

## § 1201.21

shall apply only to pleadings that include scanned material. All other pleadings except those containing classified information or Sensitive Security Information must be e-filed. The administrative judge may periodically revisit the need for an exemption granted under this subsection, and revoke the exemption as appropriate.

[73 FR 10129, Feb. 26, 2008, as amended at 76 FR 63538, Oct. 13, 2011; 77 FR 62364, Oct. 12, 2012]

APPEAL OF AGENCY ACTION; PLEADINGS

### § 1201.21 Notice of appeal rights.

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:

(a) 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;

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

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

(d) Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

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

(2) 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;

(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and

(4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.

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(e) Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.

(f) The name or title and contact information for the agency official to whom the Board should send the Acknowledgment Order and copy of the appeal in the event the employee files an appeal with the Board. Contact information should include the official's mailing address, email address, telephone and fax numbers.

[74 FR 9343, Mar. 4, 2009, as amended at 77 FR 62364, Oct. 12, 2012]

### § 1201.22 Filing an appeal and responses to appeals.

(a) *Place of filing.* Appeals, and responses to those appeals, must be filed with the appropriate Board regional or field office. See § 1201.4(d) of this part.

(b) *Time of filing.* (1) Except as provided in paragraph (b)(2) of this section, an appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of the appellant's receipt of the agency's decision, whichever is later. Where an appellant and an agency mutually agree in writing to attempt to resolve their dispute through an alternative dispute resolution process prior to the timely filing of an appeal, however, the time limit for filing the appeal is extended by an additional 30 days—for a total of 60 days. A response to an appeal must be filed within 20 days of the date of the Board's acknowledgment order. The time for filing a submission under this section is computed in accordance with § 1201.23 of this part.

(2) The time limit prescribed by paragraph (b)(1) of this section for filing an appeal does not apply where a law or regulation establishes a different time limit or where there is no applicable time limit. No time limit applies to appeals under the Uniformed Services Employment and Reemployment Rights Act (Pub. L. 103-353), as amended; see part 1208 of this title. See part 1208 of this title for the statutory filing time limits applicable to appeals under

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the Veterans Employment Opportunities Act (Pub. L. 105-339). See part 1209 of this title for the statutory filing time limits applicable to whistleblower appeals and stay requests.

(3) An appellant is responsible for keeping the agency informed of his or her current home address for purposes of receiving the agency's decision, and correspondence which is properly addressed and sent to the appellant's address via postal or commercial delivery is presumed to have been duly delivered to the addressee. While such a presumption may be overcome under the circumstances of a particular case, an appellant may not avoid service of a properly addressed and mailed decision by intentional or negligent conduct which frustrates actual service. The appellant may also be deemed to have received the agency's decision if it was received by a designated representative or a person of suitable age and discretion residing with the appellant. The following examples illustrate the application of this rule:

*Example A:* An appellant who fails to pick up mail delivered to his or her post office box may be deemed to have received the agency decision.

*Example B:* An appellant who did not receive his or her mail while in the hospital may overcome the presumption of actual receipt.

*Example C:* An appellant may be deemed to have received an agency decision received by his or her roommate.

(c) *Timeliness of appeals.* If a party does not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown. The judge will provide the party an opportunity to show why the appeal should not be dismissed as untimely.

(d) *Method of filing an appeal.* Filing of an appeal must be made with the appropriate Board office by commercial or personal delivery, by facsimile, by mail, or by electronic filing under §1201.14.

(e) *Filing a response.* Filing of a response must be made with the appropriate Board office by commercial or personal delivery, by facsimile, by

mail, or by electronic filing under §1201.14.

[54 FR 53504, Dec. 29, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1201.22, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### § 1201.23 Computation of time.

In computing the number of days allowed for complying with any deadline, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date. Unless a different deadline is specified by the Board or its designee, 5 days are added to a party's deadline for responding to a document served on the party by mail.

*Example 1:* If an employee receives a decision notice that is effective on July 1, the 30-day period for filing an appeal starts to run on July 2. The filing ordinarily would be timely only if it is made by July 31. If July 31 is a Saturday, however, the last day for filing would be Monday, August 2.

*Example 2:* The judge orders the appellant to file a response to a jurisdictional order no later than October 15, 2012, and that the agency's response is due 10 days after the filing of the appellant's pleading. If the appellant serves the agency with a pleading via regular mail on October 15, the agency's deadline for filing a response will be October 30, not October 25.

[77 FR 62364, Oct. 12, 2012]

### § 1201.24 Content of an appeal; right to hearing.

(a) *Content.* Only an appellant, his or her designated representative, or a party properly substituted under §1201.35 may file an appeal. Appeals may be in any format, including letter form. An appeal may be filed in electronic form provided that the requirements of §1201.14 have been satisfied. All appeals must contain the following:

(1) The name, address, and telephone number of the appellant, and the name and address of the agency that took the action;

(2) A description of the action the agency took and its effective date;