

Merit Systems Protection Board

§ 1210.5

and removal actions taken by the Secretary pursuant to 5 CFR 9701.613 when he or she considers such actions to be in the interest of national security.

(d) *Effect of status under a retirement system.* If an employee has been removed under subpart F of 5 CFR part 9701, neither the employee's status under any retirement system established by Federal statute nor any election made by the employee under any such system will affect the employee's appeal rights.

§ 1210.3 Application.

Subject to modification and/or waiver by the adjudicating official, the regulations set forth in 5 CFR parts 1201, 1208 and 1209 apply to Board appellate proceedings conducted under this part except as otherwise provided herein.

§ 1210.4 Definitions.

In this subpart:

(a) *Adjudicating official* means an administrative law judge, administrative judge, or other employee designated by MSPB to decide an appeal.

(b) *Demotion* means a reduction in grade, a reduction to a lower band within the same occupational cluster, or a reduction to a lower band in a different occupational cluster under rules prescribed by the Department pursuant to 5 CFR 9701.355.

(c) *Department* means the Department of Homeland Security.

(d) *Director* means Director of the Office of Personnel Management.

(e) *Furlough* means the placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

(f) *Grade* means a level of work under a position classification or job grading system.

(g) *Indefinite suspension* means the placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further Department action. An indefinite suspension continues for an indeterminate period of time and usually ends with either the employee returning to duty or the completion of any subsequent administrative action.

(h) *Initial service period (ISP)* means the 1 to 2 years employees must serve

after selection (on or after the date this subpart becomes applicable, as determined under 5 CFR 9701.102(b)) for a designated Department position in the competitive service for the purpose of providing an employee the opportunity to demonstrate competencies in a specific occupation. All relevant prior Federal civilian service (including non-appropriated fund service), as determined by appropriate standards established by the Department, counts toward completion of this requirement.

(i) *Mandatory removal offense (MRO)* means an offense that the Secretary determines in his or her sole, exclusive and unreviewable discretion, has a direct and substantial adverse impact on the Department's homeland security mission.

(j) *Mandatory Removal Panel (MRP)* means the three-person panel composed of officials appointed by the Secretary for fixed terms to decide appeals of removals based on a mandatory removal offense.

(k) *Pay* means the rate of basic pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind. For the purpose of this subpart, pay does not include locality-based comparability payments under 5 U.S.C. 5304, locality or special rate supplements under subpart C of 5 CFR 9701, or other similar payments.

(l) *Removal* means the involuntary separation of an employee from the Department.

(m) *Secretary* means Secretary of the Department of Homeland Security.

(n) *Suspension* means the temporary placement of an employee, for disciplinary reasons, in a nonduty/nonpay status.

§ 1210.5 Revocation, amendment and waiver of regulations in this part.

The Board or a judge may not revoke, amend or waive a regulation in this Part in a manner inconsistent with the Homeland Security Act of 2002 or 5 CFR Part 9701. Otherwise, the Board or a judge may revoke, amend or waive a regulation in this Part for good cause shown.