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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.
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ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to provide an automatic extension of the regulatory time limit for filing an appeal with MSPB where an appellant and agency mutually agree, prior to the timely filing of an appeal, to attempt to resolve their dispute through an alternative dispute resolution process.

EFFECTIVE DATE: May 24, 1999.

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

SUPPLEMENTARY INFORMATION: On May 1, 1998, the President issued a Memorandum for Heads of Executive Departments and Agencies in which he called on Federal agencies to "promote greater use of mediation, arbitration, early neutral evaluation, agency ombuds, and other alternative dispute resolution techniques" to resolve disputes to which the agency is a party. The Memorandum established an Interagency Alternative Dispute Resolution (ADR) Working Group to assist agencies in establishing ADR programs, help agencies that already have ADR programs to improve and promote greater use of them, and share ADR information among agencies. The President's Memorandum furthers the purposes of the Administrative Dispute Resolution Act of 1996 (Pub. L. 104-320, October 19, 1996). The Board has determined to encourage use of ADR by allowing an automatic 30-day extension of its regulatory filing time limit where

parties mutually agree in writing to attempt to resolve workplace disputes through an ADR process.

The Board has been committed to the use of ADR to resolve matters submitted to it for adjudication since its establishment by the Civil Service Reform Act of 1978 (CSRA). The CSRA explicitly granted the Board authority to provide for one or more alternative methods for settling matters within its jurisdiction.

For more than a decade, the Board has required its administrative judges to conduct settlement efforts in all cases. Since 1988, the administrative judges have maintained an annual settlement rate of about 50 percent of cases not dismissed. In 1993, the Board implemented a petition for review (PFR) settlement program at headquarters, thus extending the benefits of ADR to cases at the Board review level. The Board continues to explore ways in which it can employ its legal and ADR expertise in a cooperative effort with agencies to try to resolve personnel disputes at the agency level, before they result in formal appeals to MSPB.

In light of the longstanding MSPB commitment to ADR, the Board would like to support the new and improved agency ADR programs that can be expected to result from the President's May 1, 1998, Memorandum and the work of the Interagency ADR Working Group. The Board wants to ensure that its regulatory requirements with respect to filing time limits do not deter potential appellants from first attempting to resolve their disputes through an agreed-upon ADR process. Therefore, the Board is amending its regulation at 5 CFR 1201.22(b)(1) by adding a new provision to extend the 30-day filing time limit by an additional 30 days—for a total of 60 days—where an appellant and an agency mutually agree in writing to attempt to resolve their dispute through an ADR process.

The Board intends that when an agency provides notice of the time limits for appealing to the Board in compliance with 5 CFR 1201.21(a), it include notice of the automatic extension of the time limit that will apply under 5 CFR 1201.22(b)(1) should the parties mutually agree in writing to attempt to resolve their dispute through an ADR process.

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

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

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

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Section 1201.22 is amended by revising paragraph (b)(1) to read as follows:

§ 1201.22 Filing an appeal and response to appeals.

* * * * *

(b) * * * (1) Except as provided in paragraph (b)(2) of this section, an appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision, whichever is later. Where an appellant and an agency mutually agree in writing to attempt to resolve their dispute through an alternative dispute resolution process prior to the timely filing of an appeal, however, the time limit for filing the appeal is extended by an additional 30 days—for a total of 60 days. A response to an appeal must be filed within 20 days of the date of the Board's acknowledgment order. The time for filing a submission under this section is computed in accordance with § 1201.23 of this part.

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Dated: May 18, 1999.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 99-12975 Filed 5-21-99; 8:45 am]

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