



39 CFR Part 955

Rules of Practice Before the Postal Service Board of Contract Appeals

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document amends the rules of practice that govern all proceedings before the Postal Service Board of Contract Appeals (Board), for ease of understanding and to reflect current practice.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Postal Service Judicial Officer Department, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

FOR FURTHER INFORMATION CONTACT: Staff Counsel Sheena Allen at (240) 636-4158.

SUPPLEMENTARY INFORMATION:

A. Background

These revised rules of procedure have the same general intent and coverage as the existing rules. However, the revised rules have been updated, are more comprehensive than the existing rules, and are intended to reflect more precisely actual practice in proceedings before the Board.

B. Explanation of Changes

Amendments to 39 CFR part 955

These revised rules will completely replace the existing rules of practice and will be effective for all appeals docketed by the Board on and after their effective date. While the language of the proposed rules may have changed considerably for reasons of clarity, consistency, and to reflect more precisely the practices of the Board, we here identify the most significant changes of substance.

The revised rules formalize the contents and organization of the appeal file, supplements to the appeal file, and status of exhibits in the appeal file.

The revised rules require written motions to state the relief sought and legal basis for the motion. The Board may hold oral argument or defer ruling on a motion at its discretion. The Board will be guided by Rule 56 of the Federal Rules of Civil Procedure in deciding a motion for summary judgment. In non-dispositive motions, the moving party must indicate their attempt to resolve the issue with the other party before filing.

The revised rules clarify that the Board may issue a subpoena, on written request of either party or on its own initiative, requiring the deposition of a witness as described in Rule 30(b)(6) of the Federal Rules of Civil Procedure.

List of Subjects in 39 CFR Part 955

Administrative practice and procedure, Contract disputes, Postal Service.

Accordingly, for the reasons stated, the Postal Service revises 39 CFR part 955 to read as follows:

PART 955 – RULES OF PRACTICE BEFORE THE POSTAL SERVICE BOARD OF CONTRACT APPEALS

Sec.

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Authority: 39 U.S.C. 204, 401; 41 U.S.C. 7101–7109.

§ 955.1 (Rule 1) Jurisdiction, procedure, and service of documents.

(a) *Jurisdiction.* Under the Contract Disputes Act, 41 U.S.C. 7101–09, the Postal Service Board of Contract Appeals (Board) has jurisdiction over appeals from

contracting officers' final decisions issued by the United States Postal Service or the Postal Regulatory Commission relative to their contracts. The Board also has jurisdiction over other matters assigned to it by the Postmaster General and over matters otherwise authorized by applicable law.

(b) *Organization and location of the Board.* (1) The Board is located at 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201-3078. The Board's telephone number is (703) 812-1900, and its website is <https://about.usps.com/who/judicial/>. The Board's fax number is (703) 812-1901. The website for electronic filing is <https://usps-judicialoffice.journaltech.com>.

(2) All members of the Board must meet the qualifications established by the Contract Disputes Act. Unless otherwise allowed by this part, appeals are decided by a panel of at least three judges, with the majority's opinion constituting the Board's decision.

(c) *Board procedures--*(1) *Scope.* This part govern appeals filed under the Contract Disputes Act and other disputes assigned to the Board.

(2) *Administration and interpretation of this part.* This part will be interpreted to ensure a just, inexpensive, and timely resolution of every appeal. The Board may use the Federal Rules of Civil Procedure for guidance in interpreting this part and to resolve issues not covered by this part.

(3) *Computation of time and extensions.* (i) Unless otherwise specified by the Board, orders and decisions are deemed received by the parties on the date they are posted to the electronic filing system.

(ii) Except as otherwise provided by law, in computing time periods under this part or a Board order, the day of the event from which the designated time period begins to run will not be included, but the last day of the period will be included unless it is a Saturday, Sunday, or Federal holiday. In those cases, the period will run to the next

business day. Except as otherwise provided in this part or an applicable order, time periods are measured in calendar days.

(iii) Requests for time extensions from either party must be in writing and state good cause for the request. The requesting party must contact the opposing party about the request, or make a good faith effort to do so. The request must state whether the opposing party consents to the extension. Requests filed after a deadline should state the reason for the party's failure to file a timely request.

