

Report” and adding, in its place, “MPCR”.

[FR Doc. E8-10488 Filed 5-9-08; 8:45 am]

BILLING CODE 8320-01-P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 6101, 6102, 6103, 6104, and 6105

[GSA BCA Amendment 2006-01; BCA Case
2006-61-1]

RIN 3090-AI29

Board of Contract Appeals; BCA Case 2006-61-1; Rules of Procedure of the Civilian Board of Contract Appeals

AGENCIES: General Services
Administration (GSA), Civilian Board of
Contract Appeals.

ACTION: Final rule.

SUMMARY: This document contains final revisions to the interim rules of procedure of the Civilian Board of Contract Appeals (Board), which was published in the *Federal Register* at 72 FR 36794, July 5, 2007. These rules will govern all proceedings before the Board, and will be contained in 48 CFR parts 6101 through 6105. These rules of procedure supersede the current interim rules of the Board.

DATES: Effective Date: May 12, 2008.

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cite BCA Case 2006-61-1.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

Part 6101 contains the rules governing proceedings involving contract disputes - both standard proceedings of the Board and expedited proceedings, including alternative dispute resolution. Part 6102 contains the rules governing the resolution of disputes between insurance companies and the Department of Agriculture's Risk Management Agency (RMA) involving actions of the Federal Crop Insurance Corporation (FCIC). Part 6103 contains rules governing proceedings involving requests by carriers or freight forwarders to review actions taken by the Audit Division of the General Services Administration's Office of Transportation and Property

Management. Part 6104 contains the rules governing the Board's resolution of claims by Federal civilian employees for certain travel or relocation expenses. And part 6105 governs the Board's issuance of decisions, upon the request of an agency disbursing or certifying official, or an agency head, on questions involving payment of certain travel or relocation expenses. The Board has adopted these rules pursuant to its authority contained in the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

B. Background

The Civilian Board of Contract Appeals (Board) published in the *Federal Register* at 72 FR 36794, July 5, 2007, interim rules of procedure along with a notice inviting comments on those rules. This notice announced the intention to promulgate final rules of procedure, following the Board's review and consideration of all comments, to govern all proceedings before the Board. The period for comments closed on September 28, 2007. The Board has considered all comments received, revising the interim rules, in part, as explained in part D below, and now promulgates its final rules of procedure.

C. Summary of Comments and Changes:

The Board received comments from six commentators. Commentators included two federal agencies, one law firm, one non-profit association, one bar association, and one group of attorneys. The Board carefully considered each comment and adopted several of the suggestions made by the commentators. All comments received by the Board pertained specifically to part 6101 of the Rules. The more significant of those comments are discussed below.

Part 6101

General. In response to one commentator's suggestion, the Board amends the Rules throughout to change all references to “panel chair” to “presiding judge” in order to maintain a consistent terminology. Similarly, the Board accepts the suggestion of another commentator and amends the Rules to substitute the term “electronically stored information” for “electronic records” in order to conform to the language in the Federal Rules of Civil Procedure.

Several of the rules which pertain to contract disputes (sections 6101.1(a), 6101.2(a) and (b), 6101.4(a), 6101.5(a), 6101.12(a), and 6101.54(a)) use the term “contracting officer”. Cases which arise under the Indian Self-Determination Act, 25 U.S.C. 450m-1, are heard and decided in the same manner as contract

disputes, but the agency decisions from which these appeals are taken may have been made by someone other than a contracting officer. For these cases, the term “contracting officer” refers to the individual who rendered the decision at issue.

The Board also received comments from a bar association, a non-profit association, and a law firm suggesting that electronic filing of cases and submissions be permitted. The Board agrees that electronic filing would be beneficial in that it would permit parties—wherever they are in the world—to transmit pleadings and other submissions quickly, easily, economically, and reliably. We are exploring means of instituting electronic filing and anticipate that before long we will be able to adopt one of them. At the present time, however, we are unable to accept filings electronically (other than by facsimile transmission). As soon as we are able to do so, we expect to propose amendments to the rules which explain how such filings may be made.

6101.1 [Scope of rules; definitions; construction; rulings, orders, and directions; panels; location and address]. Two commentators suggested changes to the definition of when a document is “filed” with the Board. Section 6101.1(b)(5)(i) provides: “Any document, other than a notice of appeal or an application for award of fees and other expenses, is filed when it is received by the Office of the Clerk of the Board during the Board's working hours. A notice of appeal or an application for award of fees and other expenses is filed upon the earlier of its receipt by the Office of the Clerk of the Board or if mailed, the date on which it is mailed.” One commentator suggested expanding the definition to provide that any document is considered “filed” when delivered to the Office of the Clerk or, if mailed or to be delivered by a delivery service, when deposited with the United States Postal Service or delivery service. A second commentator suggested that the closing time for receipt of a document by the Office of the Clerk be 4:30 local time of the party's representative rather than 4:30 Eastern Time. The Board declines to make either proposed change. The Board's practice concerning the filing of documents other than a notice of appeal or an application for award of fees and other expenses is consistent with the practice of courts which consider documents “filed” only when they are in the hands of the clerk. As for the second suggestion, it would place an undue burden on the clerk and the judges to allow filing times to vary according to the time zone of a party's

representative. Section 6101.1(b)(5) is revised, however, to clarify that filing by facsimile occurs only once the Office of the Clerk has received the entire document, and for a mailed notice of appeal or application for award of fees and other expenses, that the date of filing is the date the notice or application is mailed to the Board.

