

# Rules and Regulations

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Parts 1201, 1203, 1208, 1209

#### Interim Regulatory Changes for Implementation of e-Appeal and e-Filing

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to provide parties to Board proceedings the option of transacting business electronically, as required by the Government Paperwork Elimination Act. The interim regulations allow appellants to initiate an appeal by using e-Appeal, an interactive application available from the Board's Web site (<http://www.mspb.gov/e-appeal.html>). Parties to appeals and other Board proceedings may engage in electronic case filing on an ongoing basis by making an election to file and receive pleadings and Board documents via electronic mail.

**DATES:** Effective date October 20, 2003. Written comments should be submitted on or before December 20, 2003.

**ADDRESSES:** Submit comments to the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M St., NW, Washington, DC 20419. Comments may be submitted by regular mail to this address, by facsimile to (202) 653-7130, or by e-mail to [mspb@mspb.gov](mailto:mspb@mspb.gov).

**FOR FURTHER INFORMATION CONTACT:** Timothy L. Korb, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419; (202) 653-7200; fax: (202) 653-7130; or e-mail: [mspb@mspb.gov](mailto:mspb@mspb.gov).

**SUPPLEMENTARY INFORMATION:**

#### What the Law Requires

Section 1704 of the Government Paperwork Elimination Act, Pub. L. No. 105-277, 112 Stat. 2681-750 (1998), mandated that Federal Executive agencies provide, by October 21, 2003, "(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) for the use and acceptance of electronic signatures, when practicable." As defined in § 1710 of the Act, an electronic signature means "a method of signing an electronic message that—(A) identifies and authenticates a particular person as the source of the electronic message; and (B) indicates such person's approval of the information contained in the electronic message." 112 Stat. at 2681-751.

The MSPB for some time has been accepting and processing requests submitted by electronic mail (e-mail) under the Freedom of Information and Privacy Acts. The Board has also experimented on a limited basis with accepting pleadings filed as electronic attachments to e-mail in the appeals that come before it. These interim regulations represent the Board's first agency-wide use of electronic filing in case adjudication.

The Board recently announced that it had forwarded to the Office of Management and Budget a proposed information collection: e-Appeal, a new electronic application for filing an appeal with the Board; and MSPB Form 185, a revised MSPB paper Appeal Form. 68 FR 44971 (July 31, 2003). This interim rule makes e-Appeal and Form 185 effective in Board proceedings. It also introduces filing by electronic mail.

Participation in electronic filing (e-Filing) is voluntary. An individual may still initiate a Board appeal by filing a paper appeal by any of the conventional means. Similarly, no party is obligated to participate in e-Filing during the course of a Board proceeding.

#### Future Plans for E-Filing

Part of the reason for issuing an interim rule is that the electronic case filing procedures we now institute are themselves interim in nature. Our long-term goal is to conduct all e-Filing through the Internet, including both the pleadings filed by the parties with the Board, and the notices, orders, and decisions issued by the Board to the

parties. In the future, e-Filing will include automatic notice of filing, and parties will be able to view and download pleadings and Board documents from our Web site. At the present time, however, the only part of e-Filing that is Web-enabled is the initiation of an appeal through e-Appeal.

#### Commencing a Board Proceeding via e-Appeal

e-Appeal is an interactive Web application that allows appellants or their representatives to create and submit appeals using an interview format. The application includes Help and Question and Answer links appropriate to each section of the interview.

As part of the e-Appeal process, an individual creates a unique user ID and password, which constitutes his or her electronic signature. The filer can print a copy of the appeal either at the time of filing or afterward. The Board will send an electronic confirmation that it has received and is processing the appeal.

#### Election To Participate in E-Filing by E-Mail

Under the interim rule, electronic filing after the commencement of a Board proceeding will be limited to filing and receiving documents via e-mail. To participate, a party must file an election with the Board which lists the e-mail address from which pleadings will be filed, and to which pleadings and Board documents may be sent. An election to engage in e-Filing, which may itself be filed by e-mail, constitutes consent to accept electronic service of pleadings and Board documents. Such an election also permits a party to file pleadings electronically, but a party who has elected e-Filing may still opt to file any pleading by conventional means. An election to engage in e-Filing may be terminated at any point in a Board proceeding.

