

**Forest Service Comments to the  
Possible Changes to MSPB Adjudicatory Regulations**

Possible Revised Regulation	MSPB Reasons for Recommended Change	Forest Service Comments
<p><b>§ 1201.33 Federal witnesses</b>            (a) Every Federal agency or corporation, including nonparties, must make its employees or personnel available to furnish sworn statements or to appear as witnesses at the hearing when ordered by the judge to do so. The responding agency shall arrange for the presence of approved Federal employee witnesses to include those who are employed by other Federal agencies or corporations. When providing those statements or appearing at the hearing, Federal employee witnesses will be in official duty status (i.e., entitled to pay and benefits including travel and per diem, where appropriate).</p>	<p>This proposed change will shift the administrative burden of ensuring the appearance of federal employee witnesses requested by the appellant who work for a non-party Federal agency. Agencies are already responsible for ensuring the presence of their own employee witnesses and for the presence of agency requested witnesses employed by non-party Federal agencies.</p>	<p>Agency representatives will now have to “arrange” for the testimony of federal employees who are NOT agency employees. What does the agency do if the new employing agency won’t allow the witness official time to appear at the hearing or deposition? What if the former co-worker doesn’t want to testify unless he’s on official time (or maybe not at all)? What do you do then? The proposed regulations don’t provide an answer to these questions. The Board needs to determine how an agency goes about arranging (procedures) for witnesses who are not agency employees and what happens when the other agency will not allow the employee to testify? Are there going to be sanctions against the respondent agency on appeal?</p>