

Merit Systems Protection Board

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1221(g)) also authorizes an award of compensatory damages in cases where the Board orders corrective action. Compensatory damages include pecuniary losses, future pecuniary losses, and nonpecuniary losses such as emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

(d) *Awards of liquidated damages.* The Board may award an amount equal to back pay as liquidated damages under 5 U.S.C. 3330c when it determines that an agency willfully violated an appellant's veterans' preference rights.

(e) *Definitions.* For purposes of this subpart:

(1) A *proceeding on the merits* is a proceeding to decide an appeal of an agency action under 5 U.S.C. 1221 or 7701, an appeal under 38 U.S.C. 4324, an appeal under 5 U.S.C. 3330a, a request to review an arbitration decision under 5 U.S.C. 7121(d), a Special Counsel complaint under 5 U.S.C. 1214 or 1215, or an agency action against an administrative law judge under 5 U.S.C. 7521.

(2) An *addendum proceeding* is a proceeding conducted after issuance of a final decision in a proceeding on the merits, including a decision accepting the parties' settlement of the case. The final decision in the proceeding on the merits may be an initial decision of a judge that has become final under § 1201.113 of this part or a final decision of the Board.

[63 FR 41179, Aug. 3, 1998, as amended at 65 FR 5409, Feb. 4, 2000; 77 FR 62373, Oct. 12, 2012; 78 FR 39546, July 2, 2013]

§ 1201.203 Proceedings for attorney fees.

(a) *Form and content of request.* A request for attorney fees must be made by motion, must state why the appellant or respondent believes he or she is entitled to an award under the applicable statutory standard, and must be supported by evidence substantiating the amount of the request. Evidence supporting a motion for attorney fees must include at a minimum:

(1) Accurate and current time records;

(2) A copy of the terms of the fee agreement (if any);

(3) A statement of the attorney's customary billing rate for similar work,

with evidence that that rate is consistent with the prevailing community rate for similar services in the community in which the attorney ordinarily practices; and

(4) An established attorney-client relationship.

(b) *Addendum proceeding.* A request for attorney fees will be decided in an addendum proceeding.

(c) *Place of filing.* Where the initial decision in the proceeding on the merits was issued by a judge in a MSPB regional or field office, a motion for attorney fees must be filed with the regional or field office that issued the initial decision. Where the decision in the proceeding on the merits was an initial decision issued by a judge at the Board's headquarters or where the only decision was a final decision issued by the Board, a motion for attorney fees must be filed with the Clerk of the Board.

(d) *Time of filing.* A motion for attorney fees must be filed as soon as possible after a final decision of the Board but no later than 60 days after the date on which a decision becomes final.

(e) *Service.* A copy of a motion for attorney fees must be served on the other parties or their representatives at the time of filing. A party may file a pleading responding to the motion within the time limit established by the judge.

(f) *Hearing; applicability of subpart B.* The judge may hold a hearing on a motion for attorney fees and may apply appropriate provisions of subpart B of this part to the addendum proceeding.

(g) *Initial decision; review by the Board.* The judge will issue an initial decision in the addendum proceeding, which shall be subject to the provisions for a petition for review by the Board under subpart C of this part.

[63 FR 41179, Aug. 3, 1998, as amended at 65 FR 24381, Apr. 26, 2000]

§ 1201.204 Proceedings for consequential, liquidated, or compensatory damages.

(a) *Addendum proceeding.* (1) A request for consequential, liquidated, or compensatory damages will be decided in an addendum proceeding.

(2) A judge may, either on their own motion or on the motion of a party,

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consider a request for damages in a proceeding on the merits when the judge determines that such action is in the interest of the parties and will promote efficiency and economy in adjudication.

(b) *Initiation of addendum proceeding—*

(1) *Time for making request.* A request for consequential, liquidated, or compensatory damages must be filed as soon as possible after a final decision of the Board on the merits of an appeal but no later than 60 days after the date on which such decision becomes final. The judge or the Board, as applicable, may waive the time limit for making such request for good cause shown, and upon a finding that a waiver would not result in undue prejudice to the opposing party.

(2) *Place of filing.* When the initial decision in the proceedings on the merits was issued by a judge in an MSPB regional or field office, the request must be filed with the applicable regional or field office. When the initial decision in the proceedings on the merits was issued by a judge at the Board's headquarters or when the only decision was a final decision issued by the Board itself, the request must be filed with the Clerk of the Board.