Sending a pleading from the designated e-mail address constitutes an electronic signature. Parties can submit a declaration made under penalty of perjury (equivalent to an affidavit) electronically, as described in paragraph (n) of new § 1201.5.

A party who has elected to engage in e-Filing files a pleading by sending an e-mail to the appropriate Board office. If the other party has also elected e-Filing,

service of that party is accomplished by including the party in the address portion of the e-mail. If the other party has not elected e-Filing, service is by conventional means. The Board will confirm receipt of e-mailed pleadings by sending a return e-mail.

Especially where both parties elect to participate, e-Filing should permit faster case processing because the Board and the parties will receive filings the same day they are submitted. This is particularly important for pleadings filed with the Clerk of the Board in Washington, D.C., because mailed pleadings are first sent to Ohio for irradiation. Where only one party elects to engage in e-Filing, the Board will set deadlines so that the party filing and receiving documents by conventional means will have adequate time to prepare and file a response.

#### Electronic Formats Allowed

Our interim rule allows electronic pleadings to be filed in "any widely-used electronic format." We believe that e-Filing should require as little specialized equipment, software, and expertise as possible. Ideally, all a person should require is a personal computer equipped with a word-processing application, a Web browser, and access to e-mail and the Internet. Keeping technical requirements to a minimum is important in Board proceedings because a significant proportion of the parties appearing before us are representing themselves, or are represented by non-attorneys. To require specialized equipment and software, or significant computer expertise, would preclude many parties from participating in e-Filing. If the Board or receiving party has difficulty viewing or printing an electronic pleading, the regulations require informal attempts to resolve the problem. If such efforts are unsuccessful, the filing party must serve the pleading by conventional means.

The Board expects that the primary pleading in most e-Filings will consist of an electronic attachment to the e-mail such as a word-processing file. However, we will allow the submission of very brief pleadings, one or two paragraphs, in the body of the e-mail message. The reason for this restriction is a concern that the formatting of the pleading may be adversely affected, making it difficult to read. We ask that parties identify the nature of the pleading and the appeal to which it is related in the Subject portion of the e-mail, e.g., Appellant's Prehearing Submission in Doe v. Agency, XX-0752-03-XXXX-I-1.

#### Hybrid Filings

Only a small proportion of the contents of an MSPB case file typically originate as electronic files created for the Board proceeding. Most are paper documents that could only be converted to electronic format by scanning. For that reason, pleadings that include both an electronic file created for the Board proceeding and one or more paper documents will be common. Such "hybrid" filings are allowed under the interim rule. When a pleading contains both an electronic component and a non-electronic component, the party files the electronic component by e-mail, and the non-electronic component by conventional means. Such a pleading is considered filed and served when all components have been filed and served. We note, however, that an e-Appeal is filed when submitted electronically, regardless of when requested attachments are filed. The reason is that our regulations do not require that an appeal include any documentation; they require information only. See 5 CFR 1201.24(a).

#### Large Image Files Limitation

When paper documents have been converted to electronic format by scanning, they consume much more disk space than do electronic text files, such as word-processing files. Because transmitting and downloading image files can consume a great deal of time and resources, our regulations provide that documents that can only be converted to electronic format by scanning must be filed by traditional means when the paper document exceeds 25 pages.

#### List of Subjects

##### 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

##### 5 CFR Part 1203

Administrative practice and procedure, Civil rights, Government employees.

##### 5 CFR Part 1208

Administrative practice and procedure, Government employees, Veterans.

##### 5 CFR Part 1209

Administrative practice and procedure, Government employees, Whistleblowing.

■ Accordingly, the Board amends 5 CFR parts 1201, 1203, 1208, and 1209 as follows:

#### PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204 and 7701, unless otherwise noted.

■ 2. Section 1201.4 is amended by revising paragraphs (i), (k), and (l) and by adding new paragraphs (m), (n), and (o) to read as follows:

#### § 1201.4 General definitions.

\* \* \* \* \*

(i) *Service*. The process of furnishing a copy of any pleading to Board officials, other parties, or both, either by mail, by facsimile, by commercial or personal delivery, or by electronic mail, provided the requirements of § 1201.5 of this part have been met.

