

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1208

#### Practices and Procedures for Appeals Under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Interim rule; request for comments.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is publishing a new part 1208 of its regulations to describe its practices and procedures with respect to appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and the Veterans Employment Opportunities Act of 1998. The Uniformed Services Employment and Reemployment Rights Act permits a person covered by that law to appeal to the Board if a Federal agency employer or the Office of Personnel Management fails or refuses to provide an employment or reemployment right or benefit to which the person is entitled after service in a uniformed service. The Veterans Employment Opportunities Act permits a person entitled to veterans' preference to appeal to the Board if a Federal agency violates the person's rights under any statute or regulation relating to veterans' preference. While both of these laws are intended to provide protections for veterans, and while there are similarities in the procedures and remedies under each of the laws, there are significant differences as well. The purpose of this new part is to provide guidance to parties and their representatives on how to proceed in cases filed under these laws.

The Board is simultaneously publishing an amendment to its rules at 5 CFR part 1201 to conform certain provisions in that part to the new part 1208.

**DATES:** Effective February 4, 2000. Submit written comments on or before April 4, 2000.

**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](mailto:mspb@mspb.gov).

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

**SUPPLEMENTARY INFORMATION:** The Uniformed Services Employment and

Reemployment Rights Act of 1994 (USERRA), Public Law 103-353, as amended, and the Veterans Employment Opportunities Act of 1998 (VEOA), Public Law 105-339, extend the jurisdiction of the Merit Systems Protection Board to include complaints filed by covered persons, principally veterans, under each of these laws.

The Board has previously issued regulations to implement provisions of USERRA in an amendment to its rules at 5 CFR part 1201 (interim rule at 62 FR 66813, December 22, 1997; final rule at 64 FR 54507, October 7, 1999). Various provisions of VEOA require or permit the Board to issue regulations to implement particular procedural requirements of that law (5 U.S.C. 3330a(d)(1), 5 U.S.C. 3330a(d)(2)(B), and 5 U.S.C. 3330b(c)).

The Board believes that persons who file appeals under USERRA or VEOA, their representatives, and the agency parties to such appeals will best be served by combining the regulations that apply *only* to USERRA and VEOA appeals in a single place in the Board's rules. Therefore, the Board is issuing a new 5 CFR part 1208, titled "Practices and Procedures for Appeals under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act." The Board is publishing simultaneously a rule making conforming amendments to part 1201.

To the extent consistent with the statutory requirements of USERRA and VEOA, the Board is processing appeals under these laws in the same manner as it processes other appeals under the Board's appellate jurisdiction regulations, subparts B and C of 5 CFR part 1201. Therefore, the new part 1208 contains only provisions that are unique to USERRA and VEOA, and parties should refer to the appellate jurisdiction procedures of part 1201 for other applicable requirements.

The Board's approach in the new part 1208, generally, is to include only provisions that restate or implement specific statutory requirements of USERRA and VEOA. For both USERRA and VEOA appeals, the new part 1208 includes additional requirements for the content of an appeal to ensure that information the Board needs to determine whether it has jurisdiction over an appeal under USERRA or VEOA is provided when the appeal is filed.

USERRA and VEOA are similar in that both provide new redress mechanisms for the protection of certain veterans' rights. They are also similar in that an appeal under each law may be filed with the Board after an appellant has first asked the Department of Labor

to try to resolve the matter. (In the Department of Labor, both USERRA and VEOA complaints are processed by the Veterans Employment and Training Service.) Despite these similarities, there are significant differences between USERRA and VEOA, as summarized below.

#### Violations Covered

**USERRA:** The provisions of USERRA (codified at chapter 43 of title 38, United States Code) covering Federal employees apply to claims that a Federal agency employer or the Office of Personnel Management has failed or refused to provide an employment or reemployment right or benefit to which a person is entitled after service in a uniformed service (other than claims relating to benefits under the Thrift Savings Plan for Federal employees). USERRA also applies to claims of discrimination based on uniformed service in connection with initial employment, reemployment, retention in employment, promotion, or any benefit of employment (38 U.S.C. 4311(a) and claims of reprisal (38 U.S.C. 4311(b)).

