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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1200, 1201, 1203, and 1209

Organization and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim final rule.

SUMMARY: This interim final rule updates adjudicatory and operational regulations of the Merit Systems Protection Board (MSPB or Board) to increase efficiency in processing of MSPB appeals, as well as to address potential flaws in its prior regulations.

DATES: This interim final rule is effective October 7, 2024. Comments must be received on or before November 8, 2024.

ADDRESSES: Submit your comments concerning this interim final rule by one of the following methods and in accordance with the relevant instructions:

Email: mspb@mspb.gov. Comments submitted by email can be contained in the body of the email or as an attachment in any common electronic format, including word processing applications, HTML, and PDF. If possible, commenters are asked to use a text format and not an image format for attachments. An email should contain a subject line indicating that the submission contains comments concerning the MSPB's interim final rule. The MSPB asks that commenters use email to submit comments if possible. Submission of comments by email will assist the MSPB to process comments and speed publication of a final rule.

Fax: (202) 653-7130. Comments submitted by fax should be addressed to Gina K. Grippando, Clerk of the Board, and contain a subject line indicating that the submission contains comments concerning the MSPB's interim final rule.

Mail or other commercial delivery: Comments submitted by mail should be addressed to Gina K. Grippando, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419.

Hand delivery or courier: Comments submitted by hand delivery or courier should be addressed to Gina K. Grippando, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419, and delivered to the 5th floor reception window at this street address. Such deliveries are only accepted Monday through Friday, 9 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: As noted above, the MSPB requests that commenters use email to submit comments, if possible. All comments received will be made available online at the Board's website, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information the disclosure of which is restricted by law. Those desiring to submit anonymous comments must submit comments in a manner that does not reveal the commenter's identity, include a statement that the comment is being submitted anonymously, and include no personally identifiable information. The email address of a commenter who chooses to submit comments using email will not be disclosed unless it appears in comments attached to an email or in the body of a comment.

FOR FURTHER INFORMATION CONTACT: Gina K. Grippando, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419; phone: (202) 653-7200; fax: (202) 653-7130; or email: mspb@mspb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The MSPB commenced its last comprehensive review of its regulations in January 2011, which concluded with the issuance of a final rule amending its regulations in October 2012. In May 2019, the MSPB initiated a new review of its regulations to further improve its adjudications and operations. The MSPB's review process began with a solicitation for suggested revisions from its internal offices. The submissions were then reviewed by an internal working group, which worked to

develop draft amendments to existing regulations based on the submissions.

Following restoration of the Board's quorum of members in March 2022, the draft amendments prepared by the internal working group were then evaluated by the Board members, after which time they were revised in accordance with the processing goals of the Board and prepared for issuance.

Finally, while these amendments are being issued immediately as interim final rules, the Board still requests that all stakeholders or other interested individuals provide their views on the amendments. The Board also requests additional comments on any other aspect of its regulations that stakeholders or other interested individuals feel need amending. The Board will thoroughly consider all input and respond to all comments as necessary.

II. Summary of Changes

Set forth below is a summary of amendments being implemented by the MSPB

Part 1200—Board Organization

Subpart A—General

Section 1200.3 How the Board Members Make Decisions

This amendment modifies the authority of Board members or Board staff to take certain actions when the Board is unable to act due to vacancies, recusals, or other reasons. During the Board's in-quorate status between 2017 and 2022, the Board encountered numerous scenarios which under existing regulation or policy required Board vote, but which were unable to be processed without a quorum. These included scenarios such as decisions finalizing settlements of appeals reached after an initial decision had issued, or requests for further development of the record by an administrative judge after an initial decision had issued. The Board is implementing this modification in order to expedite processing in certain scenarios in the event that it is again unable to act due to a loss of quorum in the future. Under the new regulation, a lone Board member may be able to perform certain of these tasks, and in the event the Board lacks any confirmed members, MSPB staff may be allowed to perform the tasks to the limited extent necessary to facilitate final decision-

making by a future quorum. Additionally, the new regulation addresses the Board's decision-making authority when members of the Board are unable to reach a majority decision due to vacancies, recusals, or other reasons.

Section 1200.5 Conduct Policy

This addition to the MSPB's Board Organization regulations reflects the Board's need to issue a policy prohibiting abusive conduct and filings from individuals during the pendency or after the conclusion of an appeal. This policy will benefit all parties by ensuring that appeals are adjudicated efficiently and respectfully.

Part 1201—Practices and Procedures

Subpart A—Jurisdiction and Definitions

Section 1201.3 Appellate Jurisdiction

This amendment corrects an errant reference to 5 CFR 1201.154. The regulation is intended to instead reference the Board's authority to review grievance decisions pursuant to 5 CFR 1201.155.

Subpart B—Procedures for Appellate Cases

Section 1201.22 Filing an Appeal and Responses to Appeals

This amendment clarifies that the examples listed within the regulation are not meant to be binding interpretations of the regulation, and they are instead only meant to be illustrative of potential applications of the regulation. The Board believes this change will provide flexibility in determinations regarding good cause to waive untimeliness.

Section 1201.23 Computation of Time

This amendment clarifies the Board's discretion to waive its filing deadlines due to events that broadly affect the ability of parties to file pleadings and/or the Board's ability to serve issuances. The amendment does not otherwise alter the Board's current ability to exercise discretion when determining when to waive filing deadlines in individual appeals, and instead only reflects the Board's intent to potentially alter deadlines for all pending appeals when events transpire that broadly affect the Board's filing systems, such as technical outages or government shutdowns.

Section 1201.33 Federal Witnesses

This amendment makes a small grammatical modification to the existing regulation.

Section 1201.41 Judges

This amendment clarifies that MSPB administrative judges may only hold a hearing if requested by an appellant. This modification reemphasizes that the right to request a hearing belongs solely to appellants, and that neither administrative judges nor agencies may order a hearing if the appellant does not wish to have a hearing.

Section 1201.56 Burden and Degree of Proof

This amendment clarifies which types of Office of Personnel Management decisions may be appealed. The prior version of the regulation incorrectly suggested that appeals may only come from reconsideration decisions from the Office of Personnel Management (OPM), and it did not recognize that pursuant to longstanding Board case law, initial decisions from OPM may also be considered final appealable decisions, when OPM refuses or improperly fails to issue a final decision. This modification reflects the Board's decision in *Okello v. Office of Personnel Management*, 120 M.S.P.R. 498 (2014).