\* \* \* \* \*

(k) *Certificate of Service*. A document certifying that a party has served copies of pleadings on the other parties. If a pleading is served by electronic mail, the address portion of the electronic mail message serves as a certificate of service.

(l) *Date of filing*. A document that is filed with a Board office by personal delivery is considered filed on the date on which the Board office receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. The date of filing by electronic mail is the date on which the electronic mail is sent.

(m) *Internet filing option*. The option that an appellant may exercise to commence an appeal proceeding before the Board by filing through the electronic application (e-Appeal) available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

(n) *Electronic mail filing and service*. The process of filing certain pleadings with the Board and serving certain pleadings on other parties using electronic mail.

(o) *Electronic signature*. The term "electronic signature" means a method that identifies and authenticates a particular person as the source of the electronic message and indicates such person's approval of the information contained in the electronic message.

■ 3. Subpart A of part 1201 is amended by adding a new § 1201.5 to read as follows:

**§ 1201.5 Electronic mail and Internet filing procedures.**

(a) *Scope.* This section sets forth the rules applicable to the filing and service of pleadings by electronic mail and the Board's Internet filing option for matters within the Board's original jurisdiction (as explained in § 1201.2 of this subpart) and matters within the Board's appellate jurisdiction (as explained in § 1201.3 of this subpart). The electronic submission of a pleading commencing an appeal proceeding before the Board in a matter identified in § 1201.3 of this subpart must be filed using the Board's Internet filing option available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>). Except for matters identified in paragraph (b) of this section, pleadings relating to the adjudication of a matter identified in either § 1201.2 or § 1201.3 of this subpart may be filed using electronic mail, provided the requirements of this section are satisfied.

(b) *Matters not covered.* Matters that may not be filed by electronic mail or the Internet filing option are:

(1) A request to hear a case as a class appeal and any opposition thereto (§ 1201.27 of this subpart),

(2) Service of subpoenas (§ 1201.83 of this subpart),

(3) The initial filing in a Special Counsel complaint seeking disciplinary action (§ 1201.122 of subpart D),

(4) The initial filing in a Special Counsel complaint seeking corrective action (§ 1201.128 of subpart D),

(5) The initial filing in a Special Counsel request for a stay (§ 1201.134 of subpart D),

(6) The initial filing in an agency action seeking to discipline an administrative law judge (§ 1201.137 of subpart D),

(7) The initial filing in a case involving a proposal to remove a career appointee from the Senior Executive Service (§ 1201.143 of subpart D), and

(8) Filings with the Special Panel (§ 1201.173 of subpart E).

(c) *Internet filing option.* The electronic filing of an appeal is only allowed by using the Board's Internet filing option (e-Appeal) available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>). The Internet filing option allows an appellant to contest various types of agency actions and decisions and to raise various types of defenses and claims. The Internet filing option also includes the option of designating a representative and provides for an electronic signature. Detailed instructions explaining how to use the Board's Internet filing option are available at the Board's Web site.

(d) *Filing electronic mail pleadings with the Board.* With the exception of pleadings commencing an appeal before the Board and the exceptions noted in paragraphs (b)(1) through (b)(8) of this section, a party may make any filing regarding a matter covered by this section by electronic mail if the party has completed the authorization under paragraph (f) of this section. All electronic mail filings should be addressed to the appropriate regional or field office or to the Clerk of the Board for matters pending at Headquarters. Electronic mail addresses to be used when filing with the Board will be specified in acknowledgement orders.

(e) *Electronic mail service by the Board and parties.* The Board may serve upon any party a document regarding a matter covered by this section by electronic mail provided that the party being served has authorized electronic mail service and acceptance of electronic mail service in accordance with paragraph (f) of this section. A party may serve upon any party a pleading or document regarding a matter covered by this section by electronic mail provided that both the sending and receiving parties have authorized electronic mail service and acceptance of electronic mail service in accordance with paragraph (f) of this section.

(f) *Election to engage in electronic mail filing.* (1) A party may elect to engage in electronic mail filing during a Board proceeding by filing with the judge or Board, and serving upon the other parties, a written statement of such election that includes the electronic mail address at which the party agrees to receive service. An election to engage in electronic mail filing constitutes consent to accept electronic service of pleadings and Board issuances at the electronic mail address specified. Such an election may be filed by any means provided in paragraph (i) of § 1201.4 of this part, including electronic mail.

