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## FEDERAL LABOR RELATIONS AUTHORITY

### 5 CFR Part 2416

#### Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Federal Labor Relations Authority; Correction

**AGENCY:** Federal Labor Relations Authority.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to technical amendments to regulations which were published in the *Federal Register* of Thursday, October 8, 2009. The regulations relate to the enforcement of nondiscrimination on the basis of disability in programs and activities conducted by the Federal Labor Relations Authority (Authority). The corrections being made will remove a requirement that the Authority conduct a self-appraisal of its policies and practices for compliance with section 504 of the Rehabilitation Act of 1973 by September 6, 1989.

**DATES:** Effective on January 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Rosa M. Koppel, Solicitor, (202) 218-7999.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Authority published in the *Federal Register* of October 8, 2009 (74 FR 51741) a document containing technical amendments to 5 CFR parts 2415, 2416, 2424, and 2429 of the Authority's regulations. Although the preamble lists as technical amendments the deletion, as outdated, of section 2416.110 and the renumbering of section 2416.111 as section 2416.110, the document inadvertently omitted instructions that actually indicate this removal and renumbering. In addition, the document needs an instruction that the reservation of section numbers following the renumbered section

2416.111 be revised to include section numbers 2416.111 through 2416.129.

#### Need for Correction

As published, the regulations contain errors that need to be corrected.

#### List of Subjects in 5 CFR Part 2416

Government employees, Enforcement of nondiscrimination on the basis of disability in programs or activities conducted by the Federal Labor Relations Authority.

■ Accordingly, 5 CFR part 2416 is corrected by making the following correcting amendments:

#### PART 2416—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL LABOR RELATIONS AUTHORITY

■ 1. The authority citation for part 2416 continues to read as follows:

**Authority:** 29 U.S.C. 794.

##### § 2416.110 [Removed]

■ 2. Section 2416.110 is removed.

##### § 2416.11 [Redesignated as moved § 2416.110]

■ 3. Section 2416.111 is redesignated as § 2416.110.

**Carol Waller Pope,**  
*Chairman.*

[FR Doc. 2010-19644 Filed 8-9-10; 8:45 am]

**BILLING CODE 6727-01-P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### 7 CFR Part 652

**RIN 0578-AA48**

#### Technical Service Provider Assistance

**AGENCY:** Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Final rule; Correcting amendment.

**SUMMARY:** The Natural Resources Conservation Service (NRCS) published a final rule in the *Federal Register* of February 12, 2010, amending its regulations for technical service

provider (TSP) provisions under the Food Security Act of 1985. This document correctly amends those provisions by expanding the definition Technical Service Provider Assistance, which contained an error in the omission of "Indian Tribe" in the definition of Technical Service Provider.

**DATES:** *Effective Date:* This amendment is effective on August 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Angel Figueroa, Team Leader, Technical Service Provider Team, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5236 South Building, Washington, DC 20250; *Telephone:* (202) 720-6731; *Fax:* (202) 720-5334; or *e-mail:* [angel.figueroa@wdc.usda.gov](mailto:angel.figueroa@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:** This document correctly amends the Natural Resources Conservation Service (NRCS) regulations for technical service provider (TSP) provisions the requirements. This amendment is necessary due to an error of omission in the agency's final rule published in the *Federal Register* of Friday, February 12, 2010 (75 FR 6839). In that document, on page 6846, in the third column, the *Technical Service Provider* definition reads "Technical service provider means an individual, entity, or public agency either \* \* \*". It should read "*Technical service provider* means an individual, entity, Indian Tribe, or public agency either \* \* \*".

#### List of Subjects in 7 CFR Part 652

Natural resources, Soil conservation, Technical assistance, Technical service, Water resources.

■ For the reasons stated in the preamble, NRCS correctly amends part 652 of Title 7 of the CFR as set forth below:

#### PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE

■ 1. The authority citation for part 652 continues to read as follows:

**Authority:** 16 U.S.C. 3842.

■ 2. Section § 652.2 is amended by revising the introductory text of the definition of "Technical service provider" to read as follows:

**Subpart A—General Provisions****§ 652.2 Definitions.**

\* \* \* \* \*

*Technical service provider* means an individual, entity, Indian Tribe, or public agency either:

\* \* \* \* \*

Signed this 4th day of August 2010, in Washington, DC.

**Teressa Davis,**

*Rulemaking Manager, Natural Resources Conservation Service.*

[FR Doc. 2010-19623 Filed 8-9-10; 8:45 am]

**BILLING CODE 3410-16-P**

**DEPARTMENT OF JUSTICE****28 CFR Part 79**

[CIV Docket No. 111; AG Order No. 3185-2010]

RIN 1105-AB33

**Radiation Exposure Compensation Act: Allowance for Costs and Expenses**

**AGENCY:** Civil Division, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** By this rule the Department of Justice (“the Department”) amends its existing regulations implementing the Radiation Exposure Compensation Act (“RECA” or “the Act”) to conform to the decision of the Tenth Circuit in the case of *Hackwell v. United States*, 491 F.3d 1229, 1241 (10th Cir. 2007). The Tenth Circuit held that the plain meaning of “services rendered” in section 9(a) of the Act revealed Congress’ unambiguous intent to exclude “costs incurred” from the attorney fee limitation. Consequently, the court invalidated 28 CFR 79.74(b) as “contrary to the RECA’s plain language.” Accordingly, the Department is amending its regulation at § 79.74(b) to strike the language “including costs incurred” from the agency’s limitation on payments to attorneys representing claimants under RECA.