**VEOA:** The redress mechanism established by VEOA (section 3 of the Act, codified at 5 U.S.C. 3330a through 3330c) applies to claims that a Federal agency has violated a preference eligible's rights under any statute or regulation relating to veterans' preference.

#### Persons Covered

**USERRA:** The reemployment provisions of USERRA apply to persons who have left their employment for service in a uniformed service, provided they satisfy the Act's requirements relating to such matters as advance notice to the employer, cumulative length of absence, character of service, and the time limits for reporting back to work.

The USERRA anti-discrimination provision is broader; it applies to anyone who has served, applied to serve, or has an obligation to serve in a uniformed service. (It applies *only* to such a person; there is no *derived* right for a parent or spouse to claim discrimination based on a person's uniformed service; see *Lourens v. MSPB*, Fed. Cir. No. 99-3153, October 13, 1999.) The prohibition against reprisal in USERRA applies to anyone who exercises a right under the Act, assists someone else to exercise such a right, or testifies in a proceeding under the Act, regardless of whether the person alleging reprisal has served in a uniformed service.

*VEOA*: The VEOA redress mechanism applies to preference eligibles. The requirements a veteran (and, in certain instances, a mother or spouse of a veteran) must satisfy for preference eligible status are set forth at 5 U.S.C. 2108.

#### Choice of Procedure and Exhaustion Requirements

*USERRA*: USERRA permits a covered person to initiate a proceeding under the Act either by filing with the Secretary of Labor or by filing directly with the Board. The Board has ruled that a person who files a formal complaint with the Secretary of Labor must exhaust the procedures of the Department of Labor before an appeal may be filed with the Board. *Petersen v. Department of the Interior*, 71 M.S.P.R. 227 (1996). If the person simply seeks assistance from the Department of Labor, however, and does not file a formal complaint, the exhaustion requirement does not apply.

*VEOA*: VEOA requires a preference eligible who alleges a violation of veterans' preference to file first with the Secretary of Labor. The Board has no jurisdiction over a VEOA appeal until the Department of Labor procedures have been exhausted.

#### Filing Time Limits

*USERRA*: USERRA contains no statutory time limit for filing a complaint either with the Secretary of Labor or with the Board. The Board has determined that it would be inconsistent with the Congressional intent in enacting USERRA and its predecessor laws for the Board to establish a filing time limit by regulation. Therefore, there is no time limit for filing a USERRA appeal.

*VEOA*: VEOA establishes statutory filing time limits for each stage of the redress procedure. Unless the Secretary of Labor has notified the appellant that the Department of Labor has been unable to resolve the appellant's VEOA complaint, a VEOA appeal may not be filed with the Board before the 61st day after the complaint was filed with the Secretary. If the Secretary notifies the appellant that the Department of Labor has been unable to resolve the complaint, any VEOA appeal to the Board must be filed within 15 days of the date of receipt of the Secretary's notice. VEOA does not provide for waiver of any of its statutory filing time limits for good cause.

#### Representation

*USERRA*: USERRA authorizes the Special Counsel to represent a person in a USERRA appeal before the Board.

Such representation is available only where the person has filed a USERRA complaint with the Secretary of Labor, the Secretary has notified the person that the Department of Labor cannot resolve the complaint, and the person asks the Secretary to refer the complaint to the Special Counsel. There is no provision for representation by the Special Counsel where a person files a USERRA appeal directly with the Board. Regardless of whether a USERRA appellant files with the Board directly, after exhausting the procedures of the Department of Labor, or after the Special Counsel has declined to represent the appellant, he may choose a representative in accordance with the Board's regulations at 5 CFR 1201.31.

*VEOA*: VEOA contains no provisions regarding representation of a VEOA appellant. The appellant may choose a representative in accordance with the Board's regulations at 5 CFR 1201.31.

#### Termination of Proceeding

*USERRA*: There is no provision in USERRA for a person who has filed a USERRA appeal with the Board to terminate the Board proceeding before it has concluded with the issuance of a decision.

*VEOA*: VEOA permits a person who has filed a VEOA appeal to elect to terminate the Board proceeding and file a civil action in district court if the Board has not issued a judicially reviewable decision within 120 days after the appeal was filed. The Board proceeding must terminate immediately upon the Board's receipt of the appellant's election.

