

## § 1205.22

### § 1205.22 Action on request.

(a) *Amendment granted.* If the Board grants the request for amendment, it will notify the requester and provide him or her with a copy of the amendment.

(b) *Amendment denied.* If the Board denies the request for amendment in whole or in part, it will provide the requester with a written notice that includes the following information:

- (1) The basis for the denial; and
- (2) The procedures for appealing the denial.

### § 1205.23 Time limits.

The Clerk of the Board, Regional Director, or Chief Administrative Judge will acknowledge a request for amendment within 10 workdays of receipt of the request in the appropriate office except under the unusual circumstances described in paragraphs (a)(1) through (a)(4) of §1205.12 of this part.

## Subpart D—Appeals

### § 1205.31 Submitting appeal.

(a) A partial or complete denial, by the Clerk of the Board, by the Regional Director, or by the Chief Administrative Judge, of a request for amendment may be appealed to the Chairman, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419-0001 within 10 workdays from the date of the denial.

(b) Any appeal must be in writing, must be clearly and conspicuously identified as a Privacy Act appeal on both the envelope and letter, and must include:

- (1) A copy of the original request for amendment of the record;
- (2) A copy of the denial; and
- (3) A statement of the reasons why the original denial should be overruled.

[64 FR 51043, Sept. 21, 1999, as amended at 65 FR 48886, Aug. 10, 2000]

### § 1205.32 Decision on appeal.

(a) The Chairman will decide the appeal within 30 workdays unless the Chairman determines that there is good cause for extension of that deadline. If an appeal is improperly labeled, does not contain the necessary infor-

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mation, or is submitted to an inappropriate official, the time period for processing that appeal will begin when the Chairman receives the appeal and the necessary information.

(b) If the request for amendment of a record is granted on appeal, the Chairman will direct that the amendment be made. A copy of the amended record will be provided to the requester.

(c) If the request for amendment of a record is denied, the Chairman will notify the requester of the denial and will inform the requester of:

- (1) The basis for the denial;
- (2) The right to judicial review of the decision under 5 U.S.C. 552a(g)(1)(A); and
- (3) The right to file a concise statement with the Board stating the reasons why the requester disagrees with the denial. This statement will become a part of the requester's record.

## PART 1206—OPEN MEETINGS

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AUTHORITY: 5 U.S.C. 552b.

SOURCE: 54 FR 20367, May 11, 1989, unless otherwise noted.

### Subpart A—Purpose and Policy

#### § 1206.1 Purpose.

The purpose of this part is to prescribe the procedures by which the Board will conduct open meetings in accordance with the Government in the

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Sunshine Act (5 U.S.C. 552b) (“the Act”).

### § 1206.2 Policy.

The Board will provide the public with the fullest practicable information regarding its decision-making processes, while protecting individuals’ rights and the Board’s ability to carry out its responsibilities. Meetings at which the Board members jointly conduct or dispose of official business are presumptively open to the public. The Board will close those meetings in whole or in part only in accordance with the exemptions provided under 5 U.S.C. 552b(c), and only when doing so is in the public interest.

### § 1206.3 Definitions.

The following definitions apply to this part:

(a) *Meeting* means deliberations of at least two Board members that determine or result in the joint conduct of official Board business.

(b) *Member* means one of the members of the Merit Systems Protection Board.

## Subpart B—Procedures

### § 1206.4 Notice of meeting.

(a) Notice of a Board meeting will be published in the FEDERAL REGISTER at least one week before the meeting. Each notice will include the following information:

- (1) The time of the meeting;
- (2) The place where the meeting will be held;
- (3) The subject and agenda of the meeting;
- (4) Whether the meeting is to be open to the public or closed; and
- (5) The name and telephone number of a Board official responsible for receiving inquiries regarding the meeting.

(b) The Board, by majority vote, may provide less than one week’s notice. When it does so, however, it will provide notice of the meeting at the earliest practicable time.

### § 1206.5 Change in meeting plans after notice.

(a) After notice of a meeting has been published, the Board may change the time or place of the meeting only if it

announces the change publicly at the earliest practicable time.

(b) After notice of a meeting has been published, the Board may not change either the subject matter of the meeting or the decision that the meeting will be open to the public or closed unless both of the following conditions are met:

(1) By majority, recorded vote, the Board members determine that Board business requires the change and that no earlier announcement of the change was possible; and

(2) Notice of the change, and of the individual Board members’ vote, is published in the FEDERAL REGISTER at the earliest practicable time.

### § 1206.6 Decision to close meeting.

(a) *Basis.* The Board, by majority vote, may decide to close a meeting in accordance with the provisions of 5 U.S.C. 552b(c)(1) to 552b(c)(10) when closing the meeting is in the public interest.

(b) *General Counsel certification.* For every meeting that is closed to the public in whole or in part, the General Counsel will certify that closing the meeting is proper, and will state the basis for that opinion.

