



U.S. MERIT SYSTEMS PROTECTION BOARD

**PROCEDURES FOR MAKING LIMITED EXCEPTIONS TO  
5 C.F.R. §§ 1201.14(d) AND 1201.26(b) DURING THE  
CORONAVIRUS (COVID-19) PANDEMIC AND THE  
NATIONAL EMERGENCY**

These procedures apply only when the Chairman, Acting Chairman, or acting chief administrative and executive officer so directs to ensure MSPB can efficiently and effectively continue its adjudicatory mission during the 2020 Coronavirus Pandemic and the National Emergency. This policy may be revoked or amended at any time at the discretion of the Chairman, Acting Chairman, or acting chief administrative and executive officer.

MSPB regulations prohibit the use of electronic mail (e-mail) as a method of filing pleadings in MSPB appeals. [5 C.F.R. § 1201.14\(d\)](#) provides: “Internet is sole venue for electronic filing. Following the instructions at e-Appeal Online, the MSPB’s e-Appeal site (<https://e-appeal.mspb.gov>), is the only method allowed for filing electronic pleadings with the MSPB. The MSPB will not accept pleadings filed by electronic mail (e-mail).” Pursuant to [5 C.F.R. § 1201.26\(b\)](#), “The parties must serve on each other one copy of each pleading . . . by mail, by facsimile, by commercial or personal delivery, or by electronic filing in accordance with § 1201.14.”

Pursuant to [5 C.F.R. § 1201.12](#), the Board may waive any of its adjudicatory regulations. Also pursuant to [§ 1201.12](#), an administrative judge may, for good cause shown, waive an MSPB adjudicatory 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. Further, MSPB’s [Organization Functions and Delegations of Authority](#) provides the Clerk of the Board with certain adjudicatory delegations and functions, including the authority to “accept or reject documents” (April 2011, § 2.3.5); *see also* [5 C.F.R. § 1201.114\(l\)](#) (providing the Clerk of the Board with authority to reject material that does not conform to the procedural requirements of Subpart C of Part 1201). Because specific methods of filing and serving appeals and pleadings are not required by statute, MSPB may waive the prohibition on the use of e-mail as such a method.

Accordingly, at MSPB's sole discretion, a party may file or serve appeals and pleadings by e-mail, subject to the following:

1. The Regional Director (RD), Chief Administrative Judge (CAJ), Clerk of the Board, or their respective designee, or the administrative judge or administrative law judge (ALJ), must determine, at their discretion:
  - a. The party does not have access to e-Appeal Online; or
  - b. Using e-Appeal Online would be unduly burdensome for the party (after receiving a credible, specific, and detailed explanation, e.g., medical disability or accommodation, lack of computer access, lack of internet service).
2. An administrative judge, ALJ, Office Director, or designee must notify and consult with the Office Director, RD, CAJ, Clerk of the Board, or whomever these persons may designate, regarding the decision whether to permit e-mail pleadings by a party.
3. The Office Director, RD, CAJ, Clerk of the Board, or their respective designee, or the administrative judge or ALJ, must give notice of the waiver of [5 C.F.R. §§ 1201.14](#)(d) and [1201.26](#)(b)(2) to all parties. Upon such notice, all parties in the case may serve pleadings by e-mail.
4. Due to security issues regarding access to MSPB e-mail addresses as well as potential prohibited ex parte communications, the party must use the applicable MSPB office's general e-mail box to file new appeals and pleadings with MSPB.
5. Registered e-Appeal e-filers should continue to use e-Appeal to file pleadings on MSPB and on registered e-Appeal parties, unless the e-filer meets one of the limited exceptions under section 1, above.
6. The administrative judge, ALJ, or Office Director designee may require the party to return to traditional methods of filing and serving pleadings after notifying and consulting with the Office Director, RD, CAJ, or whomever these persons may designate.
7. E-mail may not be used to: (a) file a request to hear a case as a class appeal or any opposition thereto ([§ 1201.27](#)); (b) serve a subpoena ([§ 1201.83](#)); (c) file a pleading with a Special Panel ([§ 1201.173](#)); (d) file a pleading containing Sensitive Security Information (SSI) (49 C.F.R. Parts 15 and 1520); (e) file a pleading containing classified information (32 C.F.R. Part 2001); or (f) file a request to participate as an amicus curiae or file a brief as amicus curiae ([§ 1201.34](#)).

A party who has been authorized to submit pleadings via e-mail may attach Microsoft Word or regular portable document format (PDF) files (excluding PDF Portfolio files, PDFs with attached or embedded files, or PDFs with embedded electronic signatures). If a party has another file type to submit as part of a pleading, the party must contact the appropriate regional office or Office of the Clerk of the Board first for guidance on how to proceed.

After a determination that the party meets the above requirements, MSPB, at its sole discretion, may serve issuances on any party by e-mail, using the applicable MSPB office's general e-mail box.

Pursuant to [5 C.F.R. § 1201.12](#), MSPB may also waive the requirement to serve the appellant by U.S. Mail. If a represented appellant cannot use e-Appeal or e-mail as a method of service for any reason, MSPB may order the appellant's designated representative to instead serve all issuances and pleadings on the appellant by any available method. However, if it is the appellant's designated representative who cannot use e-Appeal or e-mail as a method of service, the appellant will not be ordered to serve issuances or pleadings on that representative and adjudication will not proceed.

All e-mailed pleadings will be uploaded to MSPB's Document Management System, and will appear in proper order in the official record of the case. *See* [5 C.F.R. § 1201.53\(e\)](#).

March 27, 2020