

## SUBCHAPTER A—ORGANIZATION AND PROCEDURES

### PART 1200—BOARD ORGANIZATION

#### Subpart A—General

Sec.

- 1200.1 Statement of purpose.
- 1200.2 Board members and duties.
- 1200.3 How the Board members make decisions.
- 1200.4 Petition for rulemaking.

#### Subpart B—Offices of the Board

- 1200.10 Staff organization and functions.

SOURCE: 56 FR 41747, Aug. 23, 1991, unless otherwise noted.

#### Subpart A—General

AUTHORITY: 5 U.S.C. 1201 *et seq.*

##### § 1200.1 Statement of purpose.

The Merit Systems Protection Board (the Board) is an independent Government agency that operates like a court. The Board was created to ensure that all Federal government agencies follow Federal merit systems practices. The Board does this by adjudicating Federal employee appeals of agency personnel actions, and by conducting special reviews and studies of Federal merit systems.

[56 FR 41747, Aug. 23, 1991, as amended at 59 FR 65233, Dec. 19, 1994]

##### § 1200.2 Board members and duties.

(a) The Board has three members whom the President appoints and the Senate confirms. Members of the Board serve seven-year terms.

(b) The President appoints, with the Senate's consent, one member of the Board to serve as Chairman and chief executive officer of the Board. The President also appoints one member of the Board to serve as Vice Chairman. If the office of the Chairman is vacant or the Chairman cannot perform his or her duties, then the Vice Chairman performs the Chairman's duties. If both the Chairman and the Vice Chairman cannot perform their duties, then the

remaining Board Member performs the Chairman's duties.

[56 FR 41747, Aug. 23, 1991, as amended at 59 FR 65233, Dec. 19, 1994]

##### § 1200.3 How the Board members make decisions.

(a) The three Board members make decisions in all cases by majority vote except in circumstances described in paragraphs (b) and (c) of this section or as otherwise provided by law.

(b) When due to a vacancy, recusal or other reasons, the Board members are unable to decide any case by majority vote, the decision, recommendation or order under review shall be deemed the final decision or order of the Board. The Chairman of the Board may direct the issuance of an order consistent with this paragraph.

(c) When due to a vacancy, recusal or other reasons, the Board members are unable to decide a matter in a case which does not involve a decision, recommendation or order, the Chairman may direct referral of the matter to an administrative judge or other official for final disposition.

(d) Decisions and orders issued pursuant to paragraphs (b) and (c) of this section shall not be precedential.

(e) This section applies only when at least two Board members are in office.

[59 FR 39937, Aug. 5, 1994]

##### § 1200.4 Petition for rulemaking.

(a) Any interested person may petition the MSPB for the issuance, amendment, or repeal of a rule. For purposes of this regulation, a "rule" means a regulation contained in 5 CFR parts 1200 through 1216. Each petition shall:

(1) Be submitted to the Clerk of the Board, 1615 M Street NW., Washington, DC 20419;

(2) Set forth the text or substance of the rule or amendment proposed or specify the rule sought to be repealed;

(3) Explain the petitioner's interest in the action sought; and

(4) Set forth all data and arguments available to the petitioner in support of the action sought.

(b) No public procedures will be held on the petition before its disposition. If the MSPB finds that the petition contains adequate justification, a rule-making proceeding will be initiated or a final rule will be issued as appropriate under the Administrative Procedure Act. If the Board finds that the petition does not contain adequate justification, the petition will be denied by letter or other notice, with a brief statement of the ground for denial. The Board may consider new evidence at any time; however, repetitious petitions for rulemaking will not be considered.

[77 FR 62363, Oct. 12, 2012]

### Subpart B—Offices of the Board

AUTHORITY: 5 U.S.C. 1204 (h) and (j).

#### § 1200.10 Staff organization and functions.

(a) The Board's headquarters staff is organized into the following offices and divisions:

- (1) Office of Regional Operations.
- (2) Office of the Administrative Law Judge.
- (3) Office of Appeals Counsel.
- (4) Office of the Clerk of the Board.
- (5) Office of the General Counsel.
- (6) Office of Policy and Evaluation.
- (7) Office of Equal Employment Opportunity.
- (8) Office of Financial and Administrative Management.
- (9) Office of Information Resources Management.

(b) The principal functions of the Board's headquarters offices are as follows:

(1) *Office of Regional Operations.* The Director, Office of Regional Operations, manages the adjudicatory and administrative functions of the MSPB regional and field offices.

(2) *Office of the Administrative Law Judge.* The Administrative Law Judge hears Hatch Act cases, disciplinary action complaints brought by the Special Counsel, actions against administrative law judges, appeals of actions taken against MSPB employees, and other cases that the Board assigns.

(3) *Office of Appeals Counsel.* The Director, Office of Appeals Counsel, pre-

pares proposed decisions that recommend appropriate action by the Board in petition for review cases, original jurisdiction cases, and other cases assigned by the Board.

