# Rules and Regulations

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1200

### Board Organization

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board is republishing its organization and function statements to reflect the current alignment of the principal organizational units of the Board, their titles, and their primary functions. This action reflects a recent realignment of Board offices that strengthened management controls and added emphasis to sensitive programs, including the Board's ethics responsibilities.

**EFFECTIVE DATE:** August 23, 1991.

**FOR FURTHER INFORMATION CONTACT:** Bentley Roberts (202) 653–8892.

**SUPPLEMENTARY INFORMATION:** Since the Board last updated and published its organization and function statements on May 23, 1990 (55 FR 21171), the following organizational changes have been made: (1) The offices of Equal Employment Opportunity, the Inspector General, and the General Counsel now report directly to the Chairman; (2) public affairs functions are now centralized in the Office of Management Analysis; and (3) the title of the Personnel division in the Office of Administration has been changed to Human Resources Management.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

**List of Subjects in 5 CFR Part 1200**

Organization and functions (Government agencies).

For the reasons set out in the preamble, title 5, chapter II, subchapter A, of the Code of Federal Regulations, is amended as set forth below.

**Subchapter A—Organization and Procedures**

Part 1200 is revised to read as follows:

## PART 1200—BOARD ORGANIZATION

**Subpart A—General**

Sec.
1200.1 What is the Merit Systems Protection Board?
1200.2 Who is on the Board?

**Subpart B—Offices of the Board**

1200.10 Who assists the Board?

### Subpart A—General

Authority: 5 U.S.C. 1201 et seq.

**§ 1200.1 What is the Merit Systems Protection Board?**

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.

**§ 1200.2 Who is on the Board?**

(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.

### Subpart B—Offices of the Board

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

**§ 1200.10 Who assists the Board?**

(a) A staff helps the Board carry out its work. The staff is organized into the following offices:

(1) Office of the Executive Director.

(2) Office of Equal Employment Opportunity.

(3) Office of the Inspector General.

(4) Office of Management Analysis.

(5) Office of Administration.

(6) Office of the Administrative Law Judge.

(7) Office of Appeals Counsel.

(8) Office of the Clerk of the Board.

(9) Office of the General Counsel.

(10) Office of Policy and Evaluation.

(11) Office of Regional Operations.

(12) Regional Offices.

(b) *Office of the Executive Director.* The Executive Director manages the operations and programs of the Board's headquarters and regional offices under the direction of the Chairman.

(c) *Office of Equal Employment Opportunity.* The Director, Office of Equal Employment Opportunity, manages the Board's equal employment programs and reports directly to the Chairman.

(d) *Office of the Inspector General.* The Inspector General is the Board's internal auditor and reports directly to the Chairman. The Inspector General plans and directs audits, investigations, and internal control evaluations.

(e) *Office of Management Analysis.* The Director, Office of Management Analysis, develops and coordinates internal management programs and projects, conducts agencywide management reviews, and manages the Board's public affairs program.

(f) *Office of Administration.* The Director, Office of Administration, manages the Board's three administrative divisions: Financial and Administrative Management; Information Resources Management; and Human Resources Management.

(g) *Office of the Administrative Law Judge.* The Administrative Law Judge hears Hatch Act cases, disciplinary and corrective 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.

(h) *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 and other cases assigned by the Board.

(i) *Office of the Clerk of the Board.* The Clerk of the Board enters petitions for review and original jurisdiction cases onto the Board's docket and

monitors their processing. The Clerk of the Board also does the following:

(1) Gives information on the status of cases;

(2) Manages the Board's records, reports, and correspondence style and control programs; and

(3) Answers requests under the Freedom of Information and Privacy Acts at the Board's headquarters.

(j) *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, manages legislative policy, and performs congressional liaison. The General Counsel reports directly to the Chairman.

(k) *Office of Policy and Evaluation.* The Director, Policy and Evaluation, conducts special reviews and studies of Federal merit systems, including actions of the Office of Personnel Management under 5 U.S.C. 1206.

(l) *Office of Regional Operations.* The Director, Office of Regional Operations, manages the appellate functions of the 11 MSPB regional offices.

(m) *Regional Offices.* The Board has 11 regional offices located throughout the country (See appendix II to 5 CFR part 1201 for a list of the regional offices). The regional offices enter initial appeals onto their dockets and decide these cases as provided for in the Board's regulations.