(3) *Form and content of request.* A request for consequential, liquidated, or compensatory damages must be made in writing and state the basis for entitlement to an award of such damages, and the amount of damages sought.

(4) *Service.* A copy of the request must be served on the other parties or their representatives at the time of the request. A party may respond to the request within the time limit established by the judge or the Board, as applicable.

(5) *Hearing; applicability of subpart B.* The judge may grant the appellant's request for a hearing on a request for consequential, liquidated, or compensatory damages and may apply appropriate provisions of subpart B of this part to the addendum proceeding.

(6) *Initial decision; review by the Board.* The judge will issue an initial decision in the addendum proceeding, adjudicating the request for damages. The initial decision shall then be subject to the provisions for a petition for review

by the Board under subpart C of this part.

(7) *Request for damages made in proceeding before the Board.* Where a request for damages is made in a case which originates before the Board, the Board may:

(i) Consider both the merits of the case and the request for damages and issue a final decision; or

(ii) Remand the case to a judge for a new initial decision, either on the request for damages only or on both the merits and the request for damages.

(8) *EEOC review of decision on compensatory damages.* A final decision of the Board on a request for compensatory damages pursuant to the Civil Rights Act of 1991 shall be subject to review by the Equal Employment Opportunity Commission as provided under subpart E of this part.

[89 FR 72965, Sept. 9, 2024]

§ 1201.205 Judicial review.

A final Board decision under this subpart is subject to judicial review as provided under 5 U.S.C. 7703.

APPENDIX I TO PART 1201 [RESERVED]

APPENDIX II TO PART 1201—APPROPRIATE REGIONAL OR FIELD OFFICE FOR FILING APPEALS

All submissions shall be addressed to the Regional Director, if submitted to a regional office, or the Chief Administrative Judge, if submitted to a field office, Merit Systems Protection Board, at the addresses listed below, according to geographic region of the employing agency or as required by §1201.4(d) of this part. Address of Appropriate Regional or Field Office and Area Served:

1. Atlanta Regional Office, 401 West Peachtree Street, NW., 10th floor, Atlanta, Georgia 30308-3519, Facsimile No.: (404) 730-2767, (Alabama; Florida; Georgia; Mississippi; South Carolina; and Tennessee).

2. Central Regional Office, 230 South Dearborn Street, 31st floor, Chicago, Illinois 60604-1669, Facsimile No.: (312) 886-4231, (Illinois; Indiana; Iowa; Kansas City, Kansas; Kentucky; Michigan; Minnesota; Missouri; Ohio; and Wisconsin).

3. Northeastern Regional Office, 1601 Market Street, Suite 1700, Philadelphia, PA 19103, Facsimile No.: (215) 597-3456, (Connecticut; Delaware; Maine; Maryland—except the counties of Montgomery and Prince George's; Massachusetts; New Hampshire; New Jersey—except the counties of Bergen,

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Essex, Hudson, and Union; Pennsylvania; Rhode Island; Vermont; and West Virginia).

3a. New York Field Office, 1601 Market Street, Suite 1700, Philadelphia, PA 19103, Facsimile No.: (215) 597-3456, (New Jersey—counties of Bergen, Essex, Hudson, and Union; New York; Puerto Rico; and Virgin Islands).

4. Washington Regional Office, 1901 S. Bell Street, Arlington, Virginia 22202, Facsimile No.: (703) 756-7112, (Maryland—counties of Montgomery and Prince George’s; North Carolina; Virginia; Washington, DC; and all overseas areas not otherwise covered).

5. Western Regional Office, 1301 Clay Street, Suite 1380N, Oakland, California 94612-5217, Facsimile No.: (510) 273-7136, (Alaska; California; Hawaii; Idaho; Nevada; Oregon; Washington; and Pacific overseas areas).

5a. Denver Field Office, 165 South Union Blvd., Suite 318, Lakewood, Colorado 80228-2211, Facsimile No.: (303) 969-5109, (Arizona; Colorado; Kansas—except Kansas City; Montana; Nebraska; New Mexico; North Dakota; South Dakota; Utah; and Wyoming).

6. Dallas Regional Office, 1100 Commerce Street, Room 620, Dallas, Texas 75242-9979, Facsimile No.: (214) 767-0102, (Arkansas; Louisiana; Oklahoma; and Texas).

