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**Director of Legal Services Neil McPhie, Esq. speaks with Bloomberg BNA about a proposed MSPB rule change**

## **MSPB Proposes Regulations on Jurisdiction Over Appeals, Including Change in Standard**

### **MSPB Proposed Rule**

#### **on Practices and Procedures**

#### **Latest Development:**

**Merit Systems Protection Board issues proposed rule that would amend its regulations governing how jurisdiction is established over board appeals. Next Steps:**

**Comments on proposed rule are due no later than May 5. By Louis C. LaBrecque**

**April 3 --The Merit Systems Protection Board is proposing to amend its regulations governing how jurisdiction is established over board appeals, the MSPB said in a proposed rule published in the April 3 Federal Register (79 Fed. Reg. 18,658). According to the board, which is responsible for hearing federal employee appeals of alleged prohibited personnel practices, 5 C.F.R. § 1201.56 currently provides that "the appellant bears the burden of proving jurisdiction by preponderant evidence." The agency then bears the burden of supporting a performance-based action by substantial evidence and supporting any other action by preponderant evidence. But "the appellant will prevail if he or she can establish a successful affirmative defense under 5 U.S.C. 7701(c)(2) (specifically, that the agency action was based on a harmful procedural error, constituted a prohibited personnel practice, or was not in accordance with law)," the board said. These principles do not apply, however, in four categories of**

**appeals, the board said:•**