

■ 3. Amend § 875.104 by revising the first sentence of paragraph (c) to read as follows:

**§ 875.104 What are the steps required to resolve a dispute involving benefit eligibility or payment of a claim?**

(c) If the Carrier upholds its denial (or does not respond within 60 days), you have the right to appeal its reconsideration decision directly to the Carrier.\* \* \*

■ 4. Amend § 875.201 by adding a new sentence at the end of paragraph (a)(1) and by adding a new paragraph (a)(3) to read as follows:

**§ 875.201 Am I eligible as a Federal civilian or Postal Employee?**

(a) \* \* \*  
(1) \* \* \* There is a related exception, however: D.C. government employees and retirees who were first employed by the D.C. government before October 1, 1987 are eligible to apply for coverage.\* \* \*

(3) If you are a Non-Appropriated Fund (NAF) employee or retiree you are eligible to apply when the Secretary of Defense determines such eligibility for the NAF instrumentality that employs you, and you will be treated the same as a Federal civilian employee or retiree (as applicable) under this Part.\* \* \*

■ 5. Amend § 875.202 by revising the last sentence to read as follows:

**§ 875.202 Am I eligible as a Federal annuitant?**

\* \* \* Separated Federal employees with title to a deferred annuity may apply for coverage, even if they are not yet receiving that annuity.

■ 6. Amend § 875.205 by adding a paragraph (c) to read as follows:

**§ 875.205 Am I eligible as a retired member of the uniformed services?**

(c) You are eligible to apply for coverage as a retired ("grey") reservist, even if not yet receiving retirement pay.

■ 7. Amend § 875.206 by:

■ a. Remove the words "Federal civilian or Postal employee or member of the uniformed service" wherever they appear in the section and add, in their place, "active workforce member"; and  
■ b. Revise the section title and paragraphs (a) and (c) to read as follows:

**§ 875.206 As a new active workforce member when may I apply?**

(a) As a new, newly eligible, or returning active workforce member, you may apply as follows:

(1) If you are a new active workforce member entering a position that conveys eligibility, you may apply for coverage within 60 days after becoming eligible.

(2) If you are entering a position that conveys eligibility as an active workforce member from a position that did not convey eligibility, you may apply for coverage within 60 days after becoming eligible.

(3) If you return to active service after a break in service of 180 days or more to a position that conveys eligibility, you may apply for coverage within 60 days after becoming eligible.\* \* \*

(c) The underwriting requirements that will be required will be those applicable to active workforce members and their spouses during the last open season for enrollment before the date of your application.\* \* \*

■ 8. Amend § 875.208 by adding a new sentence at the end of the paragraph to read as follows:

**§ 875.208 May I apply as a qualified relative if the person on whom I am basing my eligibility status has died?**

\* \* \* In this case, your adult children and your current spouse are also considered to be qualified relatives.

■ 9. Revise § 875.211 to read as follows:

**§ 875.211 What happens if my eligibility status changes after I submit my application?**

(a) If you applied as an active workforce member, and separate from service under the MRA+10 provisions of 5 U.S.C. 8412(g), or retire after you submit an application for coverage, but before your coverage becomes effective, you must reapply as an annuitant and submit to full underwriting requirements.

(b) If you applied as an active workforce member, and otherwise separate from service, but you are a qualified relative of another workforce member, you must reapply based on the additional underwriting requirements specified for that type of qualified relative.

■ 10. Amend § 875.402 by adding a new paragraph (c) to read as follows:

**§ 875.402 When will open seasons be held?**

(c) In situations where new eligibility groups are added to the Program, and OPM determines that it is appropriate to have an open season, OPM will provide notice and set the requirements for a special open season limited to those eligible individuals.

■ 11. Amend § 875.403 by adding a new sentence at the end of the paragraph to read as follows:

**§ 875.403 May I apply for coverage outside of an open season?**

\* \* \* The only exceptions to the full underwriting requirements outside of an open season are described in § 875.206 and § 875.405.

