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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Mandatory Electronic Filing for Agencies and Attorneys at Washington Regional Office and Denver Field Office

**AGENCY:** Merit Systems Protection Board.

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

**SUMMARY:** This rule informs the public that the U.S. Merit Systems Protection Board (MSPB or Board) is launching a pilot program under which the Washington Regional Office (WRO) and Denver Field Office (DEFO) will require all pleadings filed by agencies and attorneys who represent appellants in MSPB proceedings to be electronically filed (e-filed). This requirement will apply to all pleadings except those containing classified information or Sensitive Security Information (SSI) in all adjudicatory proceedings before the Board. Any agency or appellant's attorney who believes e-filing would create an undue burden may request an exemption from the administrative judge; however, requests will generally be considered only for pleadings that include scanned material, for example, not documents prepared and saved in a word processing program, and will be granted only when supported by a specific and detailed explanation, such as when the submission of a voluminous amount of scanned documents would create a hardship for a party.

**DATES:** This rule is effective January 11, 2012.

**ADDRESSES:** Send or deliver comments to the Office of Clerk of the Board, U.S. 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).

**FOR FURTHER INFORMATION CONTACT:**

William D. Spencer, Clerk of the Board, U.S. 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:**

#### 1. History of MSPB's E-Filing Initiative

On February 26, 2008, MSPB issued final regulations at 5 CFR parts 1201, 1203, 1208, and 1209 governing e-filing. 73 FR 10127. Under those regulations, virtually any type of pleading can be filed electronically via MSPB's electronic filing application—e-Appeal Online. This includes the initial original appeal in matters within the Board's original and appellate jurisdiction, as well as all subsequent pleadings by the parties in such appeals. In addition to the pleadings on the merits of these appeals, e-Appeal Online can be used in subsidiary or addendum proceedings, including petitions for enforcement, motions for attorney fee awards, motions for compensatory or consequential damages, designations of representation, and notices of changes to contact information. 73 FR 10129; 5 CFR 1201.14(b). These regulations require parties and representatives who elect to e-file to follow the instructions for e-filing at MSPB's e-Appeal Online (<https://e-appeal.mspb.gov>). 5 CFR 1201.14(d).

#### 2. Benefits of MSPB's E-Filing Initiative

E-Appeal Online is more than an application for sending and receiving pleadings in electronic form; it comprises an electronic case file of all relevant electronic documents relating to a particular appeal. This includes an online Repository of all documents issued by MSPB in a particular case, such as notices, orders, decisions, and other documents issued by MSPB to the parties, as well as pleadings filed via e-Appeal Online. Also available in the online Repository are pleadings filed at the petition for review stage of adjudication, even if filed in paper form, and some pleadings filed at the regional office level. The Repository also includes an electronic "docket sheet" that lists all documents issued by MSPB to the parties, as well as all pleadings filed by the parties, including those pleadings that are not available for

viewing and downloading in electronic form. Access to appeal documents at the Repository is limited to the parties and representatives of the appeals in which they were filed.

Generally, pleadings added to the Repository are full-text searchable, including printed materials that have been converted to electronic format by scanning. This is accomplished using optical character recognition software that converts image-only electronic formats into an image-plus-text electronic format. Making case-related documents full-text searchable makes it easier for both the parties to MSPB proceedings and MSPB itself to search case files for pertinent materials.

Although e-Appeal Online has been valuable to both MSPB and its customers, some benefits can only be realized when the entire case file is available in electronic form. If only one party is e-filing, only part of the case file will generally be available to MSPB and to the parties in an appeal in electronic form. In these circumstances, both MSPB employees and the parties need access to the paper case file in order to have access to the entire record. If the entire case file were available in electronic form, neither MSPB employees nor the parties and their representatives would need to have access to the paper case file in order to do their jobs. If e-filing were mandatory for agencies and attorneys who represent appellants, scanning the remaining paper pleadings of pro se appellants who have not taken advantage of e-filing will become manageable, and the Board and the parties would be able to realize the benefits of fully electronic case files.

#### 3. Mandatory E-Filing for WRO and DEFO

In the February 26, 2008 **Federal Register** notice, MSPB announced that it was giving serious consideration to mandating e-filing for agencies and attorneys who represent appellants in MSPB proceedings, and MSPB welcomed comments on this issue. 73 FR 10127-28.