(2) All electronic mail filings must be sent from the electronic mail address specified in the election.

(3) A pleading or Board issuance served electronically on a party who has made an election under this section is deemed received on the date of electronic submission.

(4) A party who elects to engage in electronic mail filing may file any pleading, or portion of a pleading as described in paragraph (k) of this section, by non-electronic means.

(5) A party may rescind an election to engage in electronic mail filing at any time by filing notice of the rescission with the judge or, if applicable, the

Clerk and serving notice of the rescission on the other parties.

(g) *Board acknowledgement of electronic filing.* The Board will acknowledge receipt of a pleading filed by electronic mail by sending an electronic mail confirmation of receipt.

(h) *Failed electronic mail service.* If an attempt to serve a pleading or document upon the Board or a party by electronic mail is unsuccessful, the sending party must attempt to resolve the problem. If electronic service cannot be accomplished within a reasonable period, the sending party must serve a copy of the pleading by one of the other means authorized in, and as provided by, § 1201.26(b)(2) of subpart B.

(i) *Requirements relating to electronic mail.* Parties should include the title of the pleading, the Board docket number, and the case title, e.g. Doe v. Agency, in the subject heading of any electronic mail served upon the Board or another party. Pleadings up to two paragraphs in length may be included in the body of an electronic mail. Pleadings exceeding two paragraphs in length must be served as an attachment, or attachments, to an electronic mail.

(j) *Attachments to electronic mail pleadings.* (1) Electronic mail attachments may be in any widely-used electronic format.

(2) If a recipient is unable to view, open, or print an electronic mail attachment sent with a pleading, the recipient shall be responsible for informing the sender of the problem as soon as practicable and identifying all attachments that could not be viewed, opened, or printed. In response to such a report, the sending party shall attempt to resolve the problem as soon as practicable. In the event that problems relating to the transmission of the document cannot be resolved, the sending party shall have three calendar days to send a paper copy of all identified attachments to the complaining party.

(3) Electronic mail documents and all attachments must be formatted so that they will print on standard 8½ inch by 11 inch paper.

(4) Documents that can only be converted to electronic format by scanning may not be filed electronically if the length of the paper document exceeds 25 pages.

(k) *Hybrid pleadings containing both electronic files and paper documents.* A party who has elected electronic mail filing under this section 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. When a hybrid

pleading is submitted, the electronic mail submission shall inform the Board and the other party of the portions of the pleading being submitted by non-electronic means. A hybrid pleading is deemed filed and served when all parts of the pleading have been filed and served.

(l) *Certificates of Service for e-mail pleadings filed or served by electronic mail.* If a pleading is served by electronic mail, the address portion of the electronic-mail message shall serve as the certificate of service.

(m) *Use of electronic filing and service subject to control by the Judge and the Clerk of the Board.* In the event that the Board or the parties encounter repeated or unexplained difficulties filing, serving, or receiving electronic mail pleadings, documents, or attachments, the judge or the Clerk of the Board may order a party to cease filing and serving pleadings by electronic mail and may cease the Board's use of electronic mail to serve documents. In such instances, filing and service shall be undertaken in accordance with § 1201.26 of subpart B. The authority to order the cessation of the use of electronic mail may be for a particular submission, a particular time frame, or for the duration of the pendency of a case.

(n) *Requirements relating to documents requiring a signature.* An electronic document filed by a party who has elected to engage in electronic mail filing pursuant to this section shall be deemed to be signed for purposes of any regulation in part 1201, 1203, 1208, or 1209 of this title that requires a signature. An electronically filed document shall constitute a declaration made under penalty of perjury if it contains the statement required by 28 U.S.C. 1746, as set forth in Appendix IV of this part.

(o) *Authority of a judge or the Clerk of the Board to require signed submissions.* 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.

■ 4. Section 1201.22 is amended by revising paragraph (d) and by adding new paragraphs (e) and (f) to read as follows:

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

\* \* \* \* \*

(d) *Method of filing an appeal.* Filing of an appeal must be made with the appropriate Board office by personal or commercial delivery, by facsimile, by mail, or by the Internet filing option described in paragraph (e) of this section.

