

§ 1210.5

§ 1210.5 Determination of the Secretary effecting a removal or transfer; required notice of expedited procedures; initial disclosures.

An agency notice of a removal or transfer pursuant to 38 U.S.C. 713 must include the following:

(a) A statement identifying the action taken based on the Secretary's determination, stating the factual reasons for the charge(s), and statement setting forth the basis for the Secretary's determination that the performance or misconduct warrants removal or transfer.

(b) Notice regarding the Board's expedited procedures applicable to an appeal. Such notice shall include a copy of this part and access to the remainder of the Board's adjudicatory regulations.

(c) A copy of the materials the Secretary relied upon to remove or transfer the appellant (normally referred to as the "response file").

(d) The name and contact information of the agency's representative for any appeal filed with the MSPB under this part.

(e) Notice that MSPB appeals must be filed with the appropriate Board regional or field office. See § 1201.4(d) of this chapter.

§ 1210.6 Electronic filing procedures; expedited filing procedures.

(a) *Required use of MSPB e-filing system.* All parties must electronically file all pleadings and documents listed in 5 CFR 1201.14(b) by using the MSPB's e-filing system (e-Appeal Online). An attempt to file an appeal using any other method will result in rejection of the appeal and will not constitute compliance with the 7-day filing deadline under the Act, except in the limited circumstances described in § 1210.7(c).

(b) *Expedited filing and service requirements.* All documents and pleadings not otherwise covered in paragraph (a) of this section must be filed in accordance with any expedited filing and service procedures ordered by the administrative judge.

(c) The parties should frequently check the Repository on e-Appeal Online to ensure that they are aware of new pleadings, orders and submissions in a timely fashion. A party's failure to

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check for updates on e-Appeal Online may lead to a denial of a request to extend a deadline and/or the imposition of sanctions.

§ 1210.7 Filing an appeal and a response to an appeal.

(a) *Place for filing an appeal and a response.* Appeals, and responses to those appeals, must be filed with the appropriate Board regional or field office. See § 1201.4(d) of this chapter.

(b) *Time for filing an appeal and agency response.* An appeal of an action taken pursuant to 38 U.S.C. 713 must be filed no later than 7 days after the effective date of the removal or transfer being appealed. (38 U.S.C. 713(d)(2)(B)). An agency response must be filed within 3 days of the filing of the appeal.

(c) *Timeliness of appeals.* If an appellant does not submit an appeal within 7 days of the effective date of the action it will be dismissed as untimely filed. This deadline cannot be extended for any reason. (38 U.S.C. 713(d)(2)(B)). However, if an appellant establishes that he or she attempted to file an appeal using e-Appeal Online within the 7-day deadline and that the filing was unsuccessful due to a problem with e-Appeal Online, the administrative judge may deem the filing to have been completed on the date it was attempted, provided the appellant took reasonable steps to immediately advise the MSPB of the failed attempt to file the appeal using e-Appeal Online. The 21-day deadline for issuance of a decision will commence on the day such an appeal was deemed to have been filed.

(d) *Time limits for other appeals not brought under 38 U.S.C. 713.* The time limit prescribed by paragraph (b) of this section for filing an appeal does not apply where a law or regulation establishes a different time limit or where there is no applicable time limit. No time limit applies to appeals under the Uniformed Services Employment and Reemployment Rights Act (Pub. L. 103-353), as amended; see part 1208 of this chapter for the statutory filing time limits applicable to appeals under the Veterans Employment Opportunities Act (Pub. L. 105-339); see part 1209 of this chapter for the statutory filing time limits applicable to whistleblower appeals and stay requests.