Section 1201.72 Explanation and Scope of Discovery

The amendments to this section clarify that discovery during an MSPB appeal may involve individuals who are not parties to the appeal. The amendment further removes reference to the Federal Rules of Civil Procedure, reflecting the Board's desire to establish its own discovery rules and limitations to better align with its statutory and regulatory time limits for processing appeals.

Section 1201.73 Discovery Procedures

This amendment modifies the Board's discovery procedures with respect to how parties serve discovery requests and responses, as well as how parties resolve discovery disputes. The amendment eliminates the need to request permission to serve discovery responses electronically. It also provides parties with additional time before needing to file a motion to compel, in order to reduce the number of discovery disputes between parties. Finally, it puts limitations on the number of document requests and requests for admission that may be issued, which are also aimed at reducing discovery disputes and expediting the processing of appeals.

Section 1201.81 Requests for Subpoenas

This amendment provides notice of which requirements must be met to obtain a subpoena. The Board has

received multiple requests for the issuance of subpoenas from parties who have not complied with all requirements. The Board is making this amendment to ensure parties are aware of the requirements before making a subpoena request.

Section 1201.82 Motions To Quash Subpoenas

This amendment modifies the Board's procedures regarding the filing and service of motions to quash a subpoena. The Board is amending its procedures to facilitate the filing of such motions by nonparties, who are not able to otherwise access the Board's electronic filing system to file such motions themselves. Administrative judges will now have discretion to provide methods to nonparties to electronically file motions to quash subpoenas without needing to utilize the Board's electronic filing system.

Section 1201.83 Serving Subpoenas

This amendment clarifies that any party who desires a non-federal employee to serve as a witness must still comply with Federal statutes governing fees and expenses for the witness.

Section 1201.84 Proof of Service

This amendment modifies the Board's procedures regarding service of subpoenas to allow service by any method approved by applicable state law.

Section 1201.85 Enforcing Subpoenas

This amendment modifies the Board's procedures regarding how a party may enforce a subpoena for an individual who fails to comply with its terms. The amendment eliminates the ability to file an oral motion to enforce a subpoena, and it provides a mechanism for allegedly noncomplying parties to file a written response to a motion to enforce a subpoena. The amendment will further develop a written record regarding a subpoena, which will facilitate enforcement of subpoenas in Federal court against noncomplying individuals.

Section 1201.113 Finality of Decision

This amendment clarifies the finality date of initial decisions after a party requests an extension of the deadline to file a petition for review. Under the current statutory and regulatory scheme, the Board is authorized to extend the deadline for a party to file a petition for review of an initial decision past the 30-day deadline. However, after such a request for extension is granted, a petition for review is not always filed, leading to potential uncertainty as to

whether the finality date of an initial decision is the original 35-day date set by the initial decision, or the extended petition for review deadline date granted by the Board. Consistent with current Board practice, the regulation now reflects that, if no petition for review is filed by the granted extension date (assuming the extension request is granted), the initial decision of the judge will become the Board's final decision upon the expiration of the extended time limit, and judicial appeal deadlines likewise run from the date of expiration.

Subpart C—Petitions for Review of Initial Decisions

Section 1201.114 Petition for Review—Content and Procedure

This amendment sets forth multiple changes designed to simplify the processing of petitions for review. It eliminates the ability for parties to file cross petitions for review, which will simplify the petition for review process by encouraging parties to raise all issues that they wish to pursue by the initial petition for review deadline. The amendment also provides further explanation as to when and how parties may file submissions other than an initial petition for review, a response to a petition for review, or a reply to a response. Finally, the amendment imposes a requirement that the parties certify that their pleading lengths comply with the limits imposed in the regulation.

The amendments will facilitate the processing of petitions for review by ensuring that all possible issues are put forward for consideration before the Board in an expeditious fashion.

Section 1201.115 Criteria for Granting Petition for Review

This amendment reflects the elimination of cross petitions for review, referenced in the amended Section 1201.114.

Section 1201.116 Compliance With Orders for Interim Relief

This amendment simplifies the Board's procedures regarding interim relief. Under the prior version of the regulation, parties were frequently confused by the distinction between a challenge to an agency's certification of compliance with an interim relief order and an allegation of noncompliance with an initial decision that ordered interim relief. The amendment will further simplify the processing of challenges to interim relief by imposing a requirement that the agency provide evidence of interim relief when filing a petition for review. However, the amendment does not alter, contradict,

and/or overrule any requirements regarding when interim relief may be required, including, but not limited to, the Board's recent decision in *Stewart v. Department of Transportation*, 2023 MSPB 18.

Section 1201.117 Board Decisions; Procedures for Review or Reopening

This amendment reflects the clarification to Section 1201.118 that the Board retains sole discretion to reopen decisions (versus vesting in the parties a right to request reopening).

Section 1201.118 Board Reopening of Final Decisions

This amendment clarifies that parties do not have the right to request reopening an appeal under the Board's procedures, and further do not have the right to a response from the Board to any request for reopening. This amendment further clarifies that any response to a request for reopening from the Office of the Clerk of the Board does not constitute a final order or decision of the Board. The Board is making this modification in light of recent decisions from the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) that questioned whether letters from the Office of the Clerk of the Board in response to requests to reopen an appeal constituted a final order or decision of the Board subject to judicial review.

Subpart E—Procedures for Cases Involving Allegations of Discrimination

Section 1201.155 Requests for Review of Final Grievance or Arbitrator's Decisions

This amendment is primarily made to the title of the section and is made to clarify that requests for review of decisions arising out of negotiated grievance procedures are not limited to decisions issued by arbitrators.

Subpart F—Enforcement of Final Decisions and Orders

Section 1201.182 Petition for Enforcement

This amendment reflects the longstanding requirement that all submissions related to the issuance of a final Board decision or order issued pursuant to 5 CFR 1201.155 must be filed with the Office of the Clerk of the Board. On occasion, parties send such submissions to other offices within the Board, which can lead to processing delays for the submissions.

