

# 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,