

# Rules and Regulations

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1207

#### Interim Regulatory Changes Regarding Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities

**AGENCY:** Merit Systems Protection Board.

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

**SUMMARY:** The Merit Systems Protection Board (MSPB or “the Board”) is revising its regulations which were promulgated to implement Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. These revisions are necessary to reconcile the Board’s regulations with the current statute and to clarify the procedures for processing those complaints filed against the Board which allege discrimination on the basis of disability during the Board’s adjudication of a related employee appeal.

**DATES:** This rule is effective May 9, 2005. Written comments should be submitted on or before July 8, 2005.

**ADDRESSES:** Send or deliver comments to the Office of Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; fax: (202) 653-7130; or e-mail: [mspb@mspb.gov](mailto:mspb@mspb.gov).

**FOR FURTHER INFORMATION CONTACT:** Bentley 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’s regulations to implement Section 504 of the Rehabilitation Act were initially promulgated in 1988 and amended in 2000. These revisions are necessary to reconcile the Board’s

regulations with the amendments that have been made to the statute including substitution of the term “disability” for the term “handicap” used in the existing regulations.

Additional changes include the addition of a definition for the term “days,” in connection with determining the deadline for filing a complaint, the deletion of outdated provisions (such as references to the regulations issued by the Equal Employment Opportunity Commission found at 29 CFR part 1613 and the requirement to conduct a self evaluation), and revision of the compliance procedures.

The latter revision modifies the procedures for processing those complaints filed against the Board which allege discrimination on the basis of disability during the Board’s adjudication of a related employee appeal. The current regulations create a tension between the Board’s obligations to adjudicate employee appeals in an effective manner under the Civil Service Reform Act and its duty under Section 504 of the Rehabilitation Act of 1973, as amended, to ensure that its programs and activities are operated in a manner that does not result in discrimination against persons with disabilities. For example, 5 U.S.C. 7701(b)(1) and (e)(1) require that a decision on a petition for review be rendered by a majority of the Board members. However, under the Board’s current Section 504 regulations, the Chairman is given the sole authority to issue a decision in disability discrimination complaints filed under that statute. As a result, when a complaint alleging disability discrimination is filed during or regarding the adjudication of a related employee appeal, it is possible that the Board’s decision in the appeal could be overruled by a subsequent decision of the Chairman in the discrimination matter. Such a result could constitute an improper collateral attack on the Board’s adjudicatory authority.

The revised regulations seek to ameliorate this potential conflict by requiring appellants and other parties to adjudication before the Board to file claims of alleged disability discrimination within 10 days of the alleged act of discrimination or within 10 days from the date that the person knew or reasonably should have known of the alleged discrimination. The complaint is to be filed with the

administrative judge responsible for adjudicating the initial appeal.

The revised regulations further provide that the discrimination complaint will be consolidated with the employee’s initial appeal and the administrative judge will be responsible for rendering a decision on the discrimination complaint either as an interim order or as part of the initial decision. A party may seek reconsideration of the administrative judge’s ruling on the discrimination matter.

If an initial decision, recommended decision or recommendation has been issued by the time the party learns of the alleged discrimination, the party may raise the allegation in a petition for review, cross petition for review, or response to a petition or cross petition, as appropriate. The Board will decide the merits of any discrimination claim raised at this stage of the adjudicatory process.

While the Board is mindful of its obligations under Section 504 of the Rehabilitation Act of 1973, the Board is also concerned with the efficacy of its adjudicatory process. The Board believes that the procedures herein further the goal of ensuring finality in its decisions while providing a fair avenue of redress for allegations of disability discrimination.

#### List of Subjects

##### 5 CFR Part 1207

Administrative personnel, Enforcement of nondiscrimination on the basis of disability in programs or activities conducted by the Merit Systems Protection Board.

■ Accordingly, the Board amends 5 CFR part 1207 as follows:

#### PART 1207—[REVISED]

■ 1. Revise 5 CFR part 1207 as follows:

#### PART 1207—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE MERIT SYSTEMS PROTECTION BOARD

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

**Source:** 53 FR 25881 and 25885, July 8, 1988, unless otherwise noted.

#### § 1207.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

#### § 1207.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

#### § 1207.103 Definitions.

(a) *Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(b) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDDs), interpreters, notetakers, written materials, and other similar services and devices.

(c) *Complete complaint* means a written statement that contains the complainant's name and address and

describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(d) *Days* means calendar days, unless otherwise stated.

(e) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(f) *Historic preservation programs* means programs conducted by the agency that have preservation of historic properties as a primary purpose.

(g) *Historic properties* means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

(h) *Individual with a disability* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The following phrases used in this definition are further defined as follows:

(1) *Physical or mental impairment includes—*

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(iii) Also, physical and mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment means—*

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (i) of this definition but is treated by the agency as having such an impairment.

(i) *Qualified individual with a disability means—*

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) Qualified disabled person as that term is defined for purposes of employment in 29 CFR 1614.203, which is made applicable to this part by § 1207.130.

(j) *Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

#### §§ 1207.104–1207.109 [Reserved]

#### § 1207.110 Notice.

The agency shall make available to employees, applicants, participants, and

other interested parties such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

#### **§§ 1207.111–1207.119 [Reserved]**

#### **§ 1207.120 General prohibitions against discrimination.**

(a) No qualified individual with a disability shall, on the basis of such disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A qualified individual with a disability may not be excluded from participation in any of the agency's programs or activities, even though permissibly separate or different programs or activities exist.