In response to the February 26, 2008, announcement in the **Federal Register** about the possibility of mandatory e-filing for agencies and attorneys, MSPB received only one comment. The commenter acknowledged the advantages of such a rule, but identified two disadvantages: (1) Agencies would

have to upgrade their equipment to accommodate the scanning of lengthy documents, and (2) when pro se appellants do not elect to e-file, agencies would have the additional burden of preparing and submitting documents in two formats, i.e., electronic and paper. E-Mail of March 25, 2008. We have considered the comment.

As to the equipment required, we recognize that some federal agency offices may not be well-equipped to produce and upload agency files as electronic documents. However, in light of the ever-increasing affordability of high-quality scanners and related software, we believe the number of offices that would be adversely affected by such a rule would be relatively small. We note also that e-filing is already mandatory in many state and federal courts. Nevertheless, this Interim Rule takes the commenter's concern into account and provides for exemptions in appropriate circumstances.

As to the commenter's concerns about the extra work that would be entailed when appellants do not e-file, we believe those concerns are overstated. In that event, it is true that a paper copy of the agency file would have to be printed and mailed. It is not the case, however, that all of the extra work traditionally involved in assembling an agency file would still need to be done. A party that e-files a pleading that contains three or more attachments must describe and bookmark the attachments so that each attachment is listed in a table of contents and bookmarked in the electronic version. 5 CFR 1201.14(g)(3). In the assembled pleading, the table of contents will list each attachment and the page number on which it starts. This pleading can be printed and mailed as is; there would be no need for the agency to place physical tabs on the attachments, or to manually create a separate table of contents. Thus, even when the appellant is not an e-filer, we do not see a significant increase in the time required to assemble and serve the agency file. When all parties are e-filing, we believe that there will be a net savings of time associated with creating and serving the agency file electronically.

Although the MSPB announced that it was considering making e-filing mandatory for all agencies and attorneys appearing before the MSPB, this interim rule affects only parties appearing before the WRO and the DEFO. Except for pleadings filed with WRO and DEFO, whether to participate in Board proceedings as an e-filer will continue to be voluntary. We note, however, that should the pilot program in WRO and DEFO prove to be successful, the Board

would consider proposing a final agency-wide rule that would make e-filing mandatory for agencies and attorneys who represent appellants.

To provide time for agencies to comply with this rule, we are setting the effective date of this new rule 90 days in the future, on January 11, 2012. This new rule will apply only to appeals filed on or after January 11, 2012.

**List of Subjects in 5 CFR Part 1201**

Administrative practice and procedure, Electronic filing.

Accordingly, MSPB amends 5 CFR part 1201 as set forth below:

**PART 1201—[AMENDED]**

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

Authority: 5 U.S.C. 1204 and 7701.

- 2. In § 1201.14, add paragraph (p) to read as follows:

**§ 1201.14 Electronic filing procedures.**

\* \* \* \* \*

(p)(1) Except as provided in paragraphs (p)(2) and (3) of this section, all pleadings (including the initial appeal) except those containing classified information or Sensitive Security Information filed with the Washington Regional Office (WRO) and the Denver Field Office (DEFO) by agencies or attorneys must be e-filed. Agencies and attorneys in proceedings in the WRO and the DEFO must register as e-filers pursuant to paragraph (e) of this section.

(2) Agencies or attorneys who believe that e-filing would create an undue burden on their operations may request an exemption from the administrative judge for a specific appeal and/or pleading. Such a request shall include a specific and detailed explanation why e-filing would create an undue burden.

(3) Except in unusual circumstances, exemptions granted under this section 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.

**William D. Spencer,**  
*Clerk of the Board.*

[FR Doc. 2011-26315 Filed 10-12-11; 8:45 am]

**BILLING CODE 7400-01-P**

**DEPARTMENT OF AGRICULTURE**

**Office of the Secretary**

**7 CFR Part 6**

**Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2011 Tariff-Rate Quota Year**

**AGENCY:** Office of the Secretary, USDA.  
**ACTION:** Final rule.

**SUMMARY:** This document sets forth the revised appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2011 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

**DATES:** *Effective Date:* October 13, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Abdelsalam El-Farra, Dairy Import Licensing Program, Import Policies and Export Reporting Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250-1021; or by telephone at (202) 720-9439; or by e-mail at: [abdelsalam.el-farra@fas.usda.gov](mailto:abdelsalam.el-farra@fas.usda.gov).

**SUPPLEMENTARY INFORMATION:** The Foreign Agricultural Service, under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20-6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Policies and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with U.S. Customs and Border Protection, U.S. Department of Homeland Security, monitors their use.

The regulation at 7 CFR 6.34(a) states: "Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the