

Merit Systems Protection Board

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ORDER OF THE BOARD

- 1203.21 Final order of the Board.
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AUTHORITY: 5 U.S.C. 1204(a), 1204(f), and 1204(h).

SOURCE: 54 FR 23632, June 2, 1989, unless otherwise noted.

GENERAL

§ 1203.1 Scope; application of part 1201, subpart B.

(a) *General.* This part applies to the Board's review, under 5 U.S.C. 1204(a)(4) and 1204(f), of any rules or regulations ("regulations") issued by the Office of Personnel Management (OPM). It applies to the Board's review of the way in which an agency implements regulations, as well as to its review of the validity of the regulations on their face.

(b) *Application of 5 CFR part 1201, subparts B and C.* (1) Where appropriate, and unless the Board's regulations provide otherwise, the Board may apply the provisions of 5 CFR part 1201, subpart B to proceedings conducted under this part. It may do so on its own motion or on the motion of a party to these proceedings.

(2) The following provisions of 5 CFR part 1201, subparts B and C do not apply to proceedings conducted under this part:

(i) Sections 1201.21 through 1201.27 which concern petitions for appeal of agency actions, and the pleadings that are filed in connection with those petitions; and

(ii) Sections 1201.111 through 1201.119 which concern final decisions of presiding officials, and petitions for Board review of those decisions.

[54 FR 23632, June 2, 1989, as amended at 54 FR 28658, July 6, 1989]

§ 1203.2 Definitions.

(a) *Invalid regulation* means a regulation that has been issued by OPM, and that, on its face, would require an employee to commit a prohibited personnel practice if any agency implemented the regulation.

(b) *Invalidly implemented regulation* means a regulation, issued by OPM, whose implementation by an agency has required an employee to commit a prohibited personnel practice. A valid regulation may be invalidly implemented.

(c) *Merit system principles* are the principles stated in 5 U.S.C. 2301(b)(1) through 2301(b)(9).

(d) *Pleadings* are written submissions containing claims, allegations, arguments, or evidence. They include briefs, motions, requests for regulation review, responses, replies, and attachments that are submitted in connection with proceedings under this part.

(e) *Prohibited personnel practices* are the impermissible actions described in 5 U.S.C. 2302(b)(1) through 2302(b)(11).

(f) *Regulation review* means the procedure under which the Board, under 5 U.S.C. 1204(f), reviews regulations issued by OPM on their face, or reviews those regulations as they have been implemented, or both, in order to determine whether the regulations require any employee to commit a prohibited personnel practice.

(g) *Request for regulation review* means a request that the Board review a regulation issued by OPM.

[54 FR 23632, June 2, 1989, as amended at 54 FR 28658, July 6, 1989]

PROCEDURES FOR REVIEW

§ 1203.11 Request for regulation review.

(a) An interested person or the Special Counsel may submit a request for regulation review.

(b) Contents of request. (1) Each request for regulation review must include the following information:

(i) The name, address, and signature of the requester's representative or, if the requester has no representative, of the requester;

(ii) A citation identifying the regulation being challenged;

(iii) A statement (along with any relevant documents) describing in detail the reasons why the regulation would require an employee to commit a prohibited personnel practice; or the reasons why the implementation of the regulation requires an employee to

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commit a prohibited personnel practice;

(iv) Specific identification of the prohibited personnel practice at issue; and

(v) A description of the action the requester would like the Board to take.

(2) If the prohibited personnel practice at issue is one prohibited by 5 U.S.C. 2302(b)(12), the request must include the following additional information:

(i) Identification of the law or regulation that allegedly would be or has been violated, and how it would be or has been violated; and

(ii) Identification of the merit system principles at issue and an explanation of the way in which the law or regulation at issue implements or directly concerns those principles.

[54 FR 23632, June 2, 1989, as amended at 65 FR 57939, Sept. 27, 2000]

§ 1203.12 Granting or denying the request for regulation review.

(a) The Board, in its sole discretion, may grant or deny an interested person's request for regulation review. It will grant a request for regulation review that the Special Counsel submits. It will not, however, review a regulation before its effective date.

(b) After considering the request for regulation review, the Board will issue an order granting or denying the request in whole or in part. Orders in which the Board grants the request, in whole or in part, will identify the agency or agencies involved, if any. They also will include the following:

(1) A citation identifying the regulation being challenged;

(2) A description of the issues to be addressed;

(3) The docket number assigned to the proceedings; and

(4) Instructions covering the review proceedings, including information regarding the time limits for filing submissions related to the request.

[54 FR 23632, June 2, 1989, as amended at 56 FR 41749, Aug. 23, 1991]

§ 1203.13 Filing pleadings.

(a) *Place to file and number of copies.* One original and three copies of each pleading must be filed with the Office of the Clerk, U.S. Merit Systems Protection Board, 1615 M Street, NW.,

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Washington, DC 20419. In addition, parties to a proceeding under this part must serve their pleadings on each other in accordance with § 1203.14 of this part. The Office of the Clerk will make all pleadings available for review by the public.

(b) *Time limits.* (1) A request for regulation review may be filed any time after the effective date of the regulation.

(2) A response to a request for regulation review, whether the response supports or opposes the request, must be filed within the time period provided in the Board order granting the request for review.

(3) A reply to a response may be filed within 10 days after the response is filed. The reply may address only those matters raised in the response that were not addressed in the request for regulation review.

(4) Motions may be filed at any time during the regulation review. The filing of a motion will not delay the acting of the Board unless the Board orders a postponement. The Board may rule immediately on a motion for an extension of time or a continuance if circumstances make consideration of others' views regarding the motion impracticable.

(5) Submissions opposing motions must be filed within five days after the opposing party receives the motion.

(c) *Additional pleadings.* The Board will consider pleadings in addition to those mentioned above only if the Board requests them, or if it grants a request that it consider them.

(d) *Method and date of filing.* Documents may be filed with the Office of the Clerk either by mail, by personal delivery, by facsimile, or by commercial overnight delivery. If the document was submitted by certified mail, it is considered to have been filed on the mailing date. If it was submitted by regular mail, it is presumed to have been filed five days before the Office of the Clerk receives it, in the absence of evidence contradicting that presumption. If it was delivered personally, it is considered to have been filed on the date the Office of the Clerk receives it. If it was submitted by facsimile, the date of the facsimile is considered to be the filing date. If it was submitted by