(3) The agency may not, directly or through contractual or other

arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or;

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nondisabled persons from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

#### **§§ 1207.121–1207.129 [Reserved]**

#### **§ 1207.130 Employment.**

No qualified individual with a disability shall, on the basis of such disability, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the

Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

#### **§§ 1207.131–1207.139 [Reserved]**

#### **§ 1207.140 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in § 1207.150, no qualified individual with disabilities shall, because the agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

#### **§§ 1207.141–1207.149 [Reserved]**

#### **§ 1207.150 Program accessibility: Existing facilities.**

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1207.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the

benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of § 1207.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of § 1207.150(a)(2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

#### **§ 1207.151 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR

101–19.600 to 101–19.607, apply to buildings covered by this section.

#### **§§ 1207.152–1207.159 [Reserved]**

#### **§ 1207.160 Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with a disability.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with parties by telephone, telecommunication devices for deaf persons or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1207.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and

operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

#### **§§ 1207.161–1207.169 [Reserved]**

#### **§ 1207.170 Compliance procedures.**

(a) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(b) *Allegations of discrimination in the adjudication of a Board case.*

(1) When a party to a case pending before any of the Board's judges believes he or she has been subjected to discrimination on the basis of disability in the adjudication of the case, the party may raise the allegation in a pleading filed with the judge and served on all other parties in accordance with 5 CFR 1201.26(b)(2).

(2) An allegation of discrimination in the adjudication of a Board case must be raised within 10 days of the alleged act of discrimination or within 10 days from the date the complainant should reasonably have known of the alleged discrimination. If the complainant does not submit a complaint within that time period, it will be dismissed as untimely filed unless a good reason for the delay is shown.

(3) The judge to whom the case is assigned shall decide the merits of any timely allegation that is raised at this stage of adjudication, and shall make findings and conclusions regarding the allegation either in an interim order or in the initial decision, recommended decision, or recommendation. Any request for reconsideration of the administrative judge's decision on the disability discrimination claim must be filed in accordance with the requirements of 5 CFR 1201.114 and 1201.115.

(4) If the judge to whom the case was assigned has issued the initial decision, recommended decision, or recommendation by the time the party learns of the alleged discrimination, the party may raise the allegation in a petition for review, cross petition for

review, or response to the petition or cross petition.

(5) The Board shall decide the merits of any timely allegation that is raised at this stage of adjudication in a final decision.

(c) All complaints of discrimination on the basis of disability in programs and activities conducted by the agency, except for those described in paragraphs (a) and (b) of this section, shall be filed under the procedures described in this paragraph.

(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part, or authorized representative of such person, may file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint. A charge on behalf of a person or member of a class of persons claiming to be aggrieved may be made by any person, agency or organization.

(2) *Where and when to file.* Complaints shall be filed with the Director, Office of Equal Employment Opportunity (EEO Director), Merit Systems Protection Board, 1615 M Street, NW., Washington DC 20419, or e-mailed to [equalopportunity@mspb.gov](mailto:equalopportunity@mspb.gov), within thirty-five (35) calendar days of the alleged act of discrimination. A complaint filed by personal delivery is considered filed on the date it is received by the EEO Director. The date of filing by facsimile or e-mail is the date the facsimile or e-mail is sent. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service. The agency shall extend the time period for filing a complaint upon a showing of good cause. For example, the agency shall extend this time limit if a complainant shows that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits.

(3) *Acceptance of complaint.* (i) The agency shall accept a complete complaint that is filed in accordance with paragraph (c) of this section and over which it has jurisdiction. The EEO Director shall notify the complainant of receipt and acceptance of the complaint.

(ii) If the EEO Director receives a complaint that is not complete, he or she shall notify the complainant that additional information is needed. If the complainant fails to complete the complaint and return it to the EEO Director within 15 days of his or her receipt of the request for additional information, the EEO Director shall dismiss the complaint with prejudice and shall so inform the complainant.

(4) Within 60 days of the receipt of a complete complaint for which it has jurisdiction, the EEO Director shall notify the complainant of the results of the investigation in an initial decision containing—

(i) Findings of fact and conclusions of law;

(ii) When applicable, a description of a remedy for each violation found; and

(iii) A notice of the right to appeal.

(5) Any appeal of the EEO Director's initial decision must be filed with the Chairman of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419 by the complainant within 35 days of the date the EEO Director issues the decision required by § 1207.170(c)(4). The agency may extend this time for good cause when a complainant shows that circumstances beyond his or her control prevented the filing of an appeal within the prescribed time limit. An appeal filed by personal delivery is considered filed on the date it is received by the Chairman. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service. The appeal should be clearly marked "Appeal of Section 504 Decision" and must contain specific objections explaining why the person believes the initial decision was factually or legally wrong. A copy of the initial decision being appealed should be attached to the appeal letter.

(6) A timely appeal shall be decided by the Chairman unless the Chairman determines, in his or her discretion, that the appeal raises policy issues and that the nature of those policy issues warrants a decision by the full Board. The full Board shall then decide such appeals.

(7) The Chairman shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the request. If the Chairman determines

that he or she needs additional information from the complainant, he or she shall have sixty (60) days from the date he or she receives the additional information to make his or her determination on the appeal.

(8) The time limit stated in paragraph (c)(2) may be extended by the EEO Director to a period of up to 180 days, and may be extended further with the permission of the Assistant Attorney General. The time limit stated in paragraph (c)(5) may be extended by the Chairman to a period of up to 180 days, and may be extended further with the permission of the Assistant Attorney General.

(9) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

(d) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with disabilities.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate entity.

#### §§ 1207.171–1207.999 [Reserved]

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

*Clerk of the Board.*

[FR Doc. 05–9209 Filed 5–6–05; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 03–052–3]

### Karnal Bunt; Compensation for Custom Harvesters in Northern Texas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with changes, an interim rule that amended the Karnal bunt regulations to provide for the payment of compensation to custom harvesters for losses they incurred due to the requirement that their equipment be