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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comment.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is issuing interim regulations to implement procedures under which a case may be suspended for up to 60 days to permit the parties to pursue discovery or settlement.

DATES: *Effective date:* January 28, 2002. *Comment date:* Submit comments on or before March 29, 2002.

ADDRESSES: Send or deliver comments to Robert E. Taylor, Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; fax: (202) 653-7130; or email: mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7200; fax: (202) 653-7130; or email: mspb@mspb.gov.

SUPPLEMENTARY INFORMATION: This interim regulation amends the Board's rules of practice and procedure at 5 CFR part 1201 by adding a new section 1201.28, "Case Suspension Procedures."

In November 1999, the Merit Systems Protection Board (MSPB) established a pilot project to allow employee-appellants and agencies up to 60 days additional time to pursue discovery and settlement efforts in pending initial appeals. The pilot program was initiated, in part, in response to concerns raised by Board practitioners that the 120-day time limit for adjudicating appeals prevented the parties from conducting the discovery they believed necessary to prevail on appeal. The pilot simplified the process

for obtaining a suspension of case processing to accommodate parties before the Board.

Under the pilot, the presiding judge was authorized to grant a 30-day suspension of case processing to parties who mutually requested the additional time. A second 30-day suspension was granted if the parties agreed that further time was necessary. Parties were not required to provide evidence and argument to support a joint request for additional time, so long as the request was made early in the proceedings.

The Board believes that the pilot has been successful in addressing the concerns regarding adequate time to conduct discovery and in facilitating settlement of complex cases. As of November 13, 2001, the Board's administrative Judges had granted 712 case suspension requests. In those 712 suspensions, the administrative judges had granted an additional 30-day case suspension in 240 appeals.

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 1201

Administrative practice and procedure, Civil rights, Government employees.

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

PART 1201—[AMENDED]

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

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

2. Amend 5 CFR part 1201—Practices and Procedures, Subpart B—Procedures for Appellate Cases, to add a new §1201.28 immediately after § 1201.27.

§ 1201.28 Case suspension procedures.

(a) *Joint requests.* The parties may submit a joint request for additional time to pursue discovery or settlement. Upon receipt of such request, the judge will suspend processing of the case for a period up to 30 days. The judge will grant an extension of the suspension period for up to an additional 30 days upon a joint request from the parties for additional time.

(b) *Unilateral requests.* Either party may submit a unilateral request for additional time to pursue discovery as provided in this subpart. Unilateral requests for additional time may be granted at the discretion of the judge.

(c) *Time for filing requests.* The parties must file a joint request that the adjudication of the appeal be suspended within 45 days of the date of the acknowledgment order (or within 7 days of the appellant's receipt of the agency file, whichever date is later). A request for an additional 30-day suspension period must be made on or before the fifth day before the end of the first 30-day suspension period.

(d) *Untimely requests.* The judge may consider requests for initial suspensions that are filed after the time limit set forth in paragraph (c) of this section. Such requests for additional time may be granted at the discretion of the judge.

(e) *Early termination of suspension period.* The suspension period may be terminated prior to the end of the agreed upon period if the parties request the judge's assistance relative to discovery or settlement during the suspension period and the judge's involvement pursuant to that request is likely to be extensive.

Dated: January 22, 2002.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 02-1958 Filed 1-25-02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8973]

RIN 1545-AW09

Allocation of Loss With Respect to Stock and Other Personal Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8973) which were published in the **Federal Register** on Friday, December 28, 2001 (66 FR 67081). The final regulations relate to the allocation of loss recognized on the disposition of stock and other personal property under sections 861 and 865.

DATES: This correction is effective January 8, 2002.