[69 FR 11503, Mar. 11, 2004, as amended at 69 FR 61991, Oct. 22, 2004; 72 FR 40215, July 24, 2007; 73 FR 2143, Jan. 14, 2008; 78 FR 43971, July 23, 2013; 82 FR 47083, Oct. 11, 2017; 88 FR 67058, Sept. 29, 2023]

APPENDIX III TO PART 1201 [RESERVED]

APPENDIX IV TO PART 1201—SAMPLE DECLARATION UNDER 28 U.S.C.1746

Declaration

I, _____, do hereby declare:
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.
Executed on _____

Date

Signature

PART 1202—STATUTORY REVIEW BOARD

AUTHORITY: 5 U.S.C. 1204.

§ 1202.1 Designating Chairman of Statutory Review Board.

At the written request of the Department of Transportation, the Chairman of the Board will designate a presiding official of the Board to serve as the

Chairman of any Board of Review established by the Secretary of Transportation under 5 U.S.C. 3383(b) to review certain actions to remove air traffic controllers.

[54 FR 28658, July 6, 1989]

PART 1203—PROCEDURES FOR REVIEW OF RULES AND REGULATIONS OF THE OFFICE OF PERSONNEL MANAGEMENT

GENERAL

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1203.21 Final order of the Board.

1203.22 Enforcement of order.

AUTHORITY: 5 U.S.C. 1204(a), 1204(f), and 1204(h).

SOURCE: 54 FR 23632, June 2, 1989, unless otherwise noted.

GENERAL

§ 1203.1 Scope; application of part 1201, subpart B.

(a) *General.* This part applies to the Board’s review, under 5 U.S.C. 1204(a)(4) and 1204(f), of any rules or regulations (“regulations”) issued by the Office of Personnel Management (OPM). It applies to the Board’s review of the way in which an agency implements regulations, as well as to its review of the validity of the regulations on their face.

(b) *Application of 5 CFR part 1201, subparts B and C.* (1) Where appropriate, and unless the Board’s regulations provide otherwise, the Board may apply the provisions of 5 CFR part 1201, subpart B to proceedings conducted under this part. It may do so on its own motion or on the motion of a party to these proceedings.

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(2) The following provisions of 5 CFR part 1201, subparts B and C do not apply to proceedings conducted under this part:

(i) Sections 1201.21 through 1201.27 which concern petitions for appeal of agency actions, and the pleadings that are filed in connection with those petitions; and

(ii) Sections 1201.111 through 1201.119 which concern final decisions of presiding officials, and petitions for Board review of those decisions.

[54 FR 23632, June 2, 1989, as amended at 54 FR 28658, July 6, 1989]

§ 1203.2 Definitions.

(a) *Invalid regulation* means a regulation that has been issued by OPM, and that, on its face, would require an employee to commit a prohibited personnel practice if any agency implemented the regulation.

(b) *Invalidly implemented regulation* means a regulation, issued by OPM, whose implementation by an agency has required an employee to commit a prohibited personnel practice. A valid regulation may be invalidly implemented.

(c) *Merit system principles* are the principles stated in 5 U.S.C. 2301(b)(1) through 2301(b)(9).

(d) *Pleadings* are written submissions containing claims, allegations, arguments, or evidence. They include briefs, motions, requests for regulation review, responses, replies, and attachments that are submitted in connection with proceedings under this part.

(e) Prohibited personnel practices are the impermissible actions described in 5 U.S.C. 2302(b)(1) through 2302(b)(12).

(f) *Regulation review* means the procedure under which the Board, under 5 U.S.C. 1204(f), reviews regulations issued by OPM on their face, or reviews those regulations as they have been implemented, or both, in order to determine whether the regulations require any employee to commit a prohibited personnel practice.

(g) *Request for regulation review* means a request that the Board review a regulation issued by OPM.

[54 FR 23632, June 2, 1989, as amended at 54 FR 28658, July 6, 1989; 77 FR 62373, Oct. 12, 2012]

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PROCEDURES FOR REVIEW

§ 1203.11 Request for regulation review.

(a) An interested person or the Special Counsel may submit a request for regulation review.

(b) Contents of request. (1) Each request for regulation review must include the following information:

(i) The name, address, and signature of the requester's representative or, if the requester has no representative, of the requester;

(ii) A citation identifying the regulation being challenged;

(iii) A statement (along with any relevant documents) describing in detail the reasons why the regulation would require an employee to commit a prohibited personnel practice; or the reasons why the implementation of the regulation requires an employee to commit a prohibited personnel practice;

(iv) Specific identification of the prohibited personnel practice at issue; and

(v) A description of the action the requester would like the Board to take.

