Federal Register
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Monday, December 19, 1994

# Presidential Documents

Title 3—

The President

## Presidential Determination No. 95–9 of December 8, 1994

## Resumption of U.S. Drug Interdiction Assistance to the Government of Peru

**Memorandum for the Secretary of State [and] the Secretary of Defense**

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103–337, I hereby determine with respect to Peru that: (a) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (b) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
*Washington, December 8, 1994.*

[FR Doc. 94–31246
Filed 12–15–94; 4:05 pm]
Billing code 4710–10–M

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## 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 amending its organization and functions statement to reflect the reorganization of the Board's headquarters offices in accordance with the recommendations of the National Performance Review (NPR) and the President's Memorandum of September 11, 1993, titled "Streamlining the Bureaucracy." In addition, the Board is amending the titles of sections 1200.1, 1200.2, and 1200.10 of this part.

**EFFECTIVE DATE:** December 19, 1994.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653–7200.

**SUPPLEMENTARY INFORMATION:** On March 30, 1994 (59 FR 14739), the Board published a revision to its organization and functions statement to reflect the realignment of its regional offices. Since that time, the Board completed its review of the organization and functions of its headquarters offices and effected a reorganization of those offices in accordance with the recommendations of the National Performance Review (NPR) and the President's Memorandum of September 11, 1993, titled "Streamlining the Bureaucracy." The reorganization eliminates excessive layers of management review and control, consolidates functions, and improves the ratio of supervisors and managers to other employees.

The following organizational changes have been made in the Board's headquarters offices: (1) The office of the Executive Director has been abolished; (2) the offices of Inspector General and Management Analysis have been abolished and their functions distributed to other offices; (3) the offices of Administrative Law Judge and Regional Operations have been combined; and (4) the office of Administration has been assigned additional functions and retitled the office of Planning and Resource Management Services.

The Board is amending the titles of §§ 1200.1, 1200.2, and 1200.10 of this part to conform them to the format of the new § 1200.3 of this part added effective August 5, 1994 (59 FR 39937) and the other parts of the Board's regulations (5 CFR parts 1201 through 1210).

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).

Accordingly, the Board amends 5 CFR part 1200 as follows:

## PART 1200—[AMENDED]

1. The authority citation for part 1200, subpart A—General, continues to read as follows:

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

2. The authority citation for part 1200, subpart B—Offices of the Board, continues to read as follows:

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

3. The heading of § 1200.1 is revised to read "Statement of purpose."

4. The heading of § 1200.2 is revised to read "Board members and duties."

5. Section 1200.10 is revised to read as follows:

**§ 1200.10 Staff organization and functions.**

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

(1) Office of the Administrative Law Judge and Regional Operations.
(2) Office of Appeals Counsel.
(3) Office of the Clerk of the Board.
(4) Office of the General Counsel.
(5) Office of Policy and Evaluation.
(6) Office of Equal Employment Opportunity.
(7) Office of Planning and Resource Management Services.

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

(1) *Office of the Administrative Law Judge and Regional Operations.* 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. The office also manages the appellate functions of the MSPB regional and field offices.

(2) *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.

(3) *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:

(i) Gives information on the status of cases;

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

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

(4) *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, coordinates legislative policy and performs congressional liaison, coordinates the Board's public affairs function, and plans and directs audits and investigations.

(5) *Office of Policy and Evaluation.* The Director, Policy and Evaluation, conducts special reviews and studies of Federal merit systems, including reviews of the significant actions of the Office of Personnel Management.

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

(7) *Office of Planning and Resource Management Services.* The Director, Office of Planning and Resource Management Services, develops and coordinates internal management programs and projects, conducts agencywide management reviews, and manages the Board's three administrative divisions: Financial and Administrative Management; Information Resources Management; and Human Resources Management.

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

Dated: December 12, 1994.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 94–30892 Filed 12–16–94; 8:45 am]

BILLING CODE 7400–01–P

## 5 CFR Part 1201

## Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Board is amending its rules to update and clarify various provisions and to ensure that the rules in this part, as a whole, are effective, consistent, sensible, and understandable, in accordance with Executive Order 12866 of September 30, 1993. By making this amendment, the Board is providing current and consistent information to its customers regarding its adjudicatory practices and procedures.

**EFFECTIVE DATE:** December 19, 1994.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, 202–653–7200.

**SUPPLEMENTARY INFORMATION:** The Merit Systems Protection Board is amending its rules at 5 CFR part 1201 to add a new appealable action and to correct the citations for two others in § 1201.3(a); to delete § 1201.3(d); to clarify the place of filing requirements in §§ 1201.4(d), 1201.22(a), and 1201.182 following the realignment of the Board's regional and field offices; to correct a cross-reference in § 1201.37(a); to conform the method of filing requirements for original jurisdiction cases in § 1201.122(c) to those for appellate jurisdiction cases; to replace the July 1991 edition of the MSPB Appeal Form in Appendix I with the revised October 1994 edition; to add information regarding the TDD (Telecommunications Device for the Deaf) capability of facsimile numbers in the regional and field offices, add the suite number of the Atlanta Regional Office, and change the address and facsimile number of the Denver Field Office in Appendix II; and to add and delete approved hearing locations in Appendix III.