Section 1201.183 Procedures for Processing Petitions for Enforcement

This amendment makes multiple modifications to the Board's procedures

for petitions for enforcement to simplify and expedite the processing of petitions for enforcement. The amendment makes clear that only settlement agreements that have been entered into the record for purposes of enforcement will be enforceable by the Board, to dispel any notion that the Board can enforce the terms of a settlement agreement that was not entered into the record before the Board. The amendment also requires agencies to provide the Board with an email address where pleadings can be served, as the Board has been notified on occasion that agencies were not receiving submissions in petitions for enforcement due to the departure of staff.

The amendment also clarifies that discovery in petitions for enforcement is limited to issues regarding enforcement, by removing the phrase "regular discovery procedures," which led parties to believe that discovery on issues outside of enforcement could be conducted. The amendment further specifies what a noncomplying party must submit to demonstrate compliance after a finding of noncompliance. Under the prior version of the regulation, parties often submitted evidence of purported compliance without explaining why the evidence demonstrated compliance, making it difficult for the Board to determine whether compliance was reached. Finally, the amendment specifies that petitions seeking attorney fees for work on enforcement proceedings will be governed by the Board's regulation covering attorney fees at 5 CFR 1201.203(d).

Subpart H—Attorney Fees (Plus Costs, Expert Witness Fees, and Litigation Expenses, Where Applicable) and Damages (Consequential, Liquidated, and Compensatory)

Section 1201.204 Proceedings for Consequential, Liquidated, or Compensatory Damages

This amendment primarily rearranges the prior 1201.204 in order to make the process more easily understood. The amendment also eliminates the requirement that parties make a request for consequential, liquidated, or compensatory damages by the end of the pre-hearing conference. The prior requirement that the parties make requests for consequential, liquidated, or compensatory damages by the end of the pre-hearing conference unnecessarily risked precluding the parties from raising such claims, and it created potential confusion about their option to pursue them in addendum proceedings. Finally, the amendment

amends the regulation to remain consistent with the modification made to 5 CFR 1201.41 that only appellants may request a hearing for damages, and that an administrative judge cannot force an appellant to have a hearing for damages without the appellant's consent.

Part 1203—Procedures for Review of Rules and Regulations of the Office of Personnel Management

Section 1203.12 Granting or Denying the Request for Regulation Review

This amendment modifies the prior 1203.12 to better communicate what action the Board will take when it grants a request to review an OPM regulation. It is the Board's view that the prior version of the regulation focused too heavily on what the Board includes in its orders, and it did not sufficiently communicate the Board's role and functions during the regulation review process. The amended regulation explains that the Board's role is to determine whether any regulation would require, on its face or as implemented, an individual to commit a prohibited personnel practice.

Section 1203.13 Filing Pleadings

This amendment reduces the number of filings that must be sent to the Board to properly file a request to review an OPM regulation, and it allows requests to be filed with the Board electronically. Both modifications are being made in order to aid the Board's ongoing transition away from maintenance of paper files.

Section 1203.14 Serving Documents

This amendment modifies the Board's procedures to allow requests to review OPM regulations to be filed with the Board and served on other parties electronically, in order to aid the Board's ongoing transition away from maintenance of paper files.

Section 1203.21 Final Order of the Board

This amendment clarifies that, consistent with Federal Circuit case law, the Board's decision in a regulation review case will be considered a final decision of the Board subject to judicial review if the Board grants a request to review a regulation and considers the merits of the request. The Board previously relied on 5 CFR 1201.113 as its authority for the finality of decisions in regulation review matters, but upon further study of the matter, the Board believes that section 1201.113 should not serve as the authority for finality because that section applies to petitions for review in appellate cases, whereas

the Board's regulation review procedures arise under its original jurisdiction. The amendment will specify which decisions in regulation review matters can be considered final, appealable decisions of the Board, and will avoid confusion by not treating the matter like a case under the Board's appellate jurisdiction.

Part 1209—Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing or Other Protected Activity

Subpart A—Jurisdiction and Definitions

Section 1209.2 Jurisdiction

This amendment corrects an errant reference to the incorrect statutory section.

Section 1209.4 Definitions

This amendment corrects an errant reference to the incorrect regulatory definition.

III. Effective Date of Amendments

The amendments described above will go into effect on October 7, 2024.

IV. Procedural Requirements

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), MSPB has determined that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment requirements of section 553(b) do not apply to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice. The Board finds that use of an interim final rule instead of notice and comment rulemaking is appropriate here because the amendments contained herein apply solely to the Board's rules of agency organization, procedure, or practice. All of the amendments solely address how appeals proceed at the Board, and do not affect any substantive rights of parties before the Board or interested stakeholders. No substantive changes in existing law or policy are effected by these amendments. Under these circumstances, notice and comment rulemaking is unnecessary and not required by any public interest.

B. Regulatory Impact Analysis: Executive Order 12866

The MSPB has determined that this is not a significant regulatory action under E.O. 12866. Therefore, no regulatory impact analysis is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). As discussed above, notice and comment rulemaking is unnecessary for these changes due to the lack of substantive changes being made to existing law or policy. Thus, the RFA does not apply to this final rule.

D. Paperwork Reduction Act

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

E. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 5 CFR Parts 1200, 1201, 1203, and 1209

Administrative practice and procedure.

For the reasons set forth above, 5 CFR parts 1200, 1201, 1203, and 1209 are amended as follows:

PART 1200—BOARD ORGANIZATION

■ 1. The authority citation for part 1200 continues to read as follows:

Authority: 5 U.S.C. 1201 *et seq.*, unless otherwise noted.

■ 2. Revise § 1200.3 to read as follows:

§ 1200.3 How the Board members make decisions.

(a) The three Board members make decisions in all cases by majority vote except in circumstances described in paragraph (b) of this section or as otherwise provided by law.

(b) When there are at least two Board members and, due to a vacancy, recusal or other reasons, the Board members are unable to decide any case by majority vote, the decision, recommendation, or other order under review may be deemed the final decision or order of the Board. The Chairman of the Board may direct the issuance of an order consistent with this paragraph (b).