(4) *Manner of filings.* (i) Documents must be filed in the electronic filing system unless the Board permits otherwise. Documents filed electronically are deemed filed on the date and time (Eastern Time) reflected in the electronic filing system.

(ii) Documents mailed to the Board are deemed filed on the date mailed, as indicated by a United States postmark or other proof of mailing.

(iii) Documents may be filed by fax only with the Board's prior approval. Documents filed by fax are deemed filed when the Board receives a complete, legible copy.

(iv) Documents submitted by any other means are deemed filed when a complete copy is received by the Recorder during the Board's working hours (8:30 a.m. – 4:30 p.m. Eastern Time).

(5) *Service.* If both parties use the electronic filing system, separate service on the opposing party is not required. Otherwise, documents must be served by an equally or more expeditious means of transmittal than was used to submit the filing to the Board. The filing must also state that it has been furnished to the opposing party.

(d) *Parties--(1) Appellant.* The term *appellant* means a party that has filed an appeal with the Board.

(2) *Respondent.* The term *respondent* means the United States Postal Service or the Postal Regulatory Commission.

§ 955.2 (Rule 2) Initiation of appeals.

(a) An appeal may be initiated by filing a notice of appeal with either the Board (see § 955.1(c)(4) (Rule 1(c)(4))) or the contracting officer. The notice of appeal must be in writing and must be filed within the time specified by applicable law.

(b) The Postal Service Law Department must enter an appeal in the Board's electronic filing system within 10 days of the contracting officer's receipt of the notice of appeal. The Law Department must also indicate the date the notice of appeal was received by the contracting officer.

(c) Where an appeal has been properly filed from a deemed denial, the Board may stay further proceedings pending issuance of a final decision by the contracting officer within such time as the Board determines.

(d) Under 41 U.S.C. 7103(f)(4), the Board will consider a request to direct a contracting officer to issue a final decision within a specified period of time.

§ 955.3 (Rule 3) Contents of the notice of appeal.

(a) A notice of appeal must indicate the contractor's intention to file an appeal. It should also identify the relevant contract number or other reference and identify the decision from which the appeal is taken, or attach a copy of the contracting officer's final decision. If an appeal is taken from the failure of a contracting officer to issue a final decision, the notice of appeal should describe the claim or attach a copy of it.

(b) The notice of appeal should be signed by the contractor (or by an officer of a corporation or partner of a partnership), or by the contractor's duly authorized representative or attorney. The complaint referred to in § 955.6 (Rule 6) may be filed with the notice of appeal, or the notice of appeal may be designated as a complaint if it otherwise meets the requirements of Rule 6.

§ 955.4 (Rule 4) Appeal file.

(a) *Appeal file.* Within 30 days of receipt of the Board's docketing notice, or such other period as the Board may order, the Postal Service must file an appeal file consisting of all documents relevant to the appeal. The appeal file should include:

(1) The claim and contracting officer's final decision from which the appeal is taken;

(2) The contract, including relevant specifications, amendments, plans, and drawings;

(3) Relevant correspondence between the parties;

(4) Documents relied on by the contracting officer to decide the claim;

(5) Relevant affidavits, declarations, witness statements, and transcripts of testimony taken before the appeal; and

(6) Any additional relevant information.

(b) *Supplement to the appeal file.* Within 30 days after receipt of the appeal file, the appellant may supplement the appeal file with any additional relevant documents. The supplement should be organized as set forth in paragraph (c) of this section, starting with the next available exhibit number.

(c) *Organization of the appeal file.* Exhibits in the appeal file (and any supplements) must be consecutively numbered, indexed, and, where practicable, arranged chronologically. Each exhibit without internal page numbers must have page numbers added beginning at page "1." The index should describe each exhibit by date, content, and page range.

(d) *Lengthy exhibits.* The Board may waive the requirement to exchange or file bulky, lengthy, or oversized documents or tangible evidence on a showing of impracticality or undue burden. Documents or tangible evidence subject to a waiver will be available for inspection at the Board.