(c) *Vote.* Within one day after voting to close a meeting, the Board will make publicly available a record reflecting the vote of each member. In addition, within one day after any vote to close a portion or portions of a meeting to the public, the Board will make publicly available a full written explanation of its decision to close the meeting, together with a list naming all persons expected to attend the meeting and identifying their affiliation, unless that disclosure would reveal the information that the meeting was closed to protect.

### § 1206.7 Transcripts, recordings, or minutes of open and closed meetings; public availability; retention.

(a) *Closed meetings.* (1) For every meeting, or portion thereof, closed pursuant to this part the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the Board. For each such meeting, or portion thereof,

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the Board shall maintain a copy of the General Counsel's certification under §1206.6(b) of this part, a statement from the presiding official specifying the time and place of the meeting and naming the persons present, a record (which may be part of the transcript) of all votes and all documents considered at the meeting, and a complete transcript or electronic recording of the proceedings, except that for meetings or portions of meetings closed pursuant to section (10) of 5 U.S.C. 552b(c), the Board may maintain either a transcript, electronic recording, or a set of minutes. In lieu of a transcript or electronic recording, a set of minutes shall fully and accurately summarize any action taken, the reasons therefore and views thereon, documents considered and the members' vote on each roll call vote, if any.

(2) The Board shall make promptly available to the public copies of transcripts, recordings, or minutes maintained as provided in accordance with this paragraph (a), except to the extent the items therein contain information which the Board determines may be withheld pursuant to the provisions of 5 U.S.C. 552b(c). Copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs or the actual cost of transcription.

(3) The Board shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two (2) years after such meeting or until one (1) year after the conclusion of any Board proceeding with respect to which the meeting or portion was held whichever occurs later.

(b) *Open meetings.* Transcripts or other records will be made of all open meetings of the Board. Those records will be made available upon request at a fee representing the Board's actual cost of making them available.

[76 FR 10755, Feb. 28, 2011]

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### § 1206.8 Providing information to the public.

Information available to the public under this part will be made available by the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419. Individuals or organizations with a special interest in activities of the Board may ask the Office of the Clerk to have them placed on a mailing list for receipt of information available under this part.

[54 FR 20367, May 11, 1989, as amended at 65 FR 48886, Aug. 10, 2000]

### § 1206.9 Procedures for expedited closing of meetings.

Instead of following the procedures described in §§1206.4 through 1206.8 of this part, and in §§1206.11 and 1206.12, the Board may expedite the closing of its meetings under the following conditions by using the following procedures:

(a) *Finding.* (1) Most regular Board business consists of reviewing initial decisions in cases adjudicated after an opportunity for a hearing has been provided. Based on a review of this circumstance, the legislative history of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Government in the Sunshine Act (5 U.S.C. 552b), and the Board's regulations at 5 CFR part 1201, the Board finds that a majority of its meetings may properly be closed to the public under 5 U.S.C. 552b(c)(10) and 552b(d)(4).

(2) Absent a compelling public interest to the contrary, meetings or portions of meetings that can be expected to be closed under these procedures include meetings held to consider the following: Petitions for review or cases that have been or may be reopened under 5 CFR 1201.114 through 1201.117; proposals to take action against administrative law judges under 5 CFR 1201.131 through 1201.136; and actions brought by the Special Counsel under 5 CFR 1201.129.

(b) *Announcement.* The Board will announce publicly, at the earliest practicable time, the time, place, and subject matter of meetings or portions of meetings that are closed under this provision.

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(c) *Procedure for closing meetings under this section.* At the beginning of a meeting or portion of a meeting that is to be closed under this section, the Board may, by recorded vote of two of its members, decide to close the meeting or a portion of it to public observation. The Board may take this action, however, only after it receives a certification by the General Counsel under § 1206.6(b) of this part.

(d) *Record Availability.* When the Board has closed a meeting or portion of a meeting under this paragraph, it will make the following available as soon as practicable:

(1) A written record reflecting the vote of each participating member of the Board with respect to closing the meeting; and

(2) The General Counsel certification under § 1206.6(b).

### Subpart C—Conduct of Meetings

#### § 1206.11 Meeting place.

The Board will hold open meetings in meeting rooms designated in the public announcements of those meetings. Whenever the number of observers is greater than can be accommodated in the designated meeting room, however, it will make alternative facilities available to the extent possible.

#### § 1206.12 Role of observers.

The public may attend open meetings for the sole purpose of observation. Observers may not participate in the meetings unless they are expressly invited to do so. They also may not create distractions that interfere with the conduct and disposition of Board business, and they may be asked to leave if they do so. Observers of meetings that are partially closed must leave the meeting room when they are asked to do so.

## 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: 70 FR 24293, May 9, 2005, 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