(c) When due to vacancies, recusals, or other reasons, only one Board member is able to act, the Board

member may direct the following types of matters to an administrative judge or other official:

(1) A party's request to withdraw his/her appeal or petition for review for final disposition;

(2) A newly raised claim that was not previously adjudicated in the appeal currently under review for docketing and adjudication;

(3) A settlement for possible final disposition, including a determination of whether the parties actually reached a settlement, understood its terms, and agreed whether it is to be enforceable by the Board; or

(4) A matter for further development of the record.

(d) When due to vacancies, recusals, or other reasons no Board member is able to act, the Clerk of the Board may direct the following types of matters to an administrative judge or other official:

(1) A party's request to withdraw his/her appeal or petition for review for final disposition;

(2) A newly raised claim that was not previously adjudicated in the appeal currently under review for docketing and adjudication;

(3) A settlement for possible final disposition, including a determination of whether the parties actually reached a settlement, understood its terms, and agreed whether it is to be enforceable by the Board; or

(4) A matter for further development of the record.

(e) Decisions and orders issued pursuant to paragraph (b) of this section shall not be precedential.

■ 3. Add § 1200.5 to subpart A to read as follows:

§ 1200.5 Conduct policy.

The Board may issue a policy governing the conduct of the parties for all appeals before the Board and of parties and any other individuals in communications with the Board. Such policy may include rules regarding prohibited conduct and vexatious filing by a party, witness, representative, or other individual, as well as potential sanctions or other consequences for violations of the policy. Any policy established pursuant to this regulation will be made publicly available via the Board's website (www.mspb.gov).

PART 1201—PRACTICES AND PROCEDURES

■ 4. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 5. In § 1201.3, revise the last sentence in paragraph (c)(3) to read as follows:

§ 1201.3 Appellate jurisdiction.

* * * * *

(c) * * *

(3) * * * The request must be filed with the Clerk of the Board in accordance with § 1201.155.

■ 6. In § 1201.22, revise the last sentence of paragraph (b)(3) introductory text to read as follows:

§ 1201.22 Filing an appeal and responses to appeals.

* * * * *

(b) * * *

(3) * * * The following examples, while not controlling, illustrate potential application of this rule:

* * * * *

■ 7. In § 1201.23, redesignate the introductory text as paragraph (a) introductory text and examples 1 and 2 as paragraphs (a)(1) and (2), respectively, add a paragraph (a) heading, and add paragraph (b).

The additions read as follows:

§ 1201.23 Computation of time.

(a) *Computation of deadlines.* * * *

* * * * *

(b) *Changes to the computation of deadlines.* At MSPB's discretion, the computation of deadlines may be changed due to events that broadly affect the ability of parties with appeals before MSPB to file pleadings and/or MSPB's ability to serve issuances, such as MSPB system outages or government shutdowns. In these circumstances, any information concerning changes to the computation of deadlines will be addressed by MSPB through a press release posted to MSPB's website.

■ 8. In § 1201.33, revise the third sentence of paragraph (a) to read as follows:

§ 1201.33 Federal witnesses.

(a) * * * When a desired witness is employed by an agency that is not a party to the Board proceeding, the requesting party may avail itself of the provisions of §§ 1201.81 through 1201.85 regarding subpoenas to ensure the attendance of the witness. * * *

* * * * *

■ 9. In § 1201.41, revise paragraph (b)(5) and amend paragraph (b)(6) by removing the words "as appropriate," and adding in their place "by appropriate method," and add paragraph (c)(2)(iii).

The revision and addition read as follows:

§ 1201.41 Judges.

* * * * *

(b) * * *

(5) Grant an appellant's request for a hearing;

* * * * *

(c) * * *

(2) * * *

(iii) The judge may rescind a settlement agreement and reinstate the underlying matter on appeal in accordance with § 1201.183(a)(8)(ii).

■ 10. In § 1201.56, revise paragraph (b)(2)(ii) to read as follows:

§ 1201.56 Burden and degree of proof.

* * * * *

(b) * * *

(2) * * *

(ii) In appeals from final decisions of the Office of Personnel Management (OPM) involving retirement benefits, if the appellant filed the application, the appellant has the burden of proving, by a preponderance of the evidence (as defined in § 1201.4(q)), entitlement to the benefits.

* * * * *

■ 11. In § 1201.72, revise the first sentence in paragraph (a), the first sentence in paragraph (c), and revise paragraph (d)(2) to read as follows:

§ 1201.72 Explanation and scope of discovery.

(a) * * * Discovery is the process, apart from the hearing, by which a party may obtain relevant information, including the identification of potential witnesses, from a party or nonparty, that the other party or nonparty has not otherwise provided. * * *

* * * * *

(c) * * * Parties may use one or more of the following methods for obtaining discovery from parties or nonparties: written interrogatories, depositions, requests for production of documents or things for inspection or copying, and requests for admission. * * *

(d) * * *

(2) The party seeking discovery has had sufficient opportunity through discovery in the action to obtain the information sought; or

* * * * *

■ 12. In § 1201.73:

■ a. Revise the last sentence of paragraph (b) and revise paragraph (d)(3);

■ b. Redesignate paragraphs (e)(2) and (3) as paragraphs (e)(4) and (5);

■ c. Add new paragraphs (e)(2) and (3); and

■ d. Revise the first sentence of the newly redesignated paragraph (e)(5).

The revisions and additions read as follows:

§ 1201.73 Discovery procedures.

* * * * *

(b) * * * Parties and nonparties may respond to discovery requests by electronic mail.

* * * * *

(d) * * *

(3)(i) Any motion for an order to compel or to issue a subpoena must be filed with the judge:

(A) Within 20 days of the date of service of objections or, if no response is received, within 10 days after the time limit for response has expired; or

(B) Within 10 days of notice that a nonmoving party or nonparty provided an evasive or incomplete answer or response to a discovery request.

(ii) A party may request an extension of the time limit to file a motion to compel with respect to any discovery dispute pursuant to § 1201.55. Any pleading in opposition to a motion to compel or subpoena discovery must be filed with the judge within 10 days of the date of service of the motion.

(e) * * *

(2) Absent prior approval by the judge, requests for documents served by parties upon another party or nonparty may not exceed 25 in number, including all discrete subparts.

(3) Absent prior approval by the judge, requests for admission served by parties upon another party or nonparty may not exceed 25 in number, including all discrete subparts.