■ 12. Amend § 875.404 by revising paragraph (b) (2) to read as follows:

**§ 875.404 What is the effective date of coverage?**

(b) \* \* \*  
(2) If you are an active workforce member and you are applying for coverage under abbreviated underwriting, you also must be actively at work at least 1 day during the calendar week immediately before the week which contains your coverage effective date for your coverage to become effective. You must inform the Carrier if you do not meet this requirement. In the event you do not meet this requirement, the Carrier will issue you a revised effective date, which will be the 1st day of the next month. You also must meet the actively at work requirement for any revised effective date for coverage to become effective, or you will be issued another revised effective date in the same manner.

[FR Doc. 05-10642 Filed 5-26-05; 8:45 am]

BILLING CODE 6325-39-P

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Parts 1200 and 1201

#### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules relating to Board organization in 5 CFR part 1200 to more accurately reflect the Board's staff organization and functions. The Board is also amending its rules of practice and procedure in 5 CFR part 1201 to correct statutory references and to clarify certain matters.  
**DATES:** Effective May 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** Bentley M. Roberts, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653-7200; fax: (202) 653-7130; or e-mail: [mspb@mspb.gov](mailto:mspb@mspb.gov).

**SUPPLEMENTARY INFORMATION:** The Board is amending its rules relating to Board

organization in 5 CFR part 1200 and its rules of practice and procedure in 5 CFR part 1201 as follows:

1200.10(a)(8) and (b)(8) are amended to reflect the fact that the Financial and Administrative Management Division has been re-designated as the Office of Financial and Administrative Management;

1200.10(a)(9) and (b)(9) are amended to reflect the fact that the Information Resources Management Division has been re-designated as the Office of Information Resources Management;

1200.10(b)(8) is amended to reflect the fact that the Board's accounting functions are performed by the U.S. Department of Treasury's Bureau of Public Debt instead of the U.S. Department of Agriculture's National Finance Center;

1201.3(a)(2) is amended to correct a statutory reference by amending "5 U.S.C. 7512" to read "5 U.S.C. 7511–7514";

1201.3(a)(19) is amended by adding the word "and" at the end of the paragraph;

1201.3(a)(20) is deleted because 5 U.S.C. 3592(a)(3) was repealed in Pub. L. 107–296, Title XIII, § 1321(a)(2)(A)(iii), Nov. 25, 2002, 116 Stat. 2297;

1201.3(a)(21) is re-designated as (a)(20) and is amended to correct a statutory reference by deleting "22 U.S.C. 4011" and replacing it with "22 U.S.C. 4010a";

1201.53(c) is amended to clarify that the Clerk of the Board has authority to rule on requests for exceptions to the payment of costs for a hearing tape recording or transcript made after the initial decision is issued;

1201.56(a)(1)(i) is amended to delete a reference to 5 U.S.C. 3592(a)(3) as that statute was repealed by Pub. L. 107–296, Title XIII, § 1321(a)(2)(A)(iii), Nov. 25, 2002, 116 Stat. 2297;

1201.81(a) is amended to clarify the extent of the Board's subpoena authority under 5 U.S.C. 1204(b)(2)(A);

1201.103(c) is amended to delete a reference to the Board's standards of conduct (the Board has no such standards of conduct);

1201.112(a) is amended to clarify that judges do not have authority to rule on requests for exceptions to the payment of costs for a hearing tape recording or transcript made after the initial decision is issued;

1201.125(c)(1) is amended to add a reference to 5 U.S.C. 7323; and

1201.126(c) is amended to be more clear and to add references to 5 U.S.C. 7323 and 7324.

## List of Subjects

### 5 CFR Part 1200

MSPB organization.

### 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

■ Accordingly, the Board amends 5 CFR parts 1200 and 1201 as follows:

## PART 1200—[AMENDED]

■ 1. The authority citation for subpart B of part 1200 continues to read as follows:

**Authority:** 5 U.S.C. 1204(h) and (j).

■ 2. Section 1200.10 is amended by revising paragraphs (a)(8), (a)(9), (b)(8), and (b)(9) to read as follows:

### § 1200.10 Staff organization and functions.

(a) \* \* \*

(8) Office of Financial and Administrative Management.

(9) Office of Information Resources Management.

