

Comments Re Proposed New MSPB Regulations, **Federal Register 33663**, June 7, 2012

Paragraph	Language	Comment
1200.4	“(b) No public procedures will be held on the petition before its disposition. If the MSPB finds that the petition contains adequate justification, a rulemaking proceeding will be initiated or a final rule will be issued as appropriate.”	The MSPB has a unique mission to protect the integrity of the Federal personnel system. This proposed rule seems to say that the MSPB might issue rules (regulations) without allowing the stakeholders and the public the opportunity to comment. This is not consistent with the current focus on transparency and open Government, and may even be inconsistent with the requirements of the Administrative Procedures Act. Even if the APA would allow this, it does not serve the public well, and may give the appearance that the proposals of certain groups will be treated differently/more favorably (no comment period) , than proposals from other groups. Allowing a comment period not only adds value to the process, it helps maintain the appearance of fairness and objectivity in the process.
1201.21	Expands requirements for Agencies to inform employees of their rights when issuing a decision of an appealable action. Includes stating option to file OSC/IRA action or an EEO complaint, and explaining impact of selecting among various remedies when alleging a PPP.	This is a vastly expanded and highly complex notice requirement. It places agencies at higher risk of harmful error violations if they don't articulate the requirements well, and does nothing meaningful to help employees and appellants better understand their rights. To eliminate these likely adverse effects on both agencies and employees, MSPB should include in these regulations plain language covering the required content, which agencies may copy into their adverse action notices.
1201.33	Federal Witnesses	The MSPB added “to appear at a deposition” to the first sentence of subparagraph (a) to clarify that Federal agencies have the obligation of making its employees available at depositions, but it did not include the same language in the second sentence of the same subparagraph, making it clear that those employees are in official duty status when they appear at depositions. I think this omission will create ambiguity and confusion.
1201.113	Finality of Decision	It appears that the word “decision” may have been inadvertently omitted after “Board’s final” in the first sentence of this proposed rule.

1201.118	Board Reopening of Final Decisions	The proposed modifications to this regulation severely limit the jurisdiction the Board currently has to reopen and reconsider cases on its own motion. These proposed limitations appear to be in conflict with the broad statutory authority granted to the Board by 5 U.S.C. §7701(e)(1).