* * * * *

(5) Requests to exceed the limitations set forth in paragraphs (e)(1) through (4) of this section may be granted at the discretion of the judge.* * *

■ 13. In § 1201.81, amend paragraph (a) by revising the first and last sentences and amend paragraph (b) by revising the last sentence to read as follows:

§ 1201.81 Requests for subpoenas.

(a) * * * Parties who have complied with 1201.73(c), as applicable, and wish to obtain subpoenas that would require the attendance and testimony of witnesses, or subpoenas that would require the production of documents or other evidence under 5 U.S.C. 1204(b)(2)(A), should file their motions for those subpoenas with the judge.* * * Subpoenas are not ordinarily required to obtain the attendance of Federal employees as witnesses because Federal agencies and their employees must comply with 5 CFR 5.4 and § 1201.33.

(b) * * * Each request must identify specifically the testimony, documents, or other evidence desired.

* * * * *

■ 14. Revise § 1201.82 to read as follows:

§ 1201.82 Motions to quash subpoenas.

Any person to whom a subpoena is directed, or any party, may file a motion to quash or limit the subpoena. The motion must include reasons why compliance with the subpoena should not be required or the subpoena's scope should be limited. A party must file the motion with the judge and serve it on the other parties. A non-party must file the motion with the judge, who will enter the motion into the record and serve the motion on all parties. For purposes of this section, judges may provide a method by which nonparties may file the motion electronically, including by email, notwithstanding § 1201.14(d). Any party may file a response to the motion within 10 days after the motion has been entered into the record, and the judge will specify the method of service of any such response upon a non-party.

■ 15. In § 1201.83, add paragraph (c) to read as follows:

§ 1201.83 Serving subpoenas.

* * * * *

(c) A party requesting the presence of a non-federal employee witness must pay that witness' fees and travel expenses in accordance with 5 U.S.C. 1204(b)(3) and 28 U.S.C. 1821. Those fees must be paid or offered to the witness at the time the subpoena is served.

■ 16. In § 1201.84, amend paragraph (b) by removing the word "or", amend paragraph (c) by removing the period at the end and adding in its place ", or", and add paragraph (d).

The addition reads as follows:

§ 1201.84 Proof of service.

* * * * *

(d) By any other method that is in accordance with applicable State law.

■ 17. Revise § 1201.85 to read as follows:

§ 1201.85 Enforcing subpoenas.

(a) If a person who has been served with a Board subpoena fails or refuses to comply with its terms, the party seeking compliance may file a written motion for enforcement with the judge. That party must present the document certifying that the subpoena was served and, except where the witness was required to appear before the judge, must submit an affidavit or sworn statement under 28 U.S.C. 1746 (see appendix IV) describing the failure or refusal to obey the subpoena. A written motion must be served upon the person who is alleged to be in noncompliance.

(b) The person who is alleged to be in noncompliance may file a response within 10 days. A party must file the

response with the judge and serve it on the other parties. Non-parties must file their response with the judge, who will enter the response into the record. The judge may waive § 1201.14(d) to accept a nonparty's response by email. Any party may file a reply to the response within 10 days after the response has been entered into the record.

(c) In ruling on a motion to quash, judges may rely on Fed.R.Civ.P. 45 and applicable case law. Upon a finding by the judge of failure to obey a subpoena, the Board, in accordance with 5 U.S.C. 1204(c), may then ask an appropriate U.S. district court to enforce the subpoena. If the person who has failed or refused to comply with a Board subpoena is located in a foreign country, the U.S. District Court for the District of Columbia will have jurisdiction to enforce compliance, to the extent that a U.S. court can assert jurisdiction over an individual in the foreign country.

(d) Upon application by the Special Counsel, the Board may seek court enforcement of a subpoena issued by the Special Counsel in the same manner in which it seeks enforcement of Board subpoenas, in accordance with 5 U.S.C. 1212(b)(3).

■ 18. In § 1201.113, revise paragraph (d) to read as follows:

§ 1201.113 Finality of decision.

* * * * *

(d) *Extensions.* The Board may extend the time limit for filing a petition for review for good cause shown as specified in § 1201.114. If no petition for review is filed within the extended time limit, the initial decision of the judge will become the Board's final decision upon the expiration of the extended time limit.

* * * * *

■ 19. In § 1201.114:

- a. Revise the section heading and paragraph (a) introductory text;
- b. Remove paragraph (a)(2);
- c. Redesignate paragraph (a)(3) as paragraph (a)(2) and revise it;
- d. Redesignate paragraphs (a)(4) and (5) as paragraphs (a)(3) and (4);
- e. Revise newly redesignated paragraph (a)(4), paragraph (b), the first sentence of paragraph (c), and paragraphs (e), (g), (h), and (k).

The revisions read as follows:

§ 1201.114 Petition for review—content and procedure.

(a) *Pleadings allowed.* Pleadings allowed on review include a petition for review, which may be filed by either party, a response to a petition for review, and a reply to a response to a petition for review. Each party is limited to filing a single petition for review,

response to a petition for review, and reply to a response to a petition for review.

* * * * *

(2) A response to a petition for review may respond only to the arguments and assertions raised in the petition for review and does not contend that the initial decision was incorrectly decided in whole or in part. A response to another party's petition for review must be filed separately from a party's own petition for review.

* * * * *

(4) No pleading other than the ones described in this paragraph is permitted unless the party files a motion with and obtains leave from the Clerk of the Board. The motion must briefly describe the nature of and need for the requested pleading, *i.e.*, the motion must identify the requested pleading and briefly explain why the requested pleading is important. If the record is closed, as defined in paragraph (k) of this section, the motion must also show that the requested pleading is new and material, as defined in § 1201.115(a)(1) and (d), and that it was not readily available before the record closed. The party may not submit the requested pleading unless the Board issues an order granting the motion for leave. A filing characterized as a motion for leave that does not adhere to the above requirements will be rejected.

(b) *Contents of petition for review.* A petition for review states a party's objections to the initial decision, including all of the party's legal and factual arguments, and must be supported by references to applicable laws or regulations and by specific references to the record. Any petition for review that contains new evidence or argument must include an explanation of why the evidence or argument was not presented before the record below closed (see § 1201.59). A petition for review should not include documents that were part of the record below, as the entire administrative record will be available to the Board. A petition for review filed by an agency should address the agency's compliance with any interim relief requirements and should contain a certification, as set forth in § 1201.116(a).

