

§ 1210.1

- 1210.3 Application.
- 1210.4 Definitions.
- 1210.5 Revocation, amendment and waiver of regulations in this part.
- 1210.6 Savings provision.

Subpart B—Procedures for Appeals of Actions Taken Under 5 CFR Part 9701, Subpart F

- 1210.10 Notice of appeal rights.
- 1210.11 Filing an appeal.
- 1210.12 Representatives.
- 1210.13 Burden and degree of proof; affirmative defenses.
- 1210.14 Initial disclosures; scope of discovery.
- 1210.15 Discovery procedures.
- 1210.16 Intervention.
- 1210.17 Settlement.
- 1210.18 Case suspension procedures; use of the Mediation Appeals Program; refiled appeals.
- 1210.19 Right to a hearing.
- 1210.20 Summary judgment.
- 1210.21 Initial decision by the adjudicating official.

Subpart C—Petitions for Review of Initial Decisions and Petitions for Reconsideration

- 1210.30 Filing petition and cross petition for review.
- 1210.31 OPM petition for reconsideration.

Subpart D—Review of Mandatory Removal Action Appeals

- 1210.40 Filing a request for Board review.
- 1210.41 Decision of the Board.
- 1210.42 Intervenors.
- 1210.43 Finality.
- 1210.44 Request for reconsideration.

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

SOURCE: 72 FR 56885, Oct. 5, 2007, unless otherwise noted.

Subpart A—Jurisdiction, Definitions, and Waiver of Rules**§ 1210.1 Scope and policy.**

The regulations in this part apply to Board proceedings in appeals of certain adverse actions of the Department of Homeland Security that are covered under subparts F and G of 5 CFR part 9701. The Board will apply these rules in a manner that promotes the fair, efficient and expeditious resolution of appeals.

§ 1210.2 Jurisdiction.

(a) *Employees covered.* The Board has jurisdiction over appeals brought by employees covered by 5 CFR 9701.604(c), except for those classes of employees excluded under 5 CFR 9701.604(d).

(b) *Actions covered.* The Board has jurisdiction over appeals from actions taken by the Department under subpart F of 5 CFR part 9701, except for those matters excluded under paragraphs (c) and (d) of this section. Actions covered include suspensions of 15 days or more, demotions, reductions in pay, removals, or furloughs of 30 days or less, subject to the limitations set forth in 5 CFR 9701.704.

(c) *Matters excluded from MSPB jurisdiction—(1) Mandatory removal offenses.* Except as stated in paragraph (c) of this section, the Board does not have jurisdiction over first-level appeals from actions taken pursuant to 5 CFR 9701.707 for offenses that the Secretary has designated as mandatory removal offenses. The procedures governing petitions for review of decisions of the Mandatory Review Panel are set forth in subpart D of this part.

(2) *National security suspensions and removal.* The Board does not have jurisdiction over appeals from suspension and removal actions taken by the Secretary pursuant to 5 CFR 9701.613 when he or she considers such actions to be in the interest of national security.

(d) *Effect of status under a retirement system.* If an employee has been removed under subpart F of 5 CFR part 9701, neither the employee's status under any retirement system established by Federal statute nor any election made by the employee under any such system will affect the employee's appeal rights.

§ 1210.3 Application.

Subject to modification and/or waiver by the adjudicating official, the regulations set forth in 5 CFR parts 1201, 1208 and 1209 apply to Board appellate proceedings conducted under this part except as otherwise provided herein.

§ 1210.4 Definitions.

In this subpart:

(a) *Adjudicating official* means an administrative law judge, administrative