(e) *Status of exhibits in the appeal file.* Exhibits in the appeal file are considered, without further action by the parties, as part of the record the Board will consider in its decision. A party may, however, object to the admissibility of a particular exhibit reasonably in advance of a hearing, the settling of the record, or such other date as ordered by the Board. An objection to an exhibit must provide a specific reason. If a timely objection is made, and after giving the non-objecting party an opportunity to respond, the Board may constructively remove the exhibit from the appeal file. The party offering the exhibit may then offer it into evidence under §§ 955.13 and 955.17 (Rules 13 and 17).

§ 955.5 (Rule 5) Motions.

(a) *Generally.* The Board may rule on written and oral motions. Written motions should state the relief sought and legal basis for the motion. At its discretion, the Board may hold oral argument or defer ruling on a motion. A motion filed in lieu of an answer must be filed no later than the date on which the answer is due, unless the Board provides otherwise. Any other dispositive motion should be promptly filed.

(b) *Jurisdictional motions.* Jurisdictional motions should be promptly filed. The Board may at any time and on its own initiative raise the issue of its jurisdiction.

(c) *Motions for summary judgment.* In deciding a motion for summary judgment, the Board will be guided by Rule 56 of the Federal Rules of Civil Procedure. The Board may, however, defer ruling on a motion for summary judgment until after an evidentiary hearing. Motions for summary judgment may be filed only when a party believes that, based on uncontested material facts, it is entitled to judgment as a matter of law. In lieu of filing a motion for summary judgment, a party should consider submitting a request to have the appeal decided on the written record without a hearing. See §§ 955.8 and 955.11 (Rules 8 and 11).

(1) Motions for summary judgment must include a Statement of Uncontested Material Facts containing separately numbered paragraphs listing all the material facts on which the moving party bases its motion and as to which it contends there is no genuine dispute. The moving party must include references to affidavits, declarations, and documents relied on to support each material fact.

(2) With its opposition to the motion, the non-moving party must file a separate Statement of Genuine Issues of Material Facts identifying, by paragraph number from the Statement of Uncontested Material Facts, the specific facts the non-moving party claims are genuinely disputed. The non-moving party must state the precise nature of its disagreement and include references to affidavits, declarations, and documents that demonstrate the existence of a genuine dispute. The non-moving party may also propose additional material facts.

(3) The parties must each include a memorandum of law supporting or opposing summary judgment.

(4) The Board will consider a request from the non-moving party for time to obtain affidavits or declarations or to take discovery before filing its response to the motion.

(d) *Non-dispositive motions.* Non-dispositive motions, such as motions for time extensions and motions to compel, must indicate that the moving party tried to resolve the issue with the other party before filing. See § 955.14 (Rule 14).

§ 955.6 (Rule 6) Pleadings.

(a) *Complaint.* Within 45 days after receipt of the notice of docketing, the appellant must file a complaint. The complaint must set forth simple, concise, and direct statements describing the basis and dollar amount for each claim. This pleading must fulfill the generally recognized requirements of a complaint, although no particular form is required. At the appellant's request or on the Board's own initiative, the appellant's

claim, notice of appeal, or another document may be deemed to constitute the complaint if, in the Board's opinion, the issues are sufficiently explained in one of those documents.

(b) *Answer.* Within 30 days from receipt of the complaint, or notice from the Board designating another document as the complaint, the respondent must file an answer. The answer must set forth simple, concise, and direct statements of the respondent's defenses to each claim asserted by the appellant. This pleading must fulfill the generally recognized requirements of an answer and must set forth any affirmative defenses or counterclaims. If the answer is not filed within the time required, the Board may enter a general denial on behalf of the respondent, and the appellant will be so notified.

(c) *Affirmative claims by the respondent.* Where the appellant has appealed an affirmative claim asserted by a contracting officer in a final decision, such as a termination for default or a monetary claim by the Postal Service, the Board may order the respondent to file the complaint and the appellant to file the answer.

§ 955.7 (Rule 7) Amendments of pleadings or the record.

(a) On its own initiative or at the request of a party, the Board may order a party to submit a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may consider issues not raised in the pleadings that were not objected to during the proceedings. These issues will be treated as if they had been raised in the pleadings. If a party objects to evidence at a hearing because it is not within the issues raised by the pleadings, the Board may nonetheless admit the evidence and grant the objecting party a continuance or other relief if necessary to enable it to respond to such evidence.