(b) \* \* \*

(8) Office of Financial and Administrative Management. The Office of Financial and Administrative Management administers the budget, accounting, procurement, property management, physical security, and general services functions of the Board. It also develops and coordinates internal management programs and projects, including review of internal controls agencywide. It performs certain personnel functions, including policy, training, drug testing, and the Employee Assistance Program. It also administers the agency's cross-servicing arrangements with the U.S. Department of Treasury's Bureau of Public Debt for accounting services and with the U.S. Department of Agriculture's National Finance Center for payroll and personnel action processing services and with the U.S. Department of Agriculture's APHIS Business Services for most human resources management services.

(9) Office of Information Resources Management. The Office of Information Resources Management develops, implements, and maintains the Board's automated information systems.

\* \* \* \* \*

## PART 1201—[AMENDED]

■ 3. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204 and 7701.

■ 4. Section 1201.3 is amended by deleting paragraph (a)(21) and revising

paragraphs (a)(2), (a)(19), and (a)(20) to read as follows:

### § 1201.3 Appellate jurisdiction.

(a) \* \* \*

(2) Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service. (5 CFR part 752, subparts C and D; 5 U.S.C. 7511–7514);

\* \* \* \* \*

(19) Employment practices administered by the Office of Personnel Management to examine and evaluate the qualifications of applicants for appointment in the competitive service (5 CFR 300.104); and

(20) Reduction-in-force action affecting a career or career candidate appointee in the Foreign Service (Pub. L. 103–236, § 181(a)(2), to be codified at 22 U.S.C. 4010a).

\* \* \* \* \*

■ 5. Section 1201.53 is amended by revising paragraph (c) to read as follows:

### § 1201.53 Record of proceedings.

\* \* \* \* \*

(c) Exceptions to payment of costs. A party may not have to pay for a hearing tape recording or written transcript if he has a good reason to support a request for an exception. If a party believes he has a good reason and the request is made before the judge issues an initial decision, the party must send the request for an exception to the judge. If the request is made after the judge issues an initial decision, the request must be sent to the Clerk of the Board, who shall have authority to grant or deny such requests. The party must clearly state the reason for the request in an affidavit or sworn statement.

\* \* \* \* \*

■ 6. Section 1201.56 is amended by revising paragraph (a)(1)(i) to read as follows:

### § 1201.56 Burden and degree of proof; affirmative defenses.

(a) \* \* \*

(1) \* \* \*

(i) It is brought under 5 U.S.C. 4303 or 5 U.S.C. 5335 and is supported by substantial evidence; or

\* \* \* \* \*

■ 7. Section 1201.81 is amended by revising paragraph (a) to read as follows:

### § 1201.81 Requests for subpoenas.

(a) Request. Parties who wish to obtain subpoenas that would require the attendance and testimony of witnesses, or subpoenas that would require the production of documents or other evidence under 5 U.S.C. 1204(b)(2)(A),

should file their motions for those subpoenas with the judge. The Board has authority under 5 U.S.C. 1204(b)(2)(A) to issue a subpoena requiring the attendance and testimony of any individual regardless of location and for the production of documentary or other evidence from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico or the District of Columbia. Subpoenas are not ordinarily required to obtain the attendance of Federal employees as witnesses.

\* \* \* \* \*

■ 8. Section 1201.103 is amended by deleting paragraph (c)(3) and revising paragraph (c)(2) to read as follows:

**§ 1201.103 Placing communications in the record; sanctions.**

\* \* \* \* \*

(c) \* \* \*

(2) Other persons. The Board may invoke appropriate sanctions against other offending parties.

■ 9. Section 1201.112 is amended by revising paragraph (a) to read as follows:

**§ 1201.112 Jurisdiction of the judge.**

(a) After issuing the initial decision, the judge will retain jurisdiction over a case only to the extent necessary to:

(1) Correct the transcript; when one is obtained;

(2) Rule on a request by the appellant for attorney fees, consequential damages, or compensatory damages under subpart H of this part;

(3) Process any petition for enforcement filed under subpart F of this part;

(4) Vacate an initial decision before that decision becomes final under § 1201.113 in order to accept a settlement agreement into the record.

