

# Rules and Regulations

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Interim rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending several provisions of its practices and procedures regulations to improve the agency's service to its customers by facilitating the expeditious adjudication of appeals. The amendments allow the judge to grant a joint or unilateral request for suspension of a case for only one 30-day period rather than two 30-day periods. Moreover, the amended regulations no longer provide for the automatic granting of such requests; instead, requests for the suspension of a case may be granted at the discretion of the judge. As a result of these amendments, the maximum amount of time that a case may be suspended has been reduced from 60 to 30 days.

The amended regulations also impose a condition on the judge's exercise of discretion in granting unilateral requests for an additional suspension period. Such requests may be granted for good cause shown pursuant to the amended regulations. The amended regulations also specify a 30-day limit on the amount of time the judge may grant for a unilateral request.

Two new subsections have also been added to the regulations governing discovery procedures. These subsections permit the administrative judge to impose limits on the frequency or extent of the use of discovery methods and the number of discovery requests. The Board has decided to follow the guidance of the Federal Rules of Civil Procedure in adopting these changes to its discovery procedures. The

regulations governing discovery procedures have also been amended to reduce the number of days for filing subsequent discovery requests from 10 days to 7 days.

**DATES:** Effective date: September 18, 2003. Submit written comments on or before October 20, 2003.

**ADDRESSES:** Send comments to Bentley M. Roberts, Jr., Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653-7200, fax: (202) 653-7130 or e-mail: [mspb@mspb.gov](mailto:mspb@mspb.gov).

**FOR FURTHER INFORMATION CONTACT:** Bentley M. Roberts, Jr., Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653-7200, fax: (202) 653-7130 or e-mail: [mspb@mspb.gov](mailto:mspb@mspb.gov).

**SUPPLEMENTARY INFORMATION:** These changes in the Board's rules of practice and procedure respond in part to the directives contained in the President's Management Agenda (2002). The President's management reform initiative directs agencies to "reshape their organizations to meet a standard of excellence in attaining the outcomes important to the nation." Among other actions, agencies are directed to reduce the time they take to make decisions.

Both appellants and agencies have also expressed concern about the amount of time it takes to adjudicate or otherwise process a case through the Board. As a result, the Board has reviewed its practice and procedure regulations and determined that certain timelines affecting the adjudication process could be shortened without adverse effects on the rights of the parties to a fair and impartial adjudication of appeals before the Board.

#### List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

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

#### PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

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

■ 2. Revise § 1201.28 to read as follows:

#### § 1201.28 Case suspension procedures.

(a) *Joint requests.* The parties may submit a joint request for additional time to pursue discovery or settlement. Upon receipt of such request, an order suspending processing of the case for a period up to 30 days may be issued at the discretion of the judge.

(b) *Unilateral requests.* In lieu of participating in a joint request, either party may submit a unilateral request for additional time to pursue discovery as provided in this subpart. Unilateral requests for additional time of up to 30 days may be granted for good cause shown at the discretion of the judge.

(c) *Time for filing requests.* The parties must file a joint request that the adjudication of the appeal be suspended within 45 days of the date of the acknowledgment order (or within 7 days of the appellant's receipt of the agency file, whichever date is later).

(d) *Untimely requests.* The judge may consider requests for suspensions that are filed after the time limit set forth in paragraph (c) of this section. Such requests may be granted at the discretion of the judge.

(e) *Early termination of suspension period.* The suspension period may be terminated prior to the end of the agreed upon period if the parties request the judge's assistance relative to discovery or settlement during the suspension period and the judge's involvement pursuant to that request is likely to be extensive.

(f) *Limitation on suspension period.* No case may be suspended for more than a total of 30 days under the provisions of this section.

■ 3. Revise §§ 1201.72 and 1201.73 to read as follows:

#### § 1201.72 Explanation and scope of discovery.

(a) *Explanation.* Discovery is the process, apart from the hearing, by which a party may obtain relevant information, including the identification of potential witnesses, from another person or a party, that the other person or party has not otherwise provided. Relevant information includes information that appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained to assist the parties in preparing and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for