(c) * * * Any party to the proceeding, the Director of the Office of Personnel Management (OPM), or the Special Counsel (under 5 U.S.C. 1212(c)) may file a petition for review. * * *

(e) *Time for filing.* Any petition for review must be filed within 35 days after the date of issuance of the initial decision or, if the petitioner shows that

the initial decision was received more than 5 days after the date of issuance, within 30 days after the date the petitioner received the initial decision. For purposes of this section, the date that the petitioner receives the initial decision is determined according to the standard set forth at § 1201.22(b)(3), pertaining to an appellant's receipt of an agency decision. If the petitioner is represented, the 30-day time period begins to run upon receipt of the initial decision by either the representative or the petitioner, whichever comes first. Any response to a petition for review must be filed within 25 days after the date of service of the petition. Any reply to a response to a petition for review must be filed within 10 days after the date of service of the response to the petition for review. For purposes of this section, § 1201.23 governs the computation of time.

* * * * *

(g) *Late filings.* Any pleading described in paragraph (a) of this section that is filed late must be accompanied by a motion that shows good cause for the untimely filing, unless the Board has specifically granted an extension of time under paragraph (f) of this section, or unless a motion for extension is pending before the Board. The motion must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See appendix IV.) The affidavit or sworn statement must include: the reasons for failing to request an extension before the deadline for the submission, and a specific and detailed description of the circumstances causing the late filing, accompanied by supporting documentation or other evidence. Any response to the timeliness motion may be included in the response to the petition for review or may be filed separately. The response to the timeliness motion will not extend the time provided by paragraph (e) of this section to respond to the petition. In the absence of a motion, the Board may, in its discretion, determine on the basis of the existing record whether there was good cause for the untimely filing, or it may provide the party that submitted the pleading with an opportunity to show why it should not be dismissed or excluded as untimely.

(h) *Length limitations.* A petition for review, or a response to a petition for review, whether computer generated, typed, or handwritten, is limited to 30 pages or 7500 words. A reply to a response to a petition for review is limited to 15 pages or 3750 words. A party relying on word count to adhere to the length limitation must include

certification of the word count with their pleading. Argument formatted such that the length of the pleading cannot be determined may be rejected. Computer generated and typed pleadings must use no less than 12-point typeface and 1-inch margins and must be double spaced and only use one side of a page. The length limitation is exclusive of any table of contents, table of authorities, attachments, and certificate of service. Length limitations may not be circumvented by including argument in attachments. Failure to comply with the length limitations set forth in this regulation, after sufficient opportunity to comply, may lead to dismissal of the petition for review. A request for leave to file a pleading that exceeds the limitations prescribed in this paragraph must be received by the Clerk of the Board at least 3 days before the filing deadline. Such requests must give the reasons for a waiver as well as the desired length of the pleading and are granted only in exceptional circumstances. The page and word limits set forth above are maximum limits. Parties are not expected or required to submit pleadings of the maximum length.

* * * * *

(k) *Closing the record.* The record closes on expiration of the period for filing the last permissible pleading or the date on which the last permissible pleading is filed, whichever is earlier. Once the record closes, no additional argument or evidence may be filed without first requesting and receiving leave from the Clerk of the Board under paragraph (a)(4) of this section.

* * * * *

■ 20. In § 1201.115, revise the section heading and the introductory text to read as follows:

§ 1201.115 Criteria for granting petition for review.

The Board normally will consider only issues raised in a timely filed petition for review. Situations in which the Board may grant a petition for review include, but are not limited to, a showing that:

* * * * *

■ 21. Revise § 1201.116 to read as follows:

§ 1201.116 Compliance with orders for interim relief.

(a) *Certification of compliance.* (1) If the appellant was the prevailing party in the initial decision, and the decision granted the appellant interim relief, any petition for review filed by the agency must be accompanied by a certification

that the agency has complied with the interim relief order, either by:

(i) Providing the required interim relief; or

(ii) Satisfying the requirements of 5 U.S.C. 7701(b)(2)(A)(ii) and (B).

(2) Evidence of its compliance must accompany its petition for review. Failure by an agency to provide the certification and evidence required by this section with its petition for review may result in the dismissal of the agency's petition for review.

(b) *Allegation of noncompliance in petition for review.* If an appellant or an intervenor files a petition for review of an initial decision ordering interim relief and such petition includes a challenge to the agency's compliance with the interim relief order, the agency must submit evidence within 25 days of the date of service that it has provided the interim relief required or that it has satisfied the requirements of 5 U.S.C. 7701(b)(2)(A)(ii) and (B). The agency's evidence may be provided with any response to the petition for review or in a separate pleading.

(c) *Request for dismissal for noncompliance with interim relief order.* If the agency files a petition for review and the appellant believes the agency has not provided required interim relief, the appellant may request dismissal of the agency's petition. Any such request must be filed with the Clerk of the Board within 25 days of the date of service of the agency's petition, or within 25 days of the date upon which the appellant becomes aware that the agency has not provided, or has ceased to provide, interim relief. A copy of the request must be served on the agency at the same time it is filed with the Board. The agency may respond with evidence and argument to the appellant's request to dismiss within 15 days of the date of service of the request. If the appellant files a motion to dismiss beyond the time limit, the Board will dismiss the motion as untimely unless the appellant shows that it is based on information not readily available before the close of the time limit. Failure by an agency to provide the certification required by paragraph (a) of this section with its petition for review, or to provide evidence of compliance in response to a Board order, may result in the dismissal of the agency's petition for review.

(d) *Back pay and attorney fees.* Nothing in this section shall be construed to require any payment of back pay for the period preceding the date of the judge's initial decision or attorney fees before the decision of the Board becomes final.

■ 22. In § 1201.117, revise paragraph (a) introductory text to read as follows:

§ 1201.117 Board decisions; procedures for review or reopening.

(a) In any case that is reviewed, or reopened at the Board's discretion pursuant to § 1201.118, the Board may:
* * * * *

■ 23. Revise § 1201.118 to read as follows:

§ 1201.118 Board reopening of final decisions.