(e) *Internet filing option.* An appeal may be filed electronically by using the electronic filing option available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

(f) *Filing a response.* Filing of a response must be made with the appropriate Board office by personal or commercial delivery, by facsimile, by mail, or by electronic mail as specified in § 1201.5 of this part.

■ 5. Section 1201.24 is amended by revising paragraph (a), subparagraph (a)(9), and paragraph (c) to read as follows:

**§ 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. Electronic appeals must be filed using the Board's Internet filing option. All appeals must contain the following:

\* \* \* \* \*

(9) The signature of the appellant or, if the appellant has a representative, of the representative. If using the Internet filing option, the appellant or the appellant's representative must complete the electronic signature portion of the Board's Internet filing option in accordance with instructions at the Board's Web site, as set forth in § 1201.5 of this part.

\* \* \* \* \*

(c) *Use of Board form or Internet filing option.* An appellant may comply with paragraph (a) of this section, and with § 1201.31 of this part, by completing MSPB Form 185, or by completing all requests for information marked as required in the Internet filing option. Both MSPB Form 185 and the Internet filing option can be accessed at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

■ 6. Section 1201.26 is amended by revising paragraph (a), paragraph (b)(2), and paragraph (c) to read as follows:

**§ 1201.26 Number of pleadings, service, and response.**

(a) *Number.* The appellant must file two copies of both the appeal and all attachments with the appropriate Board office, unless the appellant files an appeal under the Board's Internet filing option.

(b) *Service—(1) \* \* \**

(2) *Service by the parties.* The parties must serve on each other one copy of each pleading, as defined by § 1201.4(b), and all documents submitted with it, except for the appeal. They may do so by mail, by facsimile, by personal or commercial delivery, or by electronic mail in accordance with § 1201.5 of this part. Documents and pleadings must be served upon each party and each representative. A certificate of service stating how and when service was made must accompany each pleading. The parties must notify the appropriate Board office and one another, in writing, of any changes in the names, or addresses on the service list.

(c) *Paper size.* Pleadings and attachments must be filed on 8½ by 11-inch paper, except for good cause shown. This requirement enables the Board to comply with standards established for U.S. courts. Requirements for pleadings and attachments filed electronically are set forth in §§ 1201.4 and 1201.5 of this part.

■ 7. Section 1201.27 is amended by adding new paragraph (d) as follows:

**§ 1201.27 Class appeals.**

\* \* \* \* \*

(d) *Electronic filing.* A request to hear a case as a class appeal and any opposition thereto may not be filed by electronic mail or by using the Board's Internet filing option. Subsequent pleadings may be filed and served as provided in § 1201.5 of this part.

■ 8. Section 1201.31 is amended by revising paragraph (a) to read as follows:

**§ 1201.31 Representatives.**

(a) *Procedure.* A party to an appeal may be represented in any matter related to the appeal. Parties may designate a representative, revoke such a designation, and change such a designation in a signed submission as follows:

(1) *By written pleading.* Provided the filing and service requirements in § 1201.26 of this subpart are satisfied, parties may designate a representative, revoke a representative's designation, or change representatives, in writing.

(2) *By using the Board's Internet filing option.* Parties are allowed to designate a representative when filing an appeal using the Board's Internet filing option. This means of designation may only be used when filing an appeal using the Internet filing option.

(3) *By electronic mail.* Provided the requirements in § 1201.5 of this part are satisfied, parties may designate a representative, revoke a representative's designation, or change representatives

by e-mail filed with the Board and served on the other parties.

\* \* \* \* \*

■ 9. Section 1201.114 is amended by revising paragraphs (c), (e), (f) introductory text, and (h) to read as follows:

**§ 1201.114 Filing petition and cross petition for review.**

\* \* \* \* \*

(c) *Place for filing.* A petition for review, cross petition for review, responses to those petitions, and all motions and pleadings associated with them must be filed with the Clerk of the Merit Systems Protection Board, Washington, DC 20419, by personal or commercial delivery, by facsimile, by mail, or by electronic mail in accordance with § 1201.5 of this part.