(2) If the prohibited personnel practice at issue is one prohibited by 5 U.S.C. 2302(b)(12), the request must include the following additional information:

(i) Identification of the law or regulation that allegedly would be or has been violated, and how it would be or has been violated; and

(ii) Identification of the merit system principles at issue and an explanation of the way in which the law or regulation at issue implements or directly concerns those principles.

[54 FR 23632, June 2, 1989, as amended at 65 FR 57939, Sept. 27, 2000]

§ 1203.12 Granting or denying the request for regulation review.

(a) The Board, in its sole discretion, may grant or deny an interested person's request for regulation review. It will grant a request for regulation review that the Special Counsel submits. It will not, however, review a regulation before its effective date.

(b) If the Board grants a request, it will review the regulation to determine whether any provision, whether on its face or as implemented by the agency,

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would require any employee to violate 5 U.S.C. 2302(b).

[54 FR 23632, June 2, 1989, as amended at 56 FR 41749, Aug. 23, 1991; 89 FR 72966, Sept. 9, 2024]

§ 1203.13 Filing pleadings.

(a) *How to file.* A request for regulation review must be filed with the Office of the Clerk, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. In addition, parties to a proceeding under this part must serve their pleadings on each other in accordance with §1203.14 of this part. The Office of the Clerk will make all pleadings available for review by the public, including by posting the pleadings to the Board's website.

(b) *Time limits.* (1) A request for regulation review may be filed any time after the effective date of the regulation.

(2) A response to a request for regulation review, whether the response supports or opposes the request, must be filed within the time period provided in the Board order granting the request for review.

(3) A reply to a response may be filed within 10 days after the response is filed. The reply may address only those matters raised in the response that were not addressed in the request for regulation review.

(4) Motions may be filed at any time during the regulation review. The filing of a motion will not delay the acting of the Board unless the Board orders a postponement. The Board may rule immediately on a motion for an extension of time or a continuance if circumstances make consideration of others' views regarding the motion impracticable.

(5) Submissions opposing motions must be filed within five days after the opposing party receives the motion.

(c) *Additional pleadings.* The Board will consider pleadings in addition to those mentioned above only if the Board requests them, or if it grants a request that it consider them.

(d) *Method and date of filing.* An initial filing in a request for review and other pleadings may be filed with the Office of the Clerk by mail, by commercial or personal delivery, by facsimile, or by e-filing in accordance

with §1201.14 of this chapter. If the document was submitted by certified mail, it is considered to have been filed on the mailing date. If it was submitted by regular mail, it is presumed to have been filed five days before the Office of the Clerk receives it, in the absence of evidence contradicting that presumption. If it was delivered personally, it is considered to have been filed on the date the Office of the Clerk receives it. If it was submitted by facsimile, the date of the facsimile is considered to be the filing date. If it was submitted by commercial delivery, the date of filing is the date it was delivered to the commercial delivery service. If it was submitted by e-filing, it is considered to have been filed on the date of electronic submission.

(e) *Extensions of time.* The Board will grant a request for extension of time only when good cause is shown.

[54 FR 23632, June 21, 1989, as amended at 59 FR 65242, Dec. 19, 1994; 65 FR 48885, Aug. 10, 2000; 68 FR 59864, Oct. 20, 2003; 69 FR 57631, Sept. 27, 2004; 89 FR 72966, Sept. 9, 2024]

§ 1203.14 Serving documents.

(a) *Parties.* In every case, the person requesting regulation review must serve a copy of the request on the Director of OPM. In addition, when the implementation of a regulation is being challenged, the requester must also serve a copy of the request on the head of the implementing agency. A copy of all other pleadings must be served, by the person submitting the pleading, on each other party to the proceeding.

(b) *Method of serving documents.* Pleadings may be served on parties by mail, by personal delivery, by facsimile, or by commercial delivery. Service by mail is accomplished by mailing the pleading to each party or representative, at the party's or representative's last known address. Service by facsimile is accomplished by transmitting the pleading by facsimile to each party or representative. Service by personal delivery or by commercial delivery is accomplished by delivering the pleading to the business office or home of each party or representative and leaving it with the party or representative, or with a responsible person at that address. Regardless of