#### Remedies

*USERRA and VEOA*: Both laws provide that if the Board determines that the agency has committed a violation, the Board must order the agency to comply with the provision(s) violated and award compensation for any loss of wages or benefits suffered by the appellant because of the violation.

*USERRA*: USERRA provides that any compensation received by the appellant pursuant to the Board's order shall be in addition to any other right or benefit provided for by chapter 43 of title 38, United States Code, and shall not diminish any such right or benefit. USERRA also permits the Board, when it orders an agency to comply, to award reasonable attorney fees, expert witness fees, and other litigation expenses.

*VEOA*: VEOA provides that where the Board finds that the agency's violation was willful, it must award an amount equal to backpay as liquidated damages. VEOA also requires the Board, when it orders an agency to comply, to award

reasonable attorney fees, expert witness fees, and other litigation expenses.

#### Judicial Review

*USERRA*: USERRA explicitly provides that a final Board decision on a USERRA appeal is subject to judicial review in accordance with 5 U.S.C. 7703, which provides for judicial review by the United States Court of Appeals for the Federal Circuit.

*VEOA*: VEOA does not include a judicial review provision comparable to that in USERRA. It does, however, implicitly acknowledge that a final Board decision on a VEOA appeal is subject to judicial review by referring to the Board's issuance of a "judicially reviewable decision." In the absence of an explicit judicial review provision, the Board relies on precedent construing the applicability of 5 U.S.C. 7703 to final Board decisions in cases other than those decided under chapter 77 of title 5, United States Code (See, e.g., *Frazier, et al., v. MSPB*, 672 F.2d 150, 160 (D.C. Cir. 1982)). Therefore, the Board's decisions on VEOA appeals will provide notice that judicial review is available in the United States Court of Appeals for the Federal Circuit.

#### Appeals Under Another Law, Rule, or Regulation.

*USERRA*: Nothing in USERRA prevents an appellant who may appeal an agency action to the Board under any other law, rule, or regulation from raising a claim of a USERRA violation in that appeal. The Board has ruled that it will treat such a claim as an affirmative defense that the agency action was not in accordance with law. See *Morgan v. United States Postal Service*, 82 M.S.P.R. 1 (1999).

*VEOA*: VEOA provides that a preference eligible who may appeal directly to the Board from an agency action that is appealable under any other law, rule, or regulation, may do so *in lieu of administrative redress under VEOA* (emphasis added) (5 U.S.C. 3330a(e)(1)). Such an appellant, however, may not pursue redress for an alleged violation of veterans' preference under VEOA at the same time he pursues redress for the violation under any other law, rule, or regulation (5 U.S.C. 3330a(e)(2)). An appellant who elects to appeal to the Board under another law, rule, or regulation must comply with the provisions of subparts B and C of 5 CFR part 1201, including the time of filing requirement of 5 CFR § 1201.22(b)(1).

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h), 5 U.S.C. 3330a, 5 U.S.C. 3330b, and 38 U.S.C. 4331.

**List of Subjects in 5 CFR Part 1208**

Administrative practice and procedure, Government employees, Veterans.

Accordingly, the Board amends 5 CFR chapter II, subchapter A, by adding part 1208 reading as follows:

**PART 1208—PRACTICES AND PROCEDURES FOR APPEALS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT AND THE VETERANS EMPLOYMENT OPPORTUNITIES ACT**

**Subpart A—Jurisdiction and Definitions**

Sec.

- 1208.1 Scope.
- 1208.2 Jurisdiction.
- 1208.3 Application of 5 CFR part 1201.
- 1208.4 Definitions.

**Subpart B—USERRA Appeals**

- 1208.11 Choice of procedure under USERRA; exhaustion requirement.
- 1208.12 Time of filing.
- 1208.13 Content of appeal; request for hearing.
- 1208.14 Representation by Special Counsel.
- 1208.15 Remedies.
- 1208.16 Appeals under another law, rule, or regulation.

**Subpart C—VEOA Appeals**

- 1208.21 VEOA exhaustion requirement.
- 1208.22 Time of filing.
- 1208.23 Content of appeal; request for hearing.
- 1208.24 Election to terminate MSPB proceeding.
- 1208.25 Remedies.
- 1208.26 Appeals under another law, rule, or regulation.