\* \* \* \* \*

(e) *Extension of time to file.* The Board will grant a motion for extension of time to file a petition for review, a cross petition, or a response only if the party submitting the motion shows good cause. Motions for extensions must be filed with the Clerk of the Board before the date on which the petition or other pleading is due. The Board, in its discretion, may grant or deny those motions without providing the other parties the opportunity to comment on them. A motion for an extension must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See appendix IV to part 1201.) The affidavit or sworn statement must include a specific and detailed description of the circumstances alleged to constitute good cause, and it should be accompanied by any available documentation or other evidence supporting the matters asserted.

(f) *Late filings.* Any petition for review, cross petition for review, or response that is filed late must be accompanied by a motion that shows good cause for the untimely filing, unless the Board has specifically granted an extension of time under paragraph (e) of this section, or unless a motion for extension is pending before the Board. The motion must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See appendix IV to part 1201.) The affidavit or sworn statement must include:

\* \* \* \* \*

(h) *Service.* A party submitting a pleading must serve a copy of it on each party and on each representative as provided in § 1201.5 or § 1201.26(b)(2) of this part.

\* \* \* \* \*

■ 10. Section 1201.122 is amended by revising paragraphs (b) and (d) and by

adding a new paragraph (e) to read as follows:

**§ 1201.122 Filing complaint; serving documents on parties.**

\* \* \* \* \*

(b) *Initial filing and service.* The Special Counsel must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The Special Counsel must serve a copy of the complaint on each party or the party's representative, as shown on the certificate of service. The initial filing in a complaint may not be filed by electronic mail or by using the Internet filing option.

\* \* \* \* \*

(d) *Method of filing and service.* Filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(e) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 11. Section 1201.128 is amended by revising paragraphs (b) and (d) and by adding a new paragraph (e) to read as follows:

**§ 1201.128 Filing complaint; serving documents on parties.**

\* \* \* \* \*

(b) *Initial filing and service.* The Special Counsel must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative, and each person on whose behalf the corrective action is brought. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative, and each person on whose behalf the corrective action is brought. The Special Counsel must serve a copy of the complaint on the agency or its representative, and each person on whose behalf the corrective action is brought, as shown on the certificate of service. The initial filing in a complaint may not be filed by electronic mail or by using the Internet filing option.

\* \* \* \* \*

(d) *Method of filing and service.* A filing may be by mail, by facsimile, or

by personal or commercial delivery to the office determined under paragraph (a) of this section. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(e) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 12. Section 1201.134 is amended by revising paragraphs (d) and (f) and by adding a new paragraph (g) to read as follows:

**§ 1201.134 Deciding official; filing stay request; serving documents on parties.**

\* \* \* \* \*

(d) *Initial filing and service.* The Special Counsel must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The Special Counsel must serve a copy of the request on the agency or its representative, as shown on the certificate of service. The initial filing in a request for a stay may not be filed by electronic mail or by using the Internet filing option.

\* \* \* \* \*

(f) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(g) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 13. Section 1201.137 is amended by revising paragraphs (c) and (e) and by adding a new paragraph (f) to read as follows:

**§ 1201.137 Covered actions; filing complaint; serving documents on parties.**

\* \* \* \* \*

(c) *Initial filing and service.* The agency must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The agency must serve a

copy of the complaint on each party or the party's representative, as shown on the certificate of service. The initial filing in a complaint may not be filed by electronic mail or by using the Internet filing option.

\* \* \* \* \*

(e) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by commercial or personal delivery to each party or the party's representative, as shown on the certificate of service.

(f) *Electronic mail service and filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 14. Section 1201.143 is amended by revising paragraphs (c) and (e) and by adding a new paragraph (f) to read as follows:

**§ 1201.143 Right to hearing; filing complaint; serving documents on parties.**

\* \* \* \* \*

(c) *Initial filing and service.* The appointee must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the agency proposing the appointee's removal or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The appointee must serve a copy of the request on the agency or its representative, as shown on the certificate of service. The initial filing may not be filed by electronic mail or by using the Internet filing option.

\* \* \* \* \*

(e) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery, to the office determined under paragraph (b) of this section. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(f) *Electronic mail service and filing.* All pleadings, other than the initial complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 15. Section 1201.153 is amended by revising paragraph (b) to read as follows:

**§ 1201.153 Contents of appeal.**

\* \* \* \* \*

(b) *Use of Board form or Internet filing option.* An appellant may comply with

paragraph (a) of this section by completing MSPB Form 185, or by completing all requests for information marked as required in the Internet filing option. Both MSPB Form 185 and the Internet filing option can be accessed at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

■ 16. Section 1201.173 is amended by adding new paragraph (k) to read as follows:

**§ 1201.173 Practices and procedures of Special Panel.**

\* \* \* \* \*

(k) *Electronic mail filing and service.* Pleadings in matters before the Special Panel may not be filed or served using electronic mail.

