

# Rules and Regulations

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to conform certain provisions to the new part 1208 of the Board's regulations that is being issued simultaneously with this amendment. The new part 1208 describes the Board's practices and procedures with respect to appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and the Veterans Employment Opportunities Act of 1998. This part is being amended to provide appropriate cross-references to the new part 1208 and to remove provisions that have been incorporated into the new part 1208.

**EFFECTIVE DATE:** February 4, 2000.

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

**SUPPLEMENTARY INFORMATION:** The Board is publishing separately a new part 1208 of its rules of practice and procedure to cover appeals filed under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (Public Law 103-353), as amended, and the Veterans Employment Opportunities Act of 1998 (VEOA) (Public Law 105-339). Because certain provisions regarding USERRA appeals have been included previously in part 1201 (interim rule at 62 FR 66813, December 22, 1997; final rule at 64 FR 54507, October 7, 1999), certain changes are necessary to conform that part to the new part 1208. Part 1201 is being amended to provide appropriate cross-

references to the new part 1208 and to remove provisions that have been incorporated into the new part 1208.

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, Lawyers.

Accordingly, the Board amends 5 CFR part 1201 as follows:

1. The authority citation for part 1201 is revised to read as follows:

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

2. Section 1201.3 is amended by adding "and" at the end of paragraph (a)(20), by removing ";" and" at the end of paragraph (a)(21) and adding a period in its place, by removing paragraph (a)(22) in its entirety, by redesignating paragraph (b) as paragraph (b)(2), and by adding a new paragraph (b)(1) to read as follows:

#### § 1201.3 Appellate jurisdiction.

(a) \* \* \*

(b)(1) *Appeals under the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act.* Appeals filed under the Uniformed Services Employment and Reemployment Rights Act (Public Law 103-353), as amended, and the Veterans Employment Opportunities Act (Public Law 105-339) are governed by part 1208 of this title. The provisions of subparts A, B, C, and F of part 1201 apply to appeals governed by part 1208 unless other specific provisions are made in that part. The provisions of subpart H of this part regarding awards of attorney fees apply to appeals governed by part 1208 of this title.

(2) \* \* \*

\* \* \* \* \*

3. Section 1201.22 is amended by revising paragraph (b)(2) to read as follows:

#### § 1201.22 Filing an appeal and responses to appeals.

(a) \* \* \*

(b) *Time of filing.* (1) \* \* \*

(2) The time limit prescribed by paragraph (b)(1) for filing an appeal does not apply where a law or regulation establishes a different time limit or where there is no applicable time limit. No time limit applies to

appeals under the Uniformed Services Employment and Reemployment Rights Act (Public Law 103-353), as amended; see part 1208 of this title. See part 1208 of this title for the statutory filing time limits applicable to appeals under the Veterans Employment Opportunities Act (Public Law 105-339). See part 1209 of this title for the statutory filing time limits applicable to whistleblower appeals and stay requests.

#### § 1201.31 [Amended]

4. Section 1201.31 is amended by removing paragraph (e) in its entirety.

#### § 1201.121 [Amended]

5. Section 1201.121 is amended by revising the last sentence of paragraph (c) to read as follows: "Such appeals are governed by part 1208 of this title."

6. Section 1201.202 is amended by removing "and" at the end of paragraph (a)(6), by removing the period at the end of paragraph (a)(7) and adding in its place ";" and", by adding a new paragraph (a)(8), and by revising paragraph (d)(1) to read as follows:

#### § 1201.202 Authority for awards.

(a) \* \* \*

(8) Attorney fees, expert witness fees, and other litigation expenses, as authorized by the Veterans Employment Opportunities Act; 5 U.S.C. 3330c(b).

\* \* \* \* \*

(d)(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.

\* \* \* \* \*

Dated: January 28, 2000.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 00-2338 Filed 2-3-00; 8:45 am]

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