§ 955.8 (Rule 8) Hearing request.

As directed by the Board, each party must state whether it wants to have the appeal decided after a hearing or on the written record without a hearing. See Rules 11 and 17. A party's hearing request should state where and when it wants the hearing to be conducted. After considering the parties' requests, the Board will decide whether to hold a hearing. If the Board decides to hold a hearing, it will also determine the time and place of the hearing.

§ 955.9 (Rule 9) Prehearing briefs.

After reviewing the pleadings and appeal file documents, the Board may require the parties to submit prehearing briefs in any case in which a hearing will be held. Either party may also request permission to file a prehearing brief. If the Board grants that request, it will allow the other party to also file a prehearing brief. If prehearing briefs are submitted, they must be filed at least 15 days before the date set for hearing, or as otherwise ordered by the Board.

§ 955.10 (Rule 10) Conferences with the parties.

(a) Regardless of whether an appeal will be decided after a hearing or on the written record, the Board may, on its own initiative or at the request of one of the parties, convene a conference to consider:

- (1) Simplifying or clarifying the issues;
- (2) Obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, and similar agreements to avoid unnecessary proof;
- (3) Limiting the number of witnesses and avoiding cumulative evidence;
- (4) Settling any of the disputed issues; and
- (5) Discussing any other matters that may aid in disposing of the appeal.

(b) The Board will prepare a written summary of any conference with the parties.

The written summary will be part of the record.

§ 955.11 (Rule 11) Submission without a hearing.

(a) If the parties elect to submit the appeal on the record without a hearing, the Board will set a schedule for the parties to complete the record and file briefs.

Submission of the case without a hearing does not relieve the parties from the burden of proving the facts supporting their allegations or defenses. The parties may file affidavits, declarations, depositions, admissions, answers to interrogatories, and stipulations to supplement the record.

(b) The Board may also rely on any documents listed in Rule 13(a). The Board may order the parties to submit briefs in support of their positions.

(c) Except as the Board may otherwise order, no evidence will be received after the Board closes the record.

(d) The Board may ask the parties to submit additional evidence or briefs on any matter relevant to the appeal. The Board may also request oral argument.

(e) The record will then be settled as described in Rule 13.

§ 955.12 (Rule 12) Optional Small Claims (Expedited) and Accelerated Procedures.

(a) *The Small Claims (Expedited) Procedure.* (1) The Expedited Procedure is available solely at the appellant's election. The Board will, whenever possible, decide the appeal within 120 days from receipt of the appellant's written election.

(2) The appellant may elect this procedure if:

(i) There is a monetary dispute of \$50,000 or less; or

(ii) There is a monetary dispute of \$150,000 or less and the appellant is a small business concern, as that term is defined in the Small Business Act and the regulations in 13 CFR part 121.

(3) In cases proceeding under this paragraph (a), the respondent must file a copy of the contract, the contracting officer's final decision, and the appellant's claim letter

within ten days from the respondent's receipt of the appellant's election. If either party asks for an oral hearing, the Board will promptly schedule a hearing at a mutually convenient time and place, consistent with the 120-day deadline for issuing a decision. If neither party requests a hearing, the appeal will be decided on the written record under Rule 11.

(4) After receipt of the appellant's election, the Board will set a schedule to allow for the timely resolution of the appeal. Pleadings, discovery, and other prehearing activities may be restricted or eliminated at the Board's discretion. In so doing, the Board may reserve whatever time it considers necessary to issue a decision.

(5) Written decisions issued under this paragraph (a) will contain only summary findings of fact and conclusions of law. Decisions will be issued by one judge. The presiding judge may issue an oral decision at the close of the hearing. If an oral decision is issued, the Board will later provide the parties a written decision confirming the oral decision. The date of the written decision establishes the date for computing payment and filing a motion for reconsideration under § 955.24 (Rule 24).

(6) An expedited decision will not be published, will have no precedential value, and, in the absence of fraud, cannot be appealed.

(b) *The Accelerated Procedure.* (1) The Accelerated Procedure is available solely at the appellant's election and applies only to appeals where the amount in dispute is \$100,000 or less. A decision under this procedure will, whenever possible, be issued within 180 days after the Board receives written notice of the appellant's election.