**Appendix I to Part 1201—[Reserved]**

■ 17. Remove and reserve appendix I to part 1201.

**PART 1203—[AMENDED]**

■ 18. The authority citation for part 1203 continues to read as follows:

**Authority:** 5 U.S.C. 1204.

■ 19. Section 1203.13 is amended by revising paragraph (d) to read as follows:

**§ 1203.13 Filing pleadings.**

\* \* \* \* \*

(d) *Method and date of filing.* An initial filing in a request for review of a regulation may be filed with the Office of the Clerk either by mail, by personal or commercial delivery, or by facsimile. Pleadings, other than an initial request for a regulation review under this part, may be filed with the Office of the Clerk either by mail, by personal or commercial delivery, by facsimile, or by electronic mail in accordance with § 1201.5 of this chapter. If the document was submitted by certified mail, it is considered to have been filed on the mailing date. If it was submitted by regular mail, it is presumed to have been filed five days before the Office of the Clerk receives it, in the absence of evidence contradicting that presumption. If it was delivered personally, it is considered to have been filed on the date the Office of the Clerk receives it. If it was submitted by facsimile, the date of the facsimile is considered to be the filing date. If it was submitted by commercial delivery, the date of filing is the date it was delivered to the commercial delivery service. If it was submitted by electronic mail, it is considered to have been filed on the date sent.

\* \* \* \* \*

■ 20. Section 1203.14 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

**§ 1203.14 Serving documents.**

\* \* \* \* \*

(b) *Method of serving documents.* Pleadings may be served on parties by mail, by personal delivery, by facsimile, or by commercial delivery. Service by mail is accomplished by mailing the pleading to each party or representative, at the party's or representative's last known address. Service by facsimile is accomplished by transmitting the pleading by facsimile to each party or representative. Service by personal delivery or by commercial delivery is accomplished by delivering the pleading to the business office or home of each party or representative and leaving it with the party or representative, or with a responsible person at that address. Regardless of the method of service, the party serving the document must submit to the Board, along with the pleading, a certificate of service as proof that the document was served on the other parties or their representatives. The certificate of service must list the names and addresses of the persons on whom the pleading was served, must state the date on which the pleading was served, must state the method (*i.e.*, mail, personal delivery, facsimile, or commercial delivery) by which service was accomplished, and must be signed by the person responsible for accomplishing service.

(c) *Electronic mail filing and service.* Other than the initial request for a regulation review, pleadings in a regulation review proceeding may be filed with the Board and served upon other parties by electronic mail, provided the requirements in § 1201.5 of this chapter are satisfied.

■ 21. Section 1203.22 is amended by revising paragraph (a) to read as follows:

**§ 1203.22 Enforcement of order.**

(a) Any party may ask the Board to enforce a final order it has issued under this part. The request may be made by filing a petition for enforcement with the Office of the Clerk of the Board and by serving a copy of the petition on each party to the regulation review. The request may be filed by electronic mail, provided the requirements in § 1201.5 of this part are satisfied. The petition must include specific reasons why the petitioning party believes that there has been a failure to comply with the Board's order.

\* \* \* \* \*

**PART 1208—[AMENDED]**

■ 22. The authority citation for part 1208 continues to read as follows:

**Authority:** 5 U.S.C. 1204(h), 3330a, 3330b, 38 U.S.C. 4331.

■ 23. Section 1208.13 is amended by adding new paragraph (c) to read as follows:

**§ 1208.13 Content of appeal; request for hearing.**

\* \* \* \* \*

(c) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

■ 24. Section 1208.14 is revised to read as follows:

**§ 1208.14 Representation by Special Counsel.**

The Special Counsel may represent an appellant in a USERRA appeal before the Board. A written statement (in any format) that the appellant submitted a written request to the Secretary of Labor that the appellant's complaint under 38 U.S.C. 4322(a) be referred to the Special Counsel for litigation before the Board, and that the Special Counsel has agreed to represent the appellant, will be accepted as the written designation of representative required by 5 CFR 1201.31(a). The designation of representative may be filed by electronic mail, provided the requirements in § 1201.5 of this chapter are satisfied.