In addition, one commentator recommended revising the rules for filing a notice of appeal to allow for delivery of the notice to the contracting officer, rather than the Clerk of the Board, arguing that appellants may experience confusion because of different practices among the Board's predecessor boards. The commentator noted that our predecessor boards at the Department of Labor and the Department of the Interior, along with the current Armed Services Board, would allow for service of notice on the contracting officer. The Board rejects the recommendation, however, finding that the current section 6101.1(b)(5) is consistent with the practice of the majority of our predecessor boards; section 6101.1(b)(5) as stated is sufficiently clear that appellants should experience no confusion; and allowing the submittal of appeals to contracting officers would unnecessarily delay proceedings at the Board. Although there may be occasions when misdirecting a notice of appeal would not bar a claim, such unusual circumstances would best be dealt with as they arise.

Finally, one commentator suggested that section 6101.1(e), concerning panels, be amended to provide that all panel judges must attend the hearings in cases not subject to the small claims or accelerated procedures of sections 6101.52 and 6101.53. The longstanding practice of all our predecessor boards was to have only one presiding judge attend the hearing. That practice is efficient, has posed no problems, and will continue here.

6101.2 [Filing cases; time limits for filing; notice of docketing; consolidation]. One commentator suggested changes to section 6101.2(c) to require that the notice of docketing include information concerning the designation of the presiding judge and the availability of alternative dispute resolution (ADR) services. The Board believes that the content of the notice of docketing would be more appropriately addressed through the Board's internal procedures, so no change to the section is warranted.

6101.4 [Appeal file]. One commentator suggested several amendments to section 6101.4 to clarify when the Government must file its

appeal file and what documents must be contained in the appeal file. Section 6101.4(a) is revised to provide that the Government must submit its appeal file "within 30 calendar days from receipt of the Board's docketing notice or within such time as the Board may allow." In addition, section 6101.4(a) is revised, as suggested by the commentator, to make clear that affidavits and witness statements are not necessarily required in an appeal file. The final sentence of section 6101.4(a) now begins: "Exhibits will be numbered as required by section 6101.4(b) and will include, if any:" and the phrase "if any" is deleted from subsections (1), (2), and (3).

The Board rejects as unnecessarily restrictive and burdensome suggestions that (1) the appellant must provide notice of its intent to supplement the appeal file prior to the Government's filing of an answer, and (2) specific time frames be established for objections to exhibits and for the Board to rule on those objections in advance of a hearing. Section 6101.4(g) is revised, however, to clarify that the Board may shorten or enlarge time frames for objections.

6101.5 [Appearances; notice of appearance]. One commentator suggested amending section 6101.5 to provide for permissive intervention in a case. Whether someone who is not a contractor can be a party to an appeal is a debatable point, however, and cannot be resolved by procedural rule. Section 6101.5(a)(3) allows nonparties to appear in a case as permitted by the presiding judge, and this will permit the Board to hear from anyone who can assist in resolving a case without the Board conferring "party" status.

6101.6 [Pleadings and amendment of pleadings]. One commentator suggested deleting the second sentence of section 6101.6(c), arguing that one-word responses stating an allegation is denied may be appropriate and therefore should not be specifically discouraged. The Board agrees and the sentence is deleted from section 6101.6(c).

6101.7 [Service of papers other than subpoenas]. In response to the suggestions of three commentators, the Board amends section 6101.7(a) in order (1) to clarify that the service of papers between parties must be by a means of transmittal that is no less expeditious than that used to send the document to the Board and (2) to provide that the parties will confer and agree upon a method to serve papers on each other, which method may be by electronic mail, facsimile, overnight courier, hand delivery, or any other method that will accomplish service promptly and efficiently. The commentators noted that, due to increased security

requirements in recent years, service of papers by mail, particularly to government offices, may be delayed by weeks, prejudicing the receiving party and ultimately delaying processing of the case.

6101.8 [Motions]. One commentator suggested revising section 6101.8(e), which addresses the raising of jurisdictional questions, to require resolution of such questions prior to any briefing or hearing on the merits. Although the Board declines to adopt the suggested revision, given that jurisdictional questions may not always be timely recognized, the Board agrees that such questions should be resolved as early as possible in a case. To avoid encouraging litigants to delay raising jurisdictional issues, the second sentence of section 6101.8(e) is deleted.

6101.10 [Admissibility of evidence]. One commentator suggested revising section 6101.10(b) to acknowledge that the Board may determine the credibility as well as the weight of evidence. The Board has now determined, however, that section 6101.10(b) is unnecessary and more properly a rule of substantive law rather than procedure, so that section is deleted.

6101.16 [Subpoenas]. The Board received comments from a group of lawyers, a non-profit association, and a government agency regarding section 6101.16. The Board believes section 6101.16 as proposed is appropriate and has not made any modification to it (other than substituting the phrase "electronically stored information" for the phrase "electronic records").

6101.17 [Exhibits]. The Board rejects one commentator's suggestion that parties be required to include printed versions of electronic documents in the record. Such a requirement might not always be feasible or necessary, and section 6101.17