Dated: August 19, 1991.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 91–20146 Filed 8–22–91; 8:45 am]

BILLING CODE 7400–01–M

## 5 CFR Part 1201

## Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board is amending part 1201: (1) By adding a new provision to § 1201.3, Appellate jurisdiction; (2) by amending § 1201.56, Burden and degree of proof; affirmative defenses; (3) by amending the areas served by its Chicago and St. Louis regional offices in appendix II to part 1201; and (4) by adding a new facsimile number for its Denver Regional Office in appendix II to part 1201. The amendments to §§ 1201.3 and 1201.56 reflect a legislative change in the Board's jurisdiction, and the amendments to appendix II are administrative changes. The amendments are needed to provide accurate information to Federal employees exercising their appeal rights to the Board.

**EFFECTIVE DATE:** August 23, 1991.

**FOR FURTHER INFORMATION CONTACT:** Duward Sumner (202) 653–8892.

**SUPPLEMENTARY INFORMATION:** Section 506 of the Ethics Reform Act of 1989 (Pub.L. 101–194, November 30, 1989) adds a new section 3393a to title 5 of the U.S.C., requiring that career appointees in the Senior Executive Service (SES) be recertified by their agencies every third year, beginning in calendar year 1991. Under the Act and the implementing regulations issued by the Office of Personnel Management (OPM) on January 3, 1991 (56 FR 165), a career appointee in the SES who is removed from the SES for failure to be recertified may appeal to the Merit Systems Protection Board. Both the Act and the implementing regulations issued by OPM provide that the agency action shall be sustained if it is supported by substantial evidence. The Board, therefore, is amending its regulations at 5 CFR 1201.3(a) to include removal of a career appointee from the SES for failure to be recertified as an agency action that is appealable to the Board. The Board is also amending its regulations at 5 CFR 1201.56(a)(i) to state that an action brought under 5 U.S.C. 3592(a)(3) must be sustained if it is supported by substantial evidence as defined at 5 CFR 1201.56(c)(1).

The amendment to appendix II to part 1201 with respect to the areas served by the Chicago and St. Louis regional offices transfers part of the state of Illinois from the geographic jurisdiction of the Chicago Regional Office to the geographic jurisdiction of the St. Louis Regional Office. This amendment is made to improve the efficiency of case adjudication and cost-effectiveness. The amendment to appendix II to part 1201 with respect to the Denver Regional Office reflects a change in the facsimile number.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

### List of subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends part 1201 as follows:

## PART 1201—[AMENDED]

1. The authority for 5 CFR part 1201 continues to read:

**Authority:** 5 U.S.C. 1204 and 7701 unless otherwise noted.

2. Section 1201.3 is amended by removing "and" from the end of paragraph (a)(18); by removing the period at the end of paragraph (a)(19); and by adding in its place "; and." A new paragraph (a)(20) is added to read as follows:

**§ 1201.3 Appellate jurisdiction.**

(a) * * *

(20) Removal of a career appointee from the Senior Executive Service for failure to be recertified (5 U.S.C. 3592(a)(3), 5 CFR 359.304).

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**§ 1201.56 [Amended]**

3. Section 1201.56(a)(1)(i) is amended by adding "5 U.S.C. 3592(a)(3)," after "under."

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4. Paragraphs 3. and 8., Appendix II to Part 1201, are revised to read:

### Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

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3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1669 (Illinois (all locations north of Springfield), Indiana, Michigan, Minnesota, Ohio, Wisconsin).

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8. St. Louis Regional Office, 911 Washington Avenue, suite 615, St. Louis, Missouri 63101–1203 (Illinois (Springfield and all locations south), Iowa, Kentucky, Missouri, Tennessee).

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5. Paragraph 5., Appendix II to Part 1201, is amended by removing Facsimile No.: "(303) 233–5438" and adding "(303) 231–5205."

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Dated: August 19, 1991.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 91–20181 Filed 8–22–91; 8:45 am]

BILLING CODE 7400–01–M

## 5 CFR Part 1203

## Procedures for Review of Rules and Regulations of the Office of Personnel Management

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board is amending its rules under part 1203 to remove the requirement that all Board orders granting or denying a request for regulation review be published in the **Federal Register.** The Board has determined that it does not need regulatory authority to publish its