(2) After receipt of the appellant's election, the Board will set a schedule for further proceedings to allow for the timely resolution of the appeal. The Board may shorten time periods prescribed elsewhere in this part to enable the Board to decide the appeal within 180 days.

(3) Written decisions under this procedure will normally include only summary findings of fact and conclusions of law. Decisions will be issued by a single judge with the concurrence of another judge, or by a majority of three judges in the case of a disagreement between the two judges. If the Board has conducted a hearing, and the amount in dispute is \$50,000 or less, the presiding judge may, with the concurrence of both parties, convert the appeal to an Expedited Proceeding. The presiding judge may issue an oral decision at the close of the hearing. If an oral decision is issued, the Board will later provide the parties a written decision confirming the oral decision. The date of the written decision establishes the date for computing payment and filing a motion for reconsideration under Rule 24.

(c) *Denial of election.* At the respondent's request, or on the Board's own initiative, the Board may deny the appellant's election to proceed under either paragraph (a) or (b) of this section. In making that decision, the Board will consider the actual amount in dispute and the appellant's status as a small business.

(d) *Motions for reconsideration.* Motions for reconsideration under either paragraph (a) or (b) of this section need not be decided within the time periods prescribed for the initial decision.

(e) *Applicability of other Board rules.* Unless otherwise stated, all other Board rules in this chapter apply to appeals processed under paragraphs (a) and (b) of this section.

§ 955.13 (Rule 13) Settling the record.

(a) The record consists of the appeal file described in Rule 4, and if filed: pleadings, prehearing conference memorandums, orders, briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, and other documents that the Board has designated as part of the record.

(b) Except as the Board may otherwise order, no evidence will be received after the Board has notified the parties that the record is closed.

(c) The Board will determine the weight given any evidence. The Board may require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(d) The Board may use the Federal Rules of Evidence for guidance in resolving evidentiary disputes.

§ 955.14 (Rule 14) Discovery.

(a) The parties are encouraged to engage in voluntary discovery. For a deposition or other discovery procedure, the Board may issue any order necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Those orders may include limits to the scope, method, time, and place for discovery and provide for protecting confidential information or documents. Except in connection with motions to compel or for a protective order, discovery requests and responses should not be filed with the Board.

(b) The Board may limit the type, frequency, extent, and scope of discovery. In doing so, the Board may generally consider whether:

(1) The discovery request is unreasonably cumulative or duplicative, or is obtainable from some other more convenient, less burdensome, or less expensive source;

(2) The party seeking discovery has had a reasonable opportunity to obtain the information sought; and

(3) The discovery request is relevant and proportional to the needs of the case, considering, among other things, the amount in controversy, the parties' resources, and the importance of the issues.

(c) The parties must make a good faith effort to resolve discovery disputes informally. A party receiving an objection to a discovery request, or a party that believes another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response. A motion to compel must include a statement that the moving party has made a good faith effort to informally resolve the dispute. A motion to compel must also include a copy of each discovery request at issue and any response.

(d) A party may ask the Board to impose appropriate sanctions or other remedies if the opposing party:

(1) Fails to appear for a deposition at an agreed time and date, or after being served with a proper notice; or

(2) Fails, after proper service, to object or answer interrogatories, requests for admission, or requests for the production or inspection of documents, electronically stored information, or tangible things.

§ 955.15 (Rule 15) Interrogatories, requests for admission, and production and inspection of documents, electronically stored information, and tangible things.

(a) *Interrogatories.* After an appeal has been filed, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath, and returned within 30 days. If a party timely objects, the Board will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories is controlled by Rule 14.

(b) *Requests for admissions.* After an appeal has been filed, a party may serve on the other party requests for admission. Within 30 days after service, the party served must answer or object to each request for admission. The Board may deem a matter admitted if a party fails to timely respond or object to a request for an admission.

(c) *Production and inspection of documents, electronically stored information, and tangible things.* After an appeal has been filed, a party may serve on the other party written requests for the production, inspection, and copying of any documents, electronically stored information, or tangible things. The party receiving the request must respond or object within 30 days of receiving the request. After receipt of an objection, the Board will determine the extent to which the requests must be satisfied and specify the terms and conditions of compliance.