(a) Section 1201.3(a)(6) is amended by adding 5 CFR part 844 to the citation so that the citation refers to the part of the regulations of the Office of Personnel Management governing disability retirement determinations under the Federal Employees' Retirement System, as well as to 5 CFR parts 831 and 842.

(b) Section 1201.3(a)(7) is amended by correcting the citation to read "5 CFR 731.103(d) and 731.508." The corrected citation refers to the regulations of the Office of Personnel Management providing for appeals to the Board of suitability determinations made by an agency acting under authority delegated by OPM (5 CFR 731.103(d)) and such determinations made by OPM (5 CFR 731.508).

(c) Section 1201.3(a) is amended by adding a new subparagraph (21) to include as an action appealable to the Board a reduction-in-force action affecting a career or career candidate appointee in the Foreign Service. Public Law 103–326, effective April 30, 1994, amended the Foreign Service Act of 1980 (22 U.S.C. 4001 et seq.) by, *inter alia*, providing authority to the Secretary of State to conduct reductions in force affecting career or career candidate appointees in the Foreign Service and by granting those appointees the right to appeal such reduction-in-force actions to the Board.

(d) Section 1201.3 is amended by deleting paragraph (d). This paragraph was added to the Board's rules in this part to implement 5 U.S.C. 1221(j), as added by the Whistleblower Protection Act of 1989 (Pub. L. 101–12). Subsequently, the Board ruled in *McCann* v. *Navy*, 57 M.S.P.R. 288 (1993) that 5 U.S.C. 1221(j) and the Board's regulation at 5 CFR 1201.3(d) should be construed to apply only to individual right of action appeals and other actions established by 5 U.S.C. chapter 12. Because the provisions of part 1201 are applicable to appeals that arise from actions other than those established by 5 U.S.C. chapter 12, the Board has determined that the continued inclusion of § 1201.3(d) in this part is likely to prove confusing to parties and that it should, therefore, be deleted.

(e) Section 1201.4(d) is amended to clarify the definition of "appropriate" office for purposes of filings with the Board. On March 30, 1994 (59 FR 14739), the Board published a revision to its rules in appendix II and appendix III of this part to reflect the realignment of its regional office structure into six regional and five field offices. In the **SUPPLEMENTARY INFORMATION** explaining that revision, the Board stated in part: "Appeals and related matters will continue to be filed with either the regional or field office having geographic jurisdiction." The Board is now amending § 1201.4(d) to specifically include field offices, as well as regional offices, in the definition.

(f) Section 1201.22(a) is amended to clarify that appeals and responses to appeals are to be filed with the appropriate Board regional or field office. See explanation in paragraph (e) above.

(g) Section 1201.37(a) is amended by deleting the reference to "§ 1201.116" and replacing it with "§ 1201.117." On June 16, 1994 (59 FR 30863), the Board published an amendment to its rules in this part that revised § 1201.115, redesignated §§ 1201.116 through 1201.119 as §§ 1201.117 through 1201.120, respectively, and added a new § 1201.116. Because the former § 1201.116 was redesignated as § 1201.117, the Board is now making a conforming amendment to the cross-reference to that section in § 1201.37(a).

(h) Section 1201.122(c) is amended by adding "commercial overnight delivery" as a method of filing and service. On July 7, 1993 (58 FR 36345), the Board amended its rules in subparts B and C of this part to permit filing and service of appeals and petitions for review by commercial overnight delivery. The Board is now amending § 1201.122(c) to conform the method of filing and service requirements for Special Counsel complaints and proposed agency actions against administrative law judges in subpart D of this part to those for appeals and petitions for review.

(i) Section 1201.163(c)(1) is amended to clarify that mixed case appeals governed by Reorganization Plan No. 1 of 1978 are to be filed with the appropriate Board regional or field office. See explanation in paragraph (e) above.

(j) Section 1201.182(a) and § 1201.182(c) are amended to clarify that petitions for enforcement of orders issued under the Board's appellate jurisdiction are to be filed with the appropriate Board regional or field office. See explanation in paragraph (e) above.

(k) Appendix I is amended by substituting the revised October 1994 edition of the MSPB Appeal Form, Optional Form 283 (Rev. 10/94), for the July 1991 edition. The form has been revised as follows:

(1) On page 1, "WHERE TO FILE AN APPEAL" has been revised to state that the appeal is to be filed with the Board's regional or field office having geographic jurisdiction.

(2) On page 1, "WHEN TO FILE AN APPEAL" has been revised to reflect the