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(n) *E-filer*. A party or representative who has registered to engage in e-filing under paragraph (e) of § 1201.14.

[54 FR 53504, Dec. 29, 1989, as amended at 58 FR 36345, July 7, 1993; 59 FR 65235, Dec. 19, 1994; 68 FR 59860, Oct. 20, 2003; 69 FR 57628, Sept. 27, 2004]

Subpart B—Procedures for Appellate Cases

GENERAL

§ 1201.11 Scope and policy.

The regulations in this subpart apply to Board appellate proceedings except as otherwise provided in § 1201.13. The regulations in this subpart apply also to appellate proceedings and stay requests covered by part 1209 unless other specific provisions are made in that part. These regulations also apply to original jurisdiction proceedings of the Board except as otherwise provided in subpart D. The regulations in this subpart apply also to appellate proceedings covered by part 1210 unless other specific provisions are made in that part. It is the Board's policy that these rules will be applied in a manner that expedites the processing of each case.

[72 FR 56884, Oct. 5, 2007]

§ 1201.12 Revocation, amendment, or waiver of rules.

The Board may revoke, amend, or waive any of these regulations. A judge may, for good cause shown, waive a Board regulation unless a statute requires application of the regulation. The judge must give notice of the waiver to all parties, but is not required to give the parties an opportunity to respond.

§ 1201.13 Appeals by Board employees.

Appeals by Board employees will be filed with the Clerk of the Board and will be assigned to an administrative law judge for adjudication under this subchapter. The Board's policy is to insulate the adjudication of its own employees' appeals from agency involvement as much as possible. Accordingly, the Board will not disturb initial decisions in those cases unless the party shows that there has been harmful pro-

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cedural irregularity in the proceedings before the administrative law judge or a clear error of law. In addition, the Board, as a matter of policy, will not rule on any interlocutory appeals or motions to disqualify the administrative law judge assigned to those cases until the initial decision has been issued.

§ 1201.14 Electronic filing procedures.

(a) *General*. This section prescribes the rules and procedures by which parties and representatives to proceedings within the Board's appellate and original jurisdiction may file and receive documents in electronic form.

(b) *Matters subject to electronic filing*. Subject to the registration requirement of paragraph (e) of this section, parties and representatives may use electronic filing (e-filing) to do any of the following:

(1) File any pleading, including a new appeal, in any matter within the Board's appellate jurisdiction (§ 1201.3);

(2) File any pleading, other than the original complaint or request, in any matter within the Board's original jurisdiction (§ 1201.2);

(3) File a petition for enforcement of a final Board decision (§ 1201.182);

(4) File a motion for attorney fees as a prevailing party (§ 1201.203);

(5) File a motion for compensatory or consequential damages (§ 1201.204);

(6) Designate a representative, revoke such a designation, or change such a designation (§ 1201.31); or

(7) Notify the Board of a change in contact information such as address (geographic or electronic mail) or telephone number.

(c) *Matters excluded from electronic filing*. Electronic filing may not be used to:

(1) File the original complaint or request in a matter within the Board's original jurisdiction, which includes: a complaint filed by the Special Counsel seeking corrective or disciplinary action (§§ 1201.122, 1201.128); a request by the Special Counsel for the stay of certain personnel actions (§ 1201.134); a proposal to take action against an administrative law judge under 5 U.S.C. 7521 (§ 1201.137); or a request for a hearing on a proposed removal of a career appointee from the Senior Executive

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Service for performance reasons (§ 1201.143);

(2) File a request to hear a case as a class appeal or any opposition thereto (§ 1201.27);

(3) Serve a subpoena (§ 1201.83); or

(4) File a pleading with the Special Panel (§ 1201.137).

(d) *Internet is sole venue for electronic filing.* Following the instructions at the Board's e-Appeal site (<https://e-appeal.mspb.gov>) is the only method allowed for filing electronic pleadings with the Board. The Board will not accept pleadings filed by electronic mail.

(e) *Registration as an e-filer.* (1) Except when filing a new appeal within the Board's appellate jurisdiction (§ 1201.3), no party or representative may file an electronic pleading with the Board unless he or she has registered with the Board as an e-filer. Registration as an e-filer constitutes consent to accept electronic service of pleadings filed by other registered e-filers and documents issued by the Board.

(2) The exclusive means for a party or representative to register as an e-filer during a Board proceeding is to follow the instructions at the Board's e-Appeal site (<https://e-appeal.mspb.gov>).

(3) When a party who is an individual is represented, the party and the representative can make separate determinations whether to register as an e-filer. For example, an appellant may file and receive pleadings and Board documents by non-electronic means, even though his or her representative has registered as an e-filer. Similarly, when a party has more than one representative, each representative has the choice of registering as an e-filer or filing and receiving pleadings and Board documents by non-electronic means.

(4) A party or representative who has registered as an e-filer may file any pleading, or portion of a pleading as described in paragraph (g) of this section, by non-electronic means.