§ 955.16 (Rule 16) Depositions.

(a) *When permitted.* The parties may take depositions after an appeal has been docketed and the complaint has been filed. The parties may mutually agree to, or the Board may, on application of either party and for good cause shown, order oral or written depositions before any officer authorized to administer oaths at the place of examination. An application for a deposition order must specify whether the purpose of the deposition is for discovery or for use as evidence.

(b) *Time, place, and manner.* The parties should voluntarily cooperate to determine the time, place, and manner of taking depositions. In the absence of an agreement, either party may request an order from the Board to set the time and place of a deposition.

(c) *Use as evidence.* No deposition testimony will be considered as part of the evidence in an appeal unless and until that testimony is offered into evidence by one of the parties and accepted by the Board. In cases where the Board holds a hearing, the Board will not ordinarily receive deposition testimony into evidence if the deponent is available to testify at the hearing. The Board nonetheless retains discretion to admit any deposition testimony. A deposition may be used to contradict or impeach a witness at a hearing.

(d) *Expenses.* Except for depositions of expert witnesses, whose reasonable deposition fees, absent an agreement otherwise, must be borne by the party seeking the deposition, each party will bear its own expenses associated with taking and defending of any depositions.

§ 955.17 (Rule 17) Hearings.

(a) *Where and when held.* The Board will set the time, place, and duration of a hearing after consulting with the parties. A hearing may be held in the Board's hearing room in Arlington, Virginia, or any other location after giving due consideration to the just, informal, expeditious, and inexpensive resolution of the appeal.

(b) *Notice.* The Board will issue an order reasonably in advance of a hearing notifying the parties of the time and place of the hearing.

(c) *Unexcused absence.* A hearing will not be delayed by an unexcused absence of a party. Instead, the hearing will proceed as if the absent party submitted its case under Rule 11.

(d) *Admission of evidence.* A hearing will be as informal as reasonably appropriate under the circumstances. The Board may exclude evidence to avoid unfair prejudice, confusion, delay, or the presentation of irrelevant, immaterial, or cumulative evidence. Evidentiary rulings will be guided by the Federal Rules of Evidence. Even so, under Rule 13, the Board may admit evidence not ordinarily admissible under the Federal Rules. The weight to be attached to evidence is within the Board's discretion, taking into consideration all the circumstances of the particular case.

(e) *Stipulated testimony.* Stipulations of fact agreed to by the parties may be accepted as evidence. The parties may stipulate to testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(f) *Interpreters.* A party requiring the use of an interpreter is responsible for making the necessary arrangements and paying all costs and expenses of the interpreter.

(g) *Examination of witnesses.* Unless otherwise ordered by the Board, witnesses will be examined orally under oath or affirmation. If the testimony of a witness is not given under oath or affirmation, the Board may warn the witness that their statements may be subject to the provisions of 18 U.S.C. 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency of the United States.

(h) *Exclusion of witnesses.* At the request of either party, or at the Board's discretion, witnesses may be excluded from the hearing room during the testimony of other witnesses. The Board will not, however, exclude:

- (1) A party who is an individual;
- (2) The properly designated representative of a party that is not an individual;
- (3) A person, such as an expert witness, whose presence is essential to the presentation of a party's case; or
- (4) A person required by statute to be present.

(i) *Transcripts.* Unless otherwise ordered, the Board will arrange for a court reporter to transcribe the hearing. The transcript provided by the Board is the official record of the hearing, and the Board will provide the parties with a copy after the hearing.

§ 955.18 (Rule 18) Copies of evidence and return of exhibits.

(a) When books, records, papers, or documents have been received in evidence, a true copy of all or part of the evidence may be substituted for the original either during or at the end of the hearing.

(b) After a decision becomes final, the Board may permit the return of original exhibits to the party entitled to possess them. The Board may also require substitution of the original exhibits with copies.

§ 955.19 (Rule 19) Posthearing briefs.

Posthearing briefs may be submitted as ordered by the Board at the end of the hearing. Ordinarily, briefs will be filed simultaneously on a date and by a method established by the Board. The Board may also allow reply briefs.

§ 955.20 (Rule 20) Representation of the parties.