Regardless of any other provision of this part, the Board may at any time reopen any appeal in which it has issued a final order or in which an initial decision has become the Board's final decision by operation of law. The Board will exercise its discretion to reopen an appeal only in unusual or extraordinary circumstances and generally within a short period of time after the decision becomes final. The parties have no right to request reopening and no right to a response from the Board on a request for reopening. Any response to a request for reopening from the Office of the Clerk of the Board does not constitute a final order or decision of the Board, and thus is not subject to judicial review under 5 U.S.C. 7703 or § 1201.120.

■ 24. In § 1201.155, revise the section heading and add paragraph (g) to read as follows:

§ 1201.155 Requests for review of final grievance or arbitrator's decisions.

* * * * *
(g) *Petition for enforcement.* A petition for enforcement of a final Board decision or order that was issued pursuant to paragraphs (a) through (f) of this section, should be filed with the Office of the Clerk of the Board and should otherwise comply with the requirements set forth in § 1201.182(a).

■ 25. In § 1201.182, revise the second sentence of paragraph (a) to read as follows:

§ 1201.182 Petition for enforcement.

(a) * * * The petition must be filed promptly with the regional or field office that issued the initial decision, or with the Office of the Clerk of the Board if the party is requesting enforcement of a final Board decision or order that was issued pursuant to § 1201.155; a copy of it must be served on the other party and that party's representative; and it must describe specifically the reasons the petitioning party believes there is noncompliance.* * *
* * * * *

■ 26. In § 1201.183, revise paragraphs (a) and (b) and add paragraph (g) to read as follows:

§ 1201.183 Procedures for processing petitions for enforcement.

(a) *Initial processing of a petition for enforcement.* (1) When a party has filed a petition for enforcement of a final decision or order of the Board, or enforcement of a settlement agreement that has been entered into the Board's record for purposes of enforcement, the alleged noncomplying party must file one of the following within 15 days of the date of service of the petition:

- (i) Evidence of compliance, including a narrative explanation of the calculation of back pay and other benefits, and supporting documents;
- (ii) Evidence and/or a statement of the compliance actions that are in process and/or remain to be taken, along with a schedule for accomplishing full compliance within a reasonable period; or
- (iii) A statement showing good cause for the failure to comply completely with the final decision or order of the Board, or with the terms of an applicable settlement agreement.

(2) The party that filed the petition may respond to the alleged noncomplying party's submission within 10 days after the date of service of the submission. The parties must serve copies of their pleadings on each other as required under § 1201.26(b)(2).

(3) If a party files a petition for enforcement seeking compliance with a final Board decision or order, the alleged noncomplying party generally has the burden of proving its compliance by a preponderance of the evidence. However, if any party files a petition for enforcement seeking compliance with the terms of a settlement agreement that has been entered into the Board's record for purposes of enforcement, that party has the burden of proving the other party's breach of the settlement agreement by a preponderance of the evidence.

(4) If the agency is the alleged noncomplying party, it shall submit the name, title, grade, and address of the agency official charged with complying with the Board's final decision or order, and inform such official in writing of the potential sanction for noncompliance as set forth in 5 U.S.C. 1204(a)(2) and (e)(2)(A), even if the agency asserts that it is fully complied. The agency must further submit a current initial contact email address that is regularly checked to ensure receipt of all information regarding the allegations of compliance. The agency must advise the Board of

any subsequent change to the identity and/or location of the designated agency official during the pendency of any compliance proceeding. In the absence of this information, the Board will presume that the highest-ranking agency official who is not appointed by the President by and with the consent of the Senate, is charged with compliance.

(5) Discovery may be pursued in accordance with the procedures set forth at §§ 1201.71 through 1201.75, except that unless otherwise directed by the judge, initial discovery requests must be served no later than 15 days after the alleged noncomplying party files a response to the petition for enforcement.

(6) The judge may convene a hearing to resolve compliance issues.

(7) If the judge finds that the alleged noncomplying party has fully complied with the final Board decision or order at issue, or with the applicable settlement agreement entered into the Board's record for purposes of enforcement, he or she will issue an initial decision to that effect. That decision will be subject to the procedures for petitions for review by the Board under subpart C of this part, and subject to judicial review under § 1201.120.

(8) If the judge finds that the alleged noncomplying party has not complied, in whole or in part, with the final Board decision or order at issue, or with the applicable settlement agreement entered into the Board's record for purposes of enforcement, he or she will issue an initial decision:

(i) Directing the noncomplying party to take the specific actions required by the final Board decision or order at issue, or required under the applicable settlement agreement entered into the Board's record for purposes of enforcement; or

(ii) Upon the request of the party seeking compliance where the judge finds a material breach, rescinding the applicable settlement agreement and reinstating the underlying matter on appeal.

(9) An initial decision issued under paragraph (a)(8) of this section will be subject to the procedures for petitions for review by the Board under subpart C of this part, but not subject to judicial review under § 1201.120.

(10) A copy of an initial decision finding full or partial noncompliance with a final Board decision or order, or a settlement agreement that has been entered into the Board's record for purposes of enforcement will be served on the designated agency official.

(b) *Processing after a finding of noncompliance that directs specific action.* (1) If an initial decision

described under paragraph (a)(8)(i) of this section is issued, the noncomplying party must do the following:

(i) To the extent that the noncomplying party agrees to take some or all of the actions required by the initial decision, the party must, within the time limit for filing a petition for review under § 1201.114(e), provide the Clerk of the Board with a statement of compliance certifying that the party has taken the actions identified in the initial decision, along with evidence establishing that the party has taken those actions. The narrative statement must explain in detail why the evidence of compliance satisfies the requirements set forth in the initial decision. The party seeking compliance may file evidence and argument in response to any statement of compliance within 20 days of the date of service of the statement of compliance.

(ii) To the extent that the noncomplying party declines to take some or all of the actions required by the initial decision, the party must file a petition for review under the provisions of §§ 1201.114 and 1201.115.

(iii) A statement of compliance and a petition for review, as described in the two preceding paragraphs, may be filed separately or as part of a single pleading.

(2) If an initial decision described under paragraph (a)(8)(i) of this section is issued, the party seeking compliance may also file a petition for review of an initial decision's finding of partial compliance with the Board's final decision or order, or with an applicable settlement agreement entered into the Board's record for purposes of enforcement.

