

## 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.

#### 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]

#### 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.

## § 1200.10

(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, prepares 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

## 5 CFR Ch. II (1-1-12 Edition)

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.

(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

## Merit Systems Protection Board

## Pt. 1201

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.

##### 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; affirmative defenses.

- 1201.57 Order of hearing.
- 1201.58 Closing the record.

##### EVIDENCE

- 1201.61 Exclusion of evidence and testimony.
- 1201.62 Producing prior statements.
- 1201.63 Stipulations.
- 1201.64 Official notice.

##### DISCOVERY

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

##### SUBPOENAS

- 1201.81 Requests for subpoenas.
- 1201.82 Motions to quash subpoenas.
- 1201.83 Serving subpoenas.
- 1201.84 Proof of service.
- 1201.85 Enforcing subpoenas.

##### INTERLOCUTORY APPEALS

- 1201.91 Explanation.
- 1201.92 Criteria for certifying interlocutory appeals.
- 1201.93 Procedures.

##### EX PARTE COMMUNICATIONS

- 1201.101 Explanation and definitions.
- 1201.102 Prohibition on ex parte communications.
- 1201.103 Placing communications in the record; sanctions.

##### FINAL DECISIONS

- 1201.111 Initial decision by judge.
- 1201.112 Jurisdiction of judge.
- 1201.113 Finality of decision.

#### Subpart C—Petitions for Review of Initial Decisions

- 1201.114 Filing petition and cross petition for review.
- 1201.115 Contents of petition for review.
- 1201.116 Appellant requests for enforcement of interim relief.
- 1201.117 Board decisions; procedures for review or reopening.
- 1201.118 Board reopening of case and reconsideration of initial decision.
- 1201.119 OPM petition for reconsideration.
- 1201.120 Judicial review.

#### Subpart D—Procedures for Original Jurisdiction Cases

##### GENERAL

- 1201.121 Scope of jurisdiction; application of subparts B, F, and H.