(a) The term *appellant* means a party that has filed an appeal with the Board. Only the following individuals may represent appellants:

(1) Attorneys at law duly licensed in any state, commonwealth, or territory of the United States, or in the District of Columbia may represent any party. Attorneys must register in the Board's electronic filing system and file a notice of appearance. The notice of appearance must include an email address, mailing address, and telephone number for the attorneys. Attorneys must also state the jurisdiction where they are licensed to practice law.

(2) Individual appellants may represent themselves.

(3) Officers of a corporation may represent the corporation.

(4) Members of a partnership or joint venture may represent that entity.

(b) The term *respondent* means the United States Postal Service or the Postal Regulatory Commission. Government attorneys must be licensed to practice law in a state, commonwealth, or territory of the United States, or in the District of Columbia. Government attorneys must register in the Board's electronic filing system and file a notice of appearance. The notice of appearance must include an email address, mailing address, and telephone number for the attorneys. Attorneys must also state the jurisdiction where they are licensed to practice law.

(c) References to the contractor, appellant, contracting officer, respondent, and parties include respective counsel for the parties, provided an appropriate notice of appearance has been filed. Self-represented parties or attorneys representing either party must inform the Board promptly of any change in their email address, mailing address, or telephone number.

§ 955.21 (Rule 21) Withdrawal of attorney.

An attorney who wishes to withdraw from an appeal must notify the Board. The notice must include the name, email address, mailing address, and telephone number of the person who will assume responsibility for representing the party.

§ 955.22 (Rule 22) Suspension.

(a) If the parties agree, the Board may suspend further proceedings. If, however, the Board is later advised by either party that the reason for the suspension is no longer applicable, the Board may restore the case to its active docket.

(b) The Board may suspend proceedings for good cause or to give a contracting officer time to issue a final decision when an appeal has been taken from a deemed denial of a claim.

§ 955.23 (Rule 23) Decisions.

The Board's decisions will be in writing and sent to both parties electronically or by United States mail. Except as required by law, all final orders and decisions are available for public inspection at the Board's office. They are also accessible on the Board's official website and through commercial publishers. The Board's decisions will be made solely on the evidentiary record as described in Rule 13.

§ 955.24 (Rule 24) Motion for reconsideration.

A motion for reconsideration must be filed within 30 days of the moving party's receipt of the Board's decision. A motion for reconsideration must set forth the specific grounds for reconsideration.

§ 955.25 (Rule 25) Indefinite suspension.

In certain cases, appeals need to be suspended indefinitely for reasons not within the Board's control. If the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may suspend the appeal. If neither party moves to lift the suspension within one year, the Board may dismiss the appeal with prejudice.

§ 955.26 (Rule 26) Failure to prosecute

(a) The Board may issue an order to show cause why an appeal should not be dismissed or granted, as appropriate, for failure to prosecute when a party:

- (1) Fails to file a document required by this part;
- (2) Fails to respond to notices or correspondence from the Board;
- (3) Fails to comply with the Board's orders; or
- (4) Otherwise indicates it will not continue to participate in an appeal.

(b) If the offending party fails to show cause, the Board may grant, deny, or dismiss the appeal for failure to prosecute or take any other reasonable action under the circumstances.

§ 955.27 (Rule 27) *Ex parte* communications.

(a) An *ex parte* communication is a communication between a Board judge or staff and a party or a party's representative without the presence of the opposing party or its representative.

(b) Except as set out in paragraph (c) of this section, no Board judge or staff, party to an appeal, or party representative may have or attempt to have any *ex parte* communication. Nor may a party file any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal unless a copy of the filing is provided to the opposing party.

(c) Paragraph (b) of this section does not apply to:

- (1) Consultation among Board judges and staff about an appeal;
- (2) Communications between the Board's staff and a party or a party's representative about the Board's administrative functions or procedures; or
- (3) Any event, such as a conference call or a hearing, where a party has received notice of the event and fails to appear.

§ 955.28 (Rule 28) Sanctions.

(a) All parties and their attorneys must comply with the Board's directions and orders and adhere to all applicable standards of conduct. For attorneys, the standards include the rules of professional conduct and ethics of the jurisdictions where the attorneys are licensed to practice law.