**Authority:** 5 U.S.C. 1204(h), 3330a, 3330b; 38 U.S.C. 4331.

**Subpart A—Jurisdiction and Definitions****§ 1208.1 Scope.**

This part governs appeals filed with the Board under the provisions of 38 U.S.C. 4324, as enacted by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, as amended, or under the provisions of 5 U.S.C. 3330a, as enacted by the Veterans Employment Opportunities Act of 1998 (VEOA), Public Law 105–339. With respect to USERRA appeals, this part applies to any appeal filed with the Board on or after October 13, 1994, without regard as to whether the alleged violation occurred before, on, or after October 13, 1994. With respect to VEOA appeals, this part applies to any appeal filed with the Board which alleges that a violation occurred on or after October 31, 1998.

**§ 1208.2 Jurisdiction.**

(a) *USERRA*. Under 38 U.S.C. 4324, a person entitled to the rights and benefits provided by chapter 43 of title 38, United States Code, may file an appeal with the Board alleging that a Federal agency employer or the Office of Personnel Management has failed or refused, or is about to fail or refuse, to comply with a provision of that chapter (other than a provision relating to benefits under the Thrift Savings Plan for Federal employees). In general, the provisions of chapter 43 of title 38 that apply to Federal employees guarantee various reemployment rights following a period of service in a uniformed service, provided the employee satisfies the requirements for coverage under that chapter. In addition, chapter 43 of title 38 prohibits discrimination based on a person's service—or application or obligation for service—in a uniformed service (38 U.S.C. 4311). This prohibition applies with respect to initial employment, reemployment, retention in employment, promotion, or any benefit of employment.

(b) *VEOA*. Under 5 U.S.C. 3330a, a preference eligible who alleges that a Federal agency has violated his rights under any statute or regulation relating to veterans' preference may file an appeal with the Board, provided that he has satisfied the statutory requirements for first filing a complaint with the Secretary of Labor and allowing the Secretary at least 60 days to attempt to resolve the complaint.

**§ 1208.3 Application of 5 CFR part 1201.**

Except as expressly provided in this part, the Board will apply subparts A (Jurisdiction and Definitions), B (Procedures for Appellate Cases), C (Petitions for Review of Initial Decisions), and F (Enforcement of Final Decisions and Orders) of 5 CFR part 1201 to appeals governed by this part. The Board will apply the provisions of subpart H (Attorney Fees, and Litigation Expenses, Where Applicable), Consequential Damages, and Compensatory Damages) of 5 CFR part 1201 regarding awards of attorney fees to appeals governed by this part.

**§ 1208.4 Definitions.**

(a) *Appeal*. “Appeal” means a request for review of an agency action (the same meaning as in 5 CFR § 1201.4(f)) and includes a “complaint” or “action” as those terms are used in USERRA (38 U.S.C. 4324) and a “complaint” or “appeal” as those terms are used in VEOA (5 U.S.C. 3330a).

(b) *Preference eligible*. “Preference eligible” is defined in 5 U.S.C. 2108.

(c) *USERRA appeal*. “USERRA appeal” means an appeal filed under 38 U.S.C. 4324, as enacted by the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103–353), as amended. The term includes an appeal that alleges a violation of a predecessor statutory provision of chapter 43 of title 38, United States Code.

(d) *VEOA appeal*. “VEOA appeal” means an appeal filed under 5 U.S.C. 3330a, as enacted by the Veterans Employment Opportunities Act of 1998 (Public Law 105–339).

**Subpart B—USERRA Appeals****§ 1208.11 Choice of procedure under USERRA; exhaustion requirement.**

(a) *Choice of procedure*. An appellant may file a USERRA appeal directly with the Board under this subpart or may file a complaint with the Secretary of Labor under 38 U.S.C. 4322.

(b) *Exhaustion requirement*. If an appellant files a complaint with the Secretary of Labor under 38 U.S.C. 4322, the appellant may not file a USERRA appeal with the Board until the Secretary notifies the appellant in accordance with 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint. An appellant who seeks assistance from the Secretary of Labor under 38 U.S.C. 4321 but does not file a complaint with the Secretary under 38 U.S.C. 4322 is not subject to the exhaustion requirement of this paragraph.