■ 25. Section 1208.23 is amended by adding new paragraph (c) to read as follows:

**§ 1208.23 Content of appeal; request for hearing.**

\* \* \* \* \*

(c) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

■ 26. Section 1208.24 is amended by revising paragraph (a) to read as follows:

**§ 1208.24 Election to terminate MSPB proceeding.**

(a) *Election to terminate.* At any time beginning on the 121st day after an appellant files a VEOA appeal with the Board, if a judicially reviewable Board decision on the appeal has not been issued, the appellant may elect to terminate the Board proceeding as provided under 5 U.S.C. 3330b and file a civil action with an appropriate United States district court. Such election must be in writing, signed, filed with the Board office where the appeal is being processed, and served on the parties. The election is effective immediately on the date of receipt by the Board office where the appeal is being processed. The election may be

filed by electronic mail provided the requirements in § 1201.5 of this chapter are satisfied.

\* \* \* \* \*

**PART 1209—[AMENDED]**

■ 27. The authority citation for part 1209 continues to read as follows:

**Authority:** 5 U.S.C. 1204, 1221, 2302(b)(8), and 7701.

■ 28. Section 1209.6 is amended by adding new paragraph (d) to read as follows:

**§ 1209.6 Content of appeal; right to hearing.**

\* \* \* \* \*

(d) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

■ 29. Section 1209.8 is amended by revising paragraphs (a) and (d) and by adding new paragraphs (e) and (f) to read as follows:

**§ 1209.8 Filing a request for a stay.**

(a) *Time of filing.* An appellant may request a stay of a personnel action allegedly based on whistleblowing at any time after the appellant becomes eligible to file an appeal with the Board under § 1209.5 of this part, but no later than the time limit set for the close of discovery in the appeal. The request may be filed prior to, simultaneous with, or after the filing of an appeal.

\* \* \* \* \*

(d) *Method of filing.* A stay request must be filed with the appropriate Board regional or field office by personal delivery, by facsimile, by mail, or by commercial delivery.

(e) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (<http://www.mspb.gov/e-appeal.html>).

(f) *Electronic mail option.* A stay request, made after the filing of an appeal, may be filed by electronic mail after the filing of the appeal, provided the requirements in § 1201.5 of this chapter are satisfied.

Dated: October 10, 2003.

**Bentley M. Roberts,**

*Clerk of the Board.*

[FR Doc. 03-26172 Filed 10-17-03; 8:45 am]

**BILLING CODE 7400-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

[Docket No. NM81; Special Conditions No. 25-ANM-84A]

**Special Conditions: Extended Range Operation of Boeing Model 777 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Amended special conditions.

**SUMMARY:** These special conditions amend Special Conditions No. 25-ANM-84, applicable to Boeing Model 777 series airplanes. They revise the extended range operations with two-engine airplanes (referred to as "ETOPS") test requirements defined in the original special conditions. The revisions include changing the airplane demonstration test requirement from a required 1000 flight cycles to a demonstration of capability in ETOPS flight conditions, and allowing more than one airplane to be used for the airplane demonstration test. In addition, this revision adds post-test inspection requirements for both the engine demonstration test and the airplane demonstration test articles.

**EFFECTIVE DATE:** October 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Steve Clark, FAA, ETOPS Project Manager, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 917-6496; facsimile (425) 227-1180.

**SUPPLEMENTARY INFORMATION:**

**Background**

Because of concerns over engine and airplane reliability, for many years 14 CFR 121.161 has generally prohibited operations of two-engine airplanes on routes including segments that are more than one hour flight time from a suitable airport. This regulation contains an exception that allows such operations when specifically authorized by the Administrator. These extended range operations with two-engine airplanes are referred to as ETOPS. Advisory Circular (AC) 120-42A describes a method for obtaining ETOPS authorization if an operator can demonstrate sufficient engine and airplane reliability. This method is based on a combination of various design features and operational and maintenance procedures. The AC states that eligibility for 120-minute ETOPS