(b) If a party or its attorney fails to comply with any direction or order issued by the Board, or engages in misconduct, the Board may impose appropriate sanctions. Sanctions may include:

- (1) Finding disputed facts as true;
- (2) Denying a party the right to challenge the accuracy of evidence;
- (3) Denying a party the right to support or oppose a claim or defense;
- (4) Denying a party the right to introduce evidence;
- (5) Striking pleadings, in whole or in part;
- (6) Staying further proceedings;
- (7) Dismissing or granting the appeal, in whole or in part; and
- (8) Imposing other appropriate sanctions.

(c) The Board may sanction individual attorneys who violate a Board order, direction, or standard of conduct if the violation seriously affects the integrity of the Board, its processes, or its proceedings. Sanctions may be public or private and may include admonishment, disqualification from a particular matter, disqualification from

practice before the Board (see 39 CFR part 951), referral to a licensing authority, or other appropriate action under the circumstances.

§ 955.29 (Rule 29) Subpoenas.

(a) *General.* On written request of either party, or on the Board's own initiative, the Board may issue a subpoena requiring:

(1) The deposition of a witness in the city or county where the witness resides, is employed, transacts business in person, or at another convenient location as determined by the Board;

(2) The deposition of a witness as described in Rule 30(b)(6) of the Federal Rules of Civil Procedure;

(3) The testimony of a witness at a hearing; or

(4) The production of documents, electronically stored information, and tangible things, and as appropriate, the appearance of a witness or custodian of those records.

(b) *Voluntary cooperation.* Each party is expected to:

(1) Cooperate and make witnesses and evidence under its control available as requested by the other party, without issuance of a subpoena; and

(2) Secure voluntary attendance of third-party witnesses and production of documents, electronically stored information, and tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena must normally be filed at least:

(i) 15 days before the scheduled deposition of a witness or production by a witness or custodian of documents, electronically stored information, and tangible things;

(ii) 30 days before a scheduled hearing; or

(ii) Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, the Board may honor requests for subpoenas not made within these time limits.

(2) The scope of the request for a subpoena must be reasonable, and the request must describe the general relevance of the request.

(d) *Requests to quash or modify.* A request to quash or modify a subpoena must be filed within 10 days after receipt of the subpoena.

(1) The Board may grant a request to quash or modify a subpoena if the subpoena is unreasonable or oppressive. The Board may also quash or modify a subpoena for other good cause shown.

(2) The Board may require the person on whose behalf the subpoena was issued to advance the reasonable cost of complying with the subpoena.

(3) Notwithstanding paragraphs (d)(1) and (2) of this section, the Board may consider a request to quash or modify a subpoena at any time after a copy has been served on the opposing party.

(e) *Form and issuance.* (1) Every subpoena for the appearance of a witness must:

- (i) Include the caption of the appeal;
- (ii) Identify the person to whom it is directed;
- (iii) List the time and place of the deposition or hearing; and
- (iv) Where appropriate, command the person to produce specified documents, electronically stored information, and tangible things.

(2) The judge issuing the subpoena may enter the name of the witness and otherwise leave the subpoena blank. The requesting party must then fill in the remaining information before serving the subpoena.

(3) If the witness is located in a foreign country, a letters rogatory, letter of request, or subpoena may be issued and served as provided in 28 U.S.C. 1781–84.

(f) *Service.* (1) The requesting party must arrange for service.

(2) A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena on an individual must be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The requesting party is responsible for the payment of fees and mileage of the witness and the serving officer. The failure to make payment of such charges on demand may be a sufficient reason for the Board to strike the testimony of the witness and any evidence the witness has produced.

(g) *Refusal to obey a subpoena.* If a person who refuses to obey a subpoena either resides in, is found, or transacts business within the jurisdiction of a United States District Court, the Board may apply to the Court through the Attorney General of the United States for an order requiring the person to comply with the Board's subpoena. The Court may punish a person's failure to obey the Court's order with a contempt citation.

§ 955.30 (Rule 30) Applicability.

This part governs proceedings in all appeals docketed by the Board on or after October 1, 2025, and to appeals filed before that date, unless doing so is inequitable or unfair.

Kevin Rayburn,

Attorney, Ethics and Legal Compliance.