any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level," with an amended provision, "any other significant change in duties, responsibilities, or working conditions." Because the Board's rules at 5 CFR 1209.4(a) incorporate the statutory list of personnel actions at 5 U.S.C. 2302(a)(2)(A), it is necessary to amend the Board's rules to reflect the changes made in the statutory provision by Public Law 103-424.

The Board has ruled that these amendments to 5 U.S.C. 2302(a)(2)(A) may not be applied retroactively to cases pending on the effective date of the amendments, October 29, 1994, where the personnel action occurred prior to the effective date, because the amendments enlarge the category of conduct that may form the basis of a prohibited personnel practice. See *Caddell v. Department of Justice*, 66 M.S.P.R. 347, 352-54 (1995), and *Briley v. National Archives and Records Administration*, 71 M.S.P.R. 211, 223-224 (1996).

Referrals to the Special Counsel. Section 4(c) of Public Law 103-424 amended 5 U.S.C. 1221(f) to add a new requirement that when the Board determines in a proceeding under section 1221 of title 5 (governing individual right of action appeals and certain other whistleblower appeals) that a current Federal employee may have committed a prohibited personnel practice, the Board is to refer the matter to the Special Counsel for investigation and possible prosecution under 5 U.S.C. 1215. The Board began making such referrals to the Special Counsel soon after this provision took effect on October 29, 1994. It is now amending its rules at 5 CFR part 1209 by adding a new subpart E to provide public notice that it is required to make such referrals.

Cross-Reference to Subpart H of Part 1201

This amendment also includes a change to 5 CFR 1209.3, "Application of 5 CFR part 1201," to include a statement that requests for attorney fees and consequential damages in connection with appeals under part 1209 are governed by subpart H of part 1201.

Citations

All citations to MSPB decisions are to West Publishing Company's *Merit Systems Protection Board Reporter* (M.S.P.R.). This publication is available in many law libraries and some public libraries. It is also available in the MSPB Library, 1120 Vermont Avenue, NW, 8th Floor, Washington, DC, which is open to the public between 1:00 and 5:00 PM, Monday through Friday (excluding Federal holidays).

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1209

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1209 as follows:

PART 1209—[AMENDED]

1–2. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 1204, 1221, 2302(b)(8), and 7701.

3. Section 1209.3 is amended by adding at the end of the existing text the following sentence:

§ 1209.3 Application of 5 CFR part 1201.

* * * The Board will apply the provisions of subpart H of part 1201 regarding awards of attorney fees and consequential damages under 5 U.S.C. 1221(g) to appeals governed by this part.

4. Section 1209.4 is amended by removing "or" at the end of paragraph (a)(9), by redesignating paragraph (a)(10) as (a)(11) and revising it, and by adding a new paragraph (a)(10) to read as follows:

§ 1209.4 Definitions.

(a) * * *

(10) A decision to order psychiatric testing or examination; or

(11) Any other significant change in duties, responsibilities, or working conditions.

* * *

5. Part 1209 is amended by adding subpart E to read as follows:

Subpart E—Referrals to the Special Counsel**§ 1209.13 Referral of findings to the Special Counsel.**

When the Board determines in a proceeding under this part that there is reason to believe that a current Federal employee may have committed a prohibited personnel practice described at 5 U.S.C. 2302(b)(8), the Board will refer the matter to the Special Counsel to investigate and take appropriate action under 5 U.S.C. 1215.

Dated: April 1, 1997.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 97–8644 Filed 4–8–97; 8:45 am]
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DEPARTMENT OF JUSTICE**Immigration and Naturalization Service; Executive Office for Immigration Review****8 CFR Part 3**

[INS 1788–96; AG Order No. 2071–97]

RIN 1115–AE47

Immigration and Naturalization Service and Executive Office for Immigration Review; Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Correction

AGENCY: Immigration and Naturalization Service and Executive Office for Immigration Review.

ACTION: Correction to interim regulation.

SUMMARY: This document contains a correction to the interim regulation, published Thursday, March 6, 1997 (62 FR 10312), relating to inspection and expedited removal of aliens, detention and removal of aliens, conduct of removal proceedings, and asylum procedures.

EFFECTIVE DATE: April 9, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, (703) 305–0470 (not a toll free call).

SUPPLEMENTARY INFORMATION:**Background**

The interim regulation that is the subject of these corrections amends the regulations of the Immigration and Naturalization Service and Executive Office for Immigration Review to implement the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 governing

expedited and regular removal proceedings, handling of asylum claims, and other activities involving the apprehension, determination, hearing of claims and ultimately the removal of inadmissible and deportable aliens. This rule also incorporates a number of changes which are part of the Administration's reinvention and regulation streamlining effort. On April 1, 1997, a correction notice (62 FR 15362, FR Doc. 97–8105) was published correcting those technical errors contained in the interim regulation. This notice corrects an additional technical error contained in the interim regulation.

Need for Correction

As published, the interim regulation contained errors which were in need of clarification.

Correction of Publication

Accordingly, the publication on March 6, 1997, of the interim regulation (INS No. 1788–96; AG Order No. 2071–97), which was the subject of FR Doc. 97–5250, is corrected as follows:

§ 3.23 [Corrected]

1. On page 10333, in the first column, in § 3.23(b)(1), the reference to "§ 208.22(f)" at the end of paragraph (b)(1) introductory text is removed and is replaced with a reference to "§ 208.22(e)".

Rosemary Hart,

Federal Register Liaison Officer.

[FR Doc. 97–8984 Filed 4–8–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 25**

[Docket No. NM–132, Special Conditions No. 25–ANM–124]

Special Conditions: Lockheed Martin Aerospace Corp. Model L382J Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Lockheed Martin Aerospace Corp. Model L382J airplane. This airplane will have a novel or unusual design feature(s) associated with the installation of a dual head up display (HUD) to be used as a primary flight display (PFD) for all regimes of normal operation. The HUD will satisfy the basic requirements of § 25.1321 and serve as the primary source of flight