**DATES:** This rule is effective on: September 9, 2010. This final rule will apply to all claims pending with the Radiation Exposure Compensation Act Program (“the Program”) as of this date.

**FOR FURTHER INFORMATION CONTACT:** Gerard W. Fischer (Assistant Director), (202) 616-4090, and Dianne S. Spellberg (Senior Counsel), (202) 616-4129.

**Background**

On October 5, 1990, Congress passed the Radiation Exposure Compensation

Act. The Act offers an apology and monetary compensation to individuals (or their survivors) who have contracted certain cancers and other serious diseases following exposure to radiation released during above-ground atmospheric nuclear weapons tests or following their employment in the uranium production industry during specified periods. On July 10, 2000, the RECA Amendments of 2000 (“the 2000 Amendments”) were enacted, providing expanded coverage to individuals who developed one of the compensable diseases in the Act, adding two new claimant categories (uranium millers and ore transporters), and lowering the amount of attorney’s fees from 10% of the lump sum compensation award to 2% of the award in connection with the filing of an initial claim.

On April 22, 2004, the Department promulgated revised regulations implementing the 2000 Amendments (codified as amended at 42 U.S.C. 2210 note (2006)). Among other changes, the 2000 Amendments revised section 9 of the Act to limit attorneys representing claimants before the program from receiving, “for services rendered in connection with the claim,” more than 2 percent of the final award for the filing of an initial claim, and more than 10 percent of the final award with respect to any claim filed prior to July 10, 2000, or resubmission of a denied claim. The Department implemented this statutory provision at 28 CFR 79.74(b). Specifically, the Department interpreted “services rendered” to include “costs incurred” within the statutory percentage limit on the amount an attorney may receive from a successful claim.

*The Hackwell Litigation*

On April 21, 2004, plaintiff Kim Hackwell alleged that her co-plaintiff, a law firm, had refused to represent her because of § 79.74(b) of the Department’s regulation. The plaintiffs challenged the regulation as contrary to section 9(a) of the RECA statute limiting attorney compensation for “services rendered.” In addition, plaintiffs argued the regulation was an invalid preemption of state law, and a violation of the Fifth and Tenth Amendments. The district court dismissed the suit for failure to state a claim, holding that the regulation was a “reasonable interpretation” of the statute and that the Department “did not exceed its statutory authority in implementing Congress’s compensation limitation.” *Hackwell v. United States*, No. 04-cv-00827-EWN (D. Colo. Sept. 28, 2005).

On appeal, the Tenth Circuit held that the plain meaning of “services rendered”

in section 9(a) of the Act revealed Congress’s unambiguous intent to exclude “costs incurred” from the attorney fee limitation. Consequently, the court invalidated § 79.74(b) as “contrary to the RECA’s plain language.” *Hackwell v. United States*, 491 F.3d 1229, 1241 (10th Cir. 2007). The case was remanded to the district court for further proceedings. In its July 23, 2008 remand decision, the district court enjoined the Department from enforcing § 79.74(b) and directed that attorneys may recover expenses and costs from their clients even in regard to claims under the Act that are unsuccessful. *Hackwell v. United States*, No. 04-cv-00827-EWN, 2008 WL 2900933, at \*9 (D. Colo. July 23, 2008).

The Department issued a Notice of Allowance for Costs and Expenses in the **Federal Register** on October 23, 2008, to announce its policy consistent with the decision in *Hackwell*. See Notice of Allowance for Costs and Expenses, 73 FR 63196 (Oct. 23, 2008). Accordingly, the Department no longer enforces its regulatory provision, 28 CFR 79.74(b), prohibiting attorneys from receiving reimbursement for expenses and costs from their clients in connection with claims filed under the Act, in addition to the statutory attorney’s fee. Moreover, attorneys may collect expenses and costs regardless of whether a claim is approved or denied.

**Discussion of Changes Made by This Rule**

This rule finalizes the Department’s announced intentions to revise the regulation published in its Notice of Allowance. Also, this rule conforms the Department’s regulation at § 79.74(b) with the Tenth Circuit’s decision in *Hackwell* and the policy statement promulgated in the Department’s October 23, 2008 Notice. Further, this rule strikes the language “including costs incurred” found in 28 CFR 79.74(b)(1), (2) and (3), and affirmatively excludes costs from the limitation on attorney reimbursement for “services rendered.” Finally, the rule permits attorneys to recover costs and expenses regardless of whether the claim is approved or denied.

*Administrative Procedure Act*

This rule merely conforms Department regulations to the opinion of the Tenth Circuit and does not expand upon that opinion or the provisions of the Act. In addition, this rule complies with the injunction imposed by the District of Colorado and codifies the Department’s intention to permit attorneys to receive reimbursement for expenses and costs