(c) *Appeals after exhaustion of Department of Labor procedure*. When an appellant receives notice from the Secretary of Labor in accordance with 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint, the appellant may file a USERRA appeal directly with the Board or may ask the Secretary to refer the complaint to the Special Counsel. If the Special Counsel agrees to represent the appellant, the Special Counsel may file a USERRA appeal directly with the Board. If the Special Counsel does not agree to represent the appellant, the appellant may file a USERRA appeal directly with the Board.

**§ 1208.12 Time of filing.**

Under chapter 43 of title 38, United States Code, there is no time limit for filing a USERRA appeal with the Board. However, the Board encourages appellants to file a USERRA appeal as soon as possible after the date of the alleged violation or, if a complaint is filed with the Secretary of Labor, as soon as possible after receiving notice from the Secretary in accordance with

38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint, or, if the Secretary has referred the complaint to the Special Counsel and the Special Counsel does not agree to represent the appellant, as soon as possible after receiving the Special Counsel's notice.

**§ 1208.13 Content of appeal; request for hearing.**

(a) *Content.* A USERRA appeal may be in any format, including letter form, but must contain the following:

(1) The nine (9) items or types of information required in 5 CFR 1201.24(a)(1) through (a)(9);

(2) Evidence or argument that the appellant has performed service in a uniformed service, including the dates of such service (or, where applicable, has applied for or has an obligation to perform such service), and that the appellant otherwise satisfies the requirements for coverage under chapter 43 of title 38, United States Code;

(3) A statement identifying the provision of chapter 43 of title 38, United States Code, that was allegedly violated and an explanation of how the provision was violated;

(4) If the appellant filed a complaint with the Secretary of Labor under 38 U.S.C. 4322(a), evidence of notice under 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the complaint (a copy of the Secretary's notice satisfies this requirement); and

(5) If the appellant's complaint was referred to the Special Counsel and the appellant has received notice that the Special Counsel will not represent the appellant before the Board, evidence of the Special Counsel's notice (a copy of the Special Counsel's notice satisfies this requirement).

(b) *Request for hearing.* An appellant must submit any request for a hearing with the USERRA appeal, or within any other time period the judge sets. A hearing may be provided to the appellant once the Board's jurisdiction over the appeal is established. The judge may also order a hearing if necessary to resolve issues of jurisdiction. The appellant has the burden of proof with respect to issues of jurisdiction (5 CFR 1201.56(a)(2)(i)).

**§ 1208.14 Representation by Special Counsel.**

The Special Counsel may represent an appellant in a USERRA appeal before the Board. A copy of any written request by the appellant to the Secretary of Labor that the appellant's complaint under 38 U.S.C. 4322(a) be referred to the Special Counsel for litigation before the Board will be accepted as the

written designation of representative required by 5 CFR 1201.31(a).

**§ 1208.15 Remedies.**

(a) *Order for compliance.* If the Board determines that a Federal agency employer or the Office of Personnel

Management has not complied with a provision or provisions of chapter 43 of title 38, United States Code (other than a provision relating to benefits under the Thrift Savings Plan for Federal employees), the decision of the Board (either an initial decision of a judge under 5 CFR 1201.111 or a final Board decision under 5 CFR 1201.117) will order the Federal agency employer or the Office of Personnel Management, as applicable, to comply with such provision(s) and to compensate the appellant for any loss of wages or benefits suffered by the appellant because of such lack of compliance.

Under 38 U.S.C. 4324(c)(3), any compensation received by the appellant pursuant to the Board's order shall be in addition to any other right or benefit provided for by chapter 43 of title 38, United States Code, and shall not diminish any such right or benefit.

(b) *Attorney fees and expenses.* If the Board issues a decision ordering compliance under paragraph (a) of this section, the Board has discretion to order payment of reasonable attorney fees, expert witness fees, and other litigation expenses under 38 U.S.C. 4324(c)(4). The provisions of subpart H of part 1201 shall govern any proceeding for attorney fees and expenses.