(5) A party or representative may withdraw his or her registration as an e-filer. Such withdrawal means that, effective upon the Board's receipt of this withdrawal, pleadings and Board documents will no longer be served on that person in electronic form. A withdrawal of registration as an e-filer may

be filed at the Board's e-Appeal site, in which case service is governed by paragraph (h) of this section, or by non-electronic means, in which case service is governed by section 1201.26(b) of this part.

(f) *Form of electronic pleadings—(1) Options for e-filing.* An appellant or representative using e-Appeal to file a new appeal within the Board's appellate jurisdiction (§ 1201.3) must complete the structured interview at the Board's e-Appeal site (<https://e-appeal.mspb.gov>). For all other pleadings, the e-filer has the option of uploading an electronic file or entering the text of the pleading online. Regardless of the means of filing a particular pleading, the e-filer will be allowed to submit supporting documentation as attachments, in both electronic and paper form, as described in paragraphs (f)(2) and (f)(3) of this section.

(2) *Electronic formats allowed.* The Board will accept numerous electronic formats, including word-processing and spreadsheet formats, Portable Document Format (PDF), and image files (files created by scanning). A list of formats allowed can be found at the Board's e-Appeal site. All electronic documents must be formatted so that they will print on standard 8½ inch by 11 inch paper.

(3) *Limitation on number of electronic attachments.* E-filers may upload up to three electronic files as supporting documentation, in addition to the document that constitutes the primary pleading. There is no limit on the number of non-electronic documents that may be submitted as attachments under paragraph (g) of this section.

(g) *Hybrid pleadings that include both electronic and paper documents.* An e-filer may file a hybrid pleading in which part of the pleading is submitted electronically, and part of the pleading consists of one or more paper documents filed by non-electronic means. If one or more parts of a hybrid pleading are untimely filed, the judge or the Clerk may reject the untimely part or parts while accepting timely filed parts of the same pleading.

(h) *Service of electronic pleadings.* The Board will serve electronic pleadings on other parties and representatives who have registered as e-filers. The

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Board's e-Appeal application will notify the e-filer of all documents that must be served by non-electronic means. The e-filer must certify that he or she will serve all such documents no later than the first business day after the electronic submission.

(i) *Documents requiring a signature.* An electronic document filed by a party who has registered as an e-filer pursuant to this section shall be deemed to be signed for purposes of any regulation in part 1201, 1203, 1208, 1209, or 1210 of this title that requires a signature.

(j) *Affidavits and declarations made under penalty of perjury.* Registered e-filers may submit electronic pleadings in the form of declarations made under penalty of perjury under 28 U.S.C. 1746, as described in Appendix IV of this part. If the declarant is someone other than the e-filer, a physically signed affidavit or declaration should be uploaded as an image file, or submitted separately as a non-electronic document under paragraph (g) of this section.

(k) *Issuance of Board documents to e-filers.* The Board's notices, orders, and decisions will be served on e-filers as PDF files attached to electronic mail messages, which will be sent to the electronic mail address supplied by the e-filer.

(l) *Date electronic documents are received.* Pleadings and Board documents served electronically on registered e-filers are deemed received on the date of electronic submission or, if submitted on a weekend or federal holiday, on the first business day after the electronic submission.

(m) *Authority of a judge or the Clerk to regulate e-filing.* (1) In the event that the Board or any party encounters repeated or unexplained difficulties filing, serving, or receiving electronic documents, the judge or the Clerk of the Board may order one or more parties to cease filing pleadings by e-filing, cease serving documents in electronic form, or take both these actions. In such instances, filing and service shall be undertaken in accordance with §1201.26. The authority to order the cessation of the use of electronic filing may be for a particular submission, for a particular time frame, or for the duration of the pendency of a case.

(2) A judge or the Clerk of the Board may require that any document filed electronically be submitted in non-electronic form and bear the written signature of the submitter. A party receiving such an order from a judge or the Clerk of the Board shall, within 5 calendar days, serve on the judge or Clerk of the Board by regular mail, by facsimile, or by commercial or personal delivery a signed, non-electronic copy of the document.

[69 FR 57628, Sept. 27, 2004, as amended at 72 FR 56884, Oct. 5, 2007]

APPEAL OF AGENCY ACTION; PLEADINGS

§ 1201.21 Notice of appeal rights.

(a) When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

(1) Notice of the time limits for appealing to the Board, the requirements of §1201.22(c), and the address of the appropriate Board office for filing the appeal;

(2) A copy, or access to a copy, of the Board's regulations;

(3) A copy of the MSPB appeal form available at the Board's Web site(<http://www.mspb.gov>), and

(4) Notice of any right the employee has to file a grievance, including:

(i) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;

(ii) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board; and

(iii) Whether there is any right to request Board review of a final decision on a grievance in accordance with §1201.154(d).

(b) When the Department of Homeland Security (or component thereof) issues a decision notice to an employee on a matter that is appealable to the Board, except as provided under 5 CFR 9701.707, the Department must comply