* * * * *

(g) *Requests for attorney fees.* A request for attorney fees related to a petition for enforcement will be governed by § 1201.203 and must be made no later than 60 days after issuance of the Board's final decision issued under § 1201.183(c)(1).

■ 27. Revise § 1201.204 to read as follows:

§ 1201.204 Proceedings for consequential, liquidated, or compensatory damages.

(a) *Addendum proceeding.* (1) A request for consequential, liquidated, or compensatory damages will be decided in an addendum proceeding.

(2) A judge may, either on their own motion or on the motion of a party, consider a request for damages in a proceeding on the merits when the judge determines that such action is in the interest of the parties and will promote efficiency and economy in adjudication.

(b) *Initiation of addendum proceeding—(1) Time for making request.* A request for consequential, liquidated, or compensatory damages must be filed as soon as possible after a final decision of the Board on the merits of an appeal but no later than 60 days after the date on which such decision becomes final. The judge or the Board, as applicable, may waive the time limit for making such request for good cause shown, and upon a finding that a waiver would not result in undue prejudice to the opposing party.

(2) *Place of filing.* When the initial decision in the proceedings on the merits was issued by a judge in an MSPB regional or field office, the request must be filed with the applicable regional or field office. When the initial decision in the proceedings on the merits was issued by a judge at the Board's headquarters or when the only decision was a final decision issued by the Board itself, the request must be filed with the Clerk of the Board.

(3) *Form and content of request.* A request for consequential, liquidated, or compensatory damages must be made in writing and state the basis for entitlement to an award of such damages, and the amount of damages sought.

(4) *Service.* A copy of the request must be served on the other parties or their representatives at the time of the request. A party may respond to the request within the time limit established by the judge or the Board, as applicable.

(5) *Hearing; applicability of subpart B.* The judge may grant the appellant's request for a hearing on a request for consequential, liquidated, or compensatory damages and may apply appropriate provisions of subpart B of this part to the addendum proceeding.

(6) *Initial decision; review by the Board.* The judge will issue an initial decision in the addendum proceeding, adjudicating the request for damages. The initial decision shall then be subject to the provisions for a petition for review by the Board under subpart C of this part.

(7) *Request for damages made in proceeding before the Board.* Where a request for damages is made in a case which originates before the Board, the Board may:

(i) Consider both the merits of the case and the request for damages and issue a final decision; or

(ii) Remand the case to a judge for a new initial decision, either on the request for damages only or on both the merits and the request for damages.

(8) *EEOC review of decision on compensatory damages.* A final decision

of the Board on a request for compensatory damages pursuant to the Civil Rights Act of 1991 shall be subject to review by the Equal Employment Opportunity Commission as provided under subpart E of this part.

PART 1203—PROCEDURES FOR REVIEW OF RULES AND REGULATIONS OF THE OFFICE OF PERSONNEL MANAGEMENT

■ 28. The authority citation for part 1203 continues to read as follows:

Authority: 5 U.S.C. 1204(a), 1204(f), and 1204(h).

■ 29. In § 1203.12, revise paragraph (b) to read as follows:

§ 1203.12 Granting or denying the request for regulation review.

* * * * *

(b) If the Board grants a request, it will review the regulation to determine whether any provision, whether on its face or as implemented by the agency, would require any employee to violate 5 U.S.C. 2302(b).

■ 30. In § 1203.13:

- a. Revise the heading and the first and last sentences of paragraph (a); and
- b. Remove the first and second sentences of paragraph (d) and add one sentence in their place.

The revisions and addition read as follows:

§ 1203.13 Filing pleadings.

(a) *How to file.* A request for regulation review must be filed with the Office of the Clerk, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. * * * The Office of the Clerk will make all pleadings available for review by the public, including by posting the pleadings to the Board’s website.

* * * * *

(d) * * * An initial filing in a request for review and other pleadings may be filed with the Office of the Clerk by mail, by commercial or personal delivery, by facsimile, or by e-filing in accordance with § 1201.14 of this chapter. * * *

* * * * *

■ 31. In § 1203.14, revise paragraph (c) to read as follows:

§ 1203.14 Serving documents.

* * * * *

(c) *Electronic filing.* An initial request for a regulation review and other pleadings in a regulation review proceeding may be filed with the Board and served upon other parties by electronic filing, provided the requirements of § 1201.14 of this chapter are satisfied.

■ 32. In § 1203.21, add paragraph (d) to read as follows:

§ 1203.21 Final order of the Board.

* * * * *

(d) *Final decision.* The decision of the Board is final and judicially appealable if the Board grants the request to review and addresses the merits of the request.

PART 1209—PRACTICES AND PROCEDURES FOR APPEALS AND STAY REQUESTS OF PERSONNEL ACTIONS ALLEGEDLY BASED ON WHISTLEBLOWING OR OTHER PROTECTED ACTIVITY

■ 33. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 1204, 1221, 2302(b)(8) and (b)(9)(A)(i), (B), (C), or (D), and 7701.

§ 1209.2 [Amended]

■ 34. In § 1209.2, remove “7121(d)” and add in its place “7121(b)” in paragraph (d)(1).

■ 35. In § 1209.4, revise the last sentence of paragraph (e) to read as follows:

§ 1209.4 Definitions.

* * * * *

(e) * * * It is a higher standard than “preponderance of the evidence” as defined in 5 CFR 1201.4(q).

* * * * *

Gina K. Grippando,
Clerk of the Board.

[FR Doc. 2024–19933 Filed 9–6–24; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0457; Project Identifier MCAI–2023–01207–T; Amendment 39–22790; AD 2024–14–09]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–02–10, which applied to certain Dassault Aviation Model FALCON 7X, FALCON 900EX, and FALCON 2000EX airplanes. AD 2022–02–10 required replacement of certain titanium screws. Since the FAA issued AD 2022–02–10, affected parts have been found in other areas of

certain Falcon 7X airplanes as well as in additional Falcon 7X airplanes. This AD continues to require the actions in AD 2022–02–10, adds other locations for screw replacement, and revises the applicability, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products. DATES: This AD is effective October 15, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 15, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–0457; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- For Dassault Aviation material identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; website dassaultfalcon.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–0457.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3226; email: tom.rodriguez@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–02–10,