\* \* \* \* \*

■ 10. Section 1201.125 is amended by revising paragraph (c)(1) to read as follows:

**§ 1201.125 Administrative law judge.**

\* \* \* \* \*

(c) \* \* \*

(1) In a Special Counsel complaint seeking disciplinary action against a Federal or District of Columbia government employee for a violation of 5 U.S.C. 7323 or 7324, where the administrative law judge finds that the violation does not warrant removal, the administrative law judge will issue a recommended decision to the Board in accordance with 5 U.S.C. 557.

\* \* \* \* \*

■ 11. Section 1201.126 is amended by revising paragraph (c) to read as follows:

**§ 1201.126 Final decisions.**

\* \* \* \* \*

(c) In any Hatch Act action in which the administrative law judge, or the Board on petition for review, finds that a Federal or District of Columbia government employee has violated 5 U.S.C. 7323 or 7324 and that the violation warrants removal, the administrative law judge, or the Board on petition for review, will issue a written decision ordering the employee's removal. If the administrative law judge finds a violation of 5 U.S.C. 7323 or 7324 and determines that removal is not warranted, the judge will issue a recommended decision under § 1201.125(c)(1) of this part. If the Board finds a violation of 5 U.S.C. 7323 or 7324 and determines by unanimous vote that the violation does not warrant removal, it will impose instead a penalty of not less than 30 days suspension without pay. If the Board finds by majority vote that the violation warrants removal, it will order the employee's removal.

**Bentley M. Roberts, Jr.,**

*Clerk of the Board.*

[FR Doc. 05-10652 Filed 5-26-05; 8:45 am]

**BILLING CODE 7400-01-P**

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 2

#### Revision of Delegations of Authority

**AGENCY:** Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** This document amends the delegations of authority from the Secretary of Agriculture in order to reflect the Secretary's designation of the General Counsel as the Department official responsible for delegating the authority to other Department heads for considering, ascertaining, adjusting, determining, compromising, and settling, pursuant to the Federal Tort Claims Act (FTCA) and regulations of the Attorney General, claims less than \$2500 that allege the negligence or wrongful act of an employee of a certain agency.

**DATES:** Effective May 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** Kenneth E. Cohen, Assistant General Counsel, General Law Division, Office of the General Counsel, Department of Agriculture, Room 3311-S, Washington, DC 20250, telephone 202-720-5565.

**SUPPLEMENTARY INFORMATION:** Under 28 U.S.C. 2672 of the FTCA, the head of each Federal agency, including the Secretary of Agriculture, is able to adjudicate FTCA claims brought against his or her respective agency. Furthermore, the FTCA states that an agency may effect a settlement equal to or less than \$25,000, without the "prior written approval of the Attorney General or his designee." Through 7 CFR 2.31, the Secretary of Agriculture has delegated to the General Counsel the authority to "[c]onsider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671-2680), and the regulations of the Attorney General contained in 28 CFR part 14\* \* \*"

The National Performance Review (NPR) determined that this limited delegation posed a barrier to the efficiency and cost-effectiveness of the USDA. Pursuant to the recommendations of NPR, on September 11, 1996, the Secretary of Agriculture enacted a pilot program, created under Secretary's Memorandum 1030-29, by delegating to the Assistant Secretary for Marketing and Regulatory Programs and the Administrator of APHIS the authority to adjudicate claims under \$2500 submitted pursuant to the FTCA. The pilot program proved to be highly successful. During this program, adjudication time for this type of FTCA claim was reduced from a period of three to six months to less than two weeks. Additionally, payment processing time was reduced from ten days to as little as one day.

Based on the success of this pilot program, the delegations of authority of the Department of Agriculture are amended so that the General Counsel is now able to delegate the authority to another agency head to consider, ascertain, adjust, determine, compromise, and settle, pursuant to the FTCA and regulations of the Attorney General, claims less than \$2500 that allege the negligence or wrongful act of an employee of a particular USDA agency.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12988 and Executive Orders 12866, amended by Executive Order 13258. In addition, this action is not a rule as defined by the Regulatory