(4) *Office of the Clerk of the Board.* The Clerk of the Board enters petitions for review and other headquarters cases onto the Board's docket and monitors their processing. The Clerk of the Board also does the following:

(i) Serves as the Board's public information center, including providing information on the status of cases, distributing copies of Board decisions and publications, and operating the Board's Library and on-line information services;

(ii) Manages the Board's records, reports, legal research, and correspondence control programs; and

(iii) Answers requests under the Freedom of Information and Privacy Acts at the Board's headquarters, and answers other requests for information except those for which the Office of the General Counsel or the Office of Policy and Evaluation is responsible.

(5) *Office of the General Counsel.* The General Counsel provides legal advice to the Board and its headquarters and regional offices; represents the Board in court proceedings; prepares proposed decisions for the Board in cases that the Board assigns; coordinates legislative policy and performs legislative liaison; responds to requests for non-case related information from the White House, Congress, and the media; and plans and directs audits and investigations.

(6) *Office of Policy and Evaluation.* The Director, Policy and Evaluation, carries out the Board's statutory responsibility to conduct special reviews and studies of the civil service and other merit systems in the Executive Branch, as well as oversight reviews of the significant actions of the Office of Personnel Management. The office prepares the Board's reports of these reviews and studies, submits them to the President and the Congress, and makes them available to other interested individuals and organizations. The office is responsible for distributing the Board's reports and for responding to requests for information or briefings concerning them.

## Merit Systems Protection Board

Pt. 1201

(7) *Office of Equal Employment Opportunity.* The Director, Office of Equal Employment Opportunity, manages the Board's equal employment programs.

(8) *Office of Financial and Administrative Management.* The Office of Financial and Administrative Management administers the budget, accounting, procurement, property management, physical security, and general services functions of the Board. It also develops and coordinates internal management programs and projects, including review of internal controls agencywide. It performs certain personnel functions, including policy, training, drug testing, and the Employee Assistance Program. It also administers the agency's cross-servicing arrangements with the U.S. Department of Treasury's Bureau of Public Debt for accounting services and with the U.S. Department of Agriculture's National Finance Center for payroll and personnel action processing services and with the U.S. Department of Agriculture's APHIS Business Services for most human resources management services.

(9) *Office of Information Resources Management.* The Office of Information Resources Management develops, implements, and maintains the Board's automated information systems.

(c) *Regional and Field Offices.* The Board has regional and field offices located throughout the country (See Appendix II to 5 CFR part 1201 for a list of the regional and field offices). Judges in the regional and field offices hear and decide initial appeals and other assigned cases as provided for in the Board's regulations.

[62 FR 49589, Sept. 23, 1997, as amended at 64 FR 15916, Apr. 2, 1999; 70 FR 30608, May 27, 2005]

## PART 1201—PRACTICES AND PROCEDURES

### Subpart A—Jurisdiction and Definitions

- Sec.  
1201.1 General.  
1201.2 Original jurisdiction.  
1201.3 Appellate jurisdiction.  
1201.4 General definitions.

### Subpart B—Procedures for Appellate Cases

#### GENERAL

- 1201.11 Scope and policy.  
1201.12 Revocation, amendment, or waiver of rules.  
1201.13 Appeals by Board employees.  
1201.14 Electronic filing procedures.

#### APPEAL OF AGENCY ACTION; PLEADINGS

- 1201.21 Notice of appeal rights.  
1201.22 Filing an appeal and responses to appeals.  
1201.23 Computation of time.  
1201.24 Content of an appeal; right to hearing.  
1201.25 Content of agency response.  
1201.26 Number of pleadings, service, and response.  
1201.27 Class appeals.  
1201.28 Case suspension procedures.  
1201.29 Dismissal without prejudice.

#### PARTIES, REPRESENTATIVES, AND WITNESSES

- 1201.31 Representatives.  
1201.32 Witnesses; right to representation.  
1201.33 Federal witnesses.  
1201.34 Intervenors and amicus curiae.  
1201.35 Substituting parties.  
1201.36 Consolidating and joining appeals.  
1201.37 Witness fees.

#### JUDGES

- 1201.41 Judges.  
1201.42 Disqualifying a judge.  
1201.43 Sanctions.

#### HEARINGS

- 1201.51 Scheduling the hearing.  
1201.52 Public hearings.  
1201.53 Record of proceedings.  
1201.55 Motions.  
1201.56 Burden and degree of proof.  
1201.57 Establishing jurisdiction in appeals not covered by §1201.56; burden and degree of proof; scope of review.  
1201.58 Order of hearing.  
1201.59 Closing the record.

#### EVIDENCE

- 1201.61 Exclusion of evidence and testimony.  
1201.63 Stipulations.  
1201.64 Official notice.

#### DISCOVERY

- 1201.71 Purpose of discovery.  
1201.72 Explanation and scope of discovery.  
1201.73 Discovery procedures.  
1201.74 Orders for discovery.  
1201.75 Taking depositions.

#### SUBPOENAS

- 1201.81 Requests for subpoenas.