



MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Appellate Jurisdiction Update

AGENCY: Merit Systems Protection Board (MSPB).

ACTION: Final rule

SUMMARY: The Merit Systems Protection Board (MSPB or Board) is amending its regulations to remove certain appeal rights to MSPB for actions related to placement or movement of a civil service employee into an excepted service position without civil service protection. This rule reflects the Office of Personnel Management's (OPM's) rescission of these rights.

DATE: This final rule is effective on March 9, 2026.

FOR FURTHER INFORMATION CONTACT: Gina K. Grippando, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419; phone: (202) 653-7200; fax: (202) 653-7130; or email: mspb@mspb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Civil Service Reform Act grants MSPB jurisdiction to hear appeals of any action made appealable to MSPB under law, rule, or regulation. 5 U.S.C. 7701(a). For the benefit of MSPB's stakeholders, MSPB's regulation at 5 CFR 1201.3 contains a list of the types of appeals MSPB has been granted jurisdiction to hear.

In 2024, following notice and comment on a proposed rule, OPM issued a final rule, 5 CFR 302.603, which conferred jurisdiction on MSPB to hear appeals from: (1) federal employees moved from the competitive service into the excepted service, or moved between schedules in the excepted service, when the agency

asserts that the employee would lose appeal rights, competitive status, or other previously accrued protections as a result of that move; and (2) an agency's failure to provide required notice to the employee regarding whether the move would affect the employee's appeal rights, competitive status, or other accrued protections. After notice and comment on a proposed rule, MSPB concurrently amended 5 CFR 1201.3 to reflect MSPB's new jurisdiction over the appeal rights conferred by OPM's rule, 5 CFR 302.603. MSPB's amendment was codified at 5 CFR 1201.3(a)(12).

On February 6, 2026, OPM rescinded 5 CFR 302.603, which had conferred jurisdiction on MSPB to hear the above employee appeal rights. Consequently, MSPB now amends 5 CFR 1201.3 to reflect the removal of these appeal rights, and mirror OPM's new rules, which rescinded the previously codified basis for MSPB jurisdiction.

II. Summary of Changes

Section 1201.3 Appellate Jurisdiction

The proposed amendment removes the appeal right in 5 CFR 1201.3(a)(12) from the list of appealable actions identified in section 1201.3(a).

III. Effective Date of Amendment

The amendment described above will go into effect on **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**

IV. Regulatory Compliance

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), MSPB finds that there is good cause to issue this final rule without prior notice and comment. This final rule merely reflects OPM's rescission of the regulatory basis for MSPB's jurisdiction. MSPB lacks any discretion regarding this change, and thus in this rulemaking action. OPM's rescission removes MSPB's jurisdiction over these cases, regardless of whether

MSPB updates its regulations to reflect this fact. Accordingly, notice and public comment procedures are unnecessary.

Similarly, pursuant to 5 U.S.C. 553(d)(3), MSPB finds that there is good cause to make this final rule effective immediately upon publication. This final rule merely reflects the rescission of the regulatory basis for MSPB's jurisdiction, which took effect on March 9, 2026.

B. *Regulatory Impact Analysis: Executive Order 12866*

MSPB has examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to evaluate the benefits and costs of the proposed action. A regulatory impact analysis must be prepared for major rules with effects of \$100 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated as a "significant regulatory action" under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563.

C. *Regulatory Flexibility Act*

MSPB certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because OPM's proposed rule will apply only to Federal agencies and employees, and MSPB's proposed rule does not in itself effect any change but only reflects OPM's amendments to MSPB's regulatory jurisdiction.

D. *Paperwork Reduction Act*

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. Chapter 35).

D. *Executive Order 13132, Federalism*

This regulation will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Aug. 10, 1999), it is determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E. *Executive Order 12988, Civil Justice Reform*

This regulation meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988 (Feb. 7, 1996).

F. *Unfunded Mandates Reform Act of 1995*

This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Thus, no written assessment of unfunded mandates is required.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Under the authority of 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, and for the reasons set forth above, 5 CFR part 1201 is amended as follows:

PART 1201—PRACTICES AND PROCEDURES

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

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

§ 1201.3 [Amended]

2. Amend Section 1201.3 by removing paragraph (a)(12).

Gina K. Grippando,

Clerk of the Board.

[FR Doc. 2026-03594 Filed: 2/20/2026 8:45 am; Publication Date: 2/23/2026]