**§ 1208.16 Appeals under another law, rule, or regulation.**

Nothing in USERRA prevents an appellant who may appeal an agency action to the Board under any other law, rule, or regulation from raising a claim of a USERRA violation in that appeal. The Board will treat such a claim as an affirmative defense that the agency action was not in accordance with law (5 CFR 1201.56(b)(3)).

**Subpart C—VEOA Appeals**

**§ 1208.21 VEOA exhaustion requirement.**

Before an appellant may file a VEOA appeal with the Board, the appellant must first file a complaint under 5 U.S.C. 3330a(a) with the Secretary of Labor within 60 days after the date of the alleged violation and allow the Secretary at least 60 days from the date the complaint is filed to attempt to resolve the complaint.

**§ 1208.22 Time of filing.**

(a) Unless the Secretary of Labor has notified the appellant that the Secretary

has been unable to resolve the appellant's VEOA complaint, a VEOA appeal may not be filed with the Board before the 61st day after the date on which the appellant filed the complaint under 5 U.S.C. 3330a(a) with the Secretary.

(b) If the Secretary of Labor notifies the appellant that the Secretary has been unable to resolve the appellant's VEOA complaint and the appellant elects to appeal to the Board under 5 U.S.C. 3330a(d), the appellant must file the VEOA appeal with the Board within 15 days after the date of receipt of the Secretary's notice. A copy of the Secretary's notice must be submitted with the appeal.

**§ 1208.23 Content of appeal; request for hearing.**

(a) *Content.* A VEOA appeal may be in any format, including letter form, but must contain the following:

(1) The nine (9) items or types of information required in 5 CFR 1201.24(a)(1) through (a)(9);

(2) Evidence or argument that the appellant is a preference eligible;

(3) A statement identifying the statute or regulation relating to veterans' preference that was allegedly violated, an explanation of how the provision was violated, and the date of the violation;

(4) Evidence that a complaint under 5 U.S.C. 3330a(a) was filed with the Secretary of Labor, including the date the complaint was filed; and

(5)(i) Evidence that the Secretary has notified the appellant in accordance with 5 U.S.C. 3330a(c)(2) that the Secretary has been unable to resolve the complaint (a copy of the Secretary's notice satisfies this requirement); or

(ii) Evidence that the appellant has provided written notice to the Secretary of the appellant's intent to appeal to the Board, as required by 5 U.S.C. 3330a(d)(2) (a copy of the appellant's written notice to the Secretary satisfies this requirement).

(b) *Request for hearing.* An appellant must submit any request for a hearing with the VEOA appeal, or within any other time period the judge sets. A hearing may be provided to the appellant once the Board's jurisdiction over the appeal is established and it has been determined that the appeal is timely. The judge may also order a hearing if necessary to resolve issues of jurisdiction or timeliness. The appellant has the burden of proof with respect to issues of jurisdiction and timeliness (5 CFR 1201.56(a)(2)(i) and (ii)).

**§ 1208.24 Election to terminate MSPB proceeding.**

(a) *Election to terminate.* At any time beginning on the 121st day after an appellant files a VEOA appeal with the Board, if a judicially reviewable Board decision on the appeal has not been issued, the appellant may elect to terminate the Board proceeding as provided under 5 U.S.C. 3330b and file a civil action with an appropriate United States district court. Such election must be in writing, filed with the Board office where the appeal is being processed, and served on the parties. The election is effective immediately on the date of receipt by the Board office where the appeal is being processed.

(b) *Termination order.* Following receipt by the Board of an appellant's written election to terminate the Board proceeding, a termination order will be issued to document the termination of the proceeding. The termination order will state that the proceeding was terminated as of the date of receipt of the appellant's written election. Such an order is neither an initial decision under 5 CFR 1201.111 nor a final Board decision and is not subject to a petition for review in accordance with subpart C of part 1201, a petition for enforcement in accordance with subpart F of part 1201, or a petition for judicial review.

**§ 1208.25 Remedies.**

(a) *Order for compliance.* If the Board determines that a Federal agency has violated the appellant's VEOA rights, the decision of the Board (either an initial decision of a judge under 5 CFR 1201.111 or a final Board decision under 5 CFR 1201.117) will order the agency to comply with the statute or regulation violated and to compensate the appellant for any loss of wages or benefits suffered by the appellant because of the violation. If the Board determines that the violation was willful, it will order the agency to pay the appellant an amount equal to back pay as liquidated damages.

(b) *Attorney fees and expenses.* If the Board issues a decision ordering compliance under paragraph (a) of this section, the Board will order payment of reasonable attorney fees, expert witness fees, and other litigation expenses. The provisions of subpart H of part 1201 shall govern any proceeding for attorney fees and expenses.

**§ 1208.26 Appeals under another law, rule, or regulation.**

(a) The VEOA provides that 5 U.S.C. 3330a shall not be construed to prohibit a preference eligible from appealing directly to the Board from any action

that is appealable under any other law, rule, or regulation, in lieu of administrative redress under VEOA (5 U.S.C. 3330a(e)(1)). An appellant may not pursue redress for an alleged violation of veterans' preference under VEOA at the same time he pursues redress for such violation under any other law, rule, or regulation (5 U.S.C. 3330a(e)(2)).

(b) An appellant who elects to appeal to the Board under another law, rule, or regulation must comply with the provisions of subparts B and C of 5 CFR part 1201, including the time of filing requirement of 5 CFR 1201.22(b)(1).

Dated: January 24, 2000.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 00-2339 Filed 2-3-00; 8:45 am]

**BILLING CODE 7400-01-U**

**DEPARTMENT OF AGRICULTURE****Office of the Secretary****7 CFR Part 2****Revision of Delegations of Authority**

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department due to passage of the Agricultural Research, Extension, and Education Reform Act of 1998.

**EFFECTIVE DATE:** Effective February 4, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Philip Schwab, Science Advisor and Legislative Affairs, Cooperative State Research, Education, and Extension Service, USDA, Room 305-A, Jamie L. Whitten Federal Bldg., Washington, DC 20250, telephone 202-720-4423.

**SUPPLEMENTARY INFORMATION:** On June 23, 1998, the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. 105-185, was signed into law. With the enactment of this new law many existing authorities were either modified or extended and some new ones added. It is necessary for these authorities to be delegated to Agency Administrators. This document also delegates authority for the Census of Agriculture as provided for in the Census of Agriculture Act of 1997, Pub. L. 105-113 (7 U.S.C. 2204g). This document lays out these delegations of authority as they have been modified and expanded. This rule relates to internal agency management. Therefore,

pursuant to 5 U.S.C. 553, notice of proposed rulemaking 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 Orders 12866 and 12988. Finally, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.*, and, thus, is exempt from their provisions.

**List of Subjects in 7 CFR Part 2**

Authority Delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as set forth below.

**PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT**

1. The authority for Part 2 continues to read as follows:

**Authority:** Sec. 212(a), Pub. L. 103-354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 CFR 1949-1953 Comp., p. 1024.

**Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries**

2. Amend § 2.21 as follows:

- a. Redesignate paragraphs (a)(1)(cxli) through (a)(1)(cxlix) as paragraphs (a)(1)(cxli) through (a)(1)(cl);
- b. Add new paragraphs (a)(1)(cxl), and (a)(1)(cli) through (a)(1)(clxxi);
- c. Remove and reserve paragraphs (a)(1)(lxxviii), (a)(1)(lxxxiii), (a)(1)(lxxxiv), (a)(1)(lxxxv), (a)(1)(lxxxvi), and (a)(1)(xc); and
- d. Revise paragraphs (a)(1)(x), (a)(1)(xliv), (a)(1)(li), (a)(1)(liii), (a)(1)(lvii), (a)(1)(lix), (a)(1)(lxxix), and (b)(1)(i) and to add paragraphs (a)(1)(liv), (a)(1)(lxxx), (a)(1)(lxxxii), and (a)(1)(lxxxvii) to read as follows:

**§ 2.21 Under Secretary for Research, Education, and Economics.**

(a) \* \* \*  
(1) \* \* \*

(x) Evaluate, assess, and report to congressional agriculture committees on the merits of proposals for agricultural research facilities in the States; establish a task force on a 10-year strategic plan for agricultural research facilities; ensure that each research activity conducted by an Agricultural Research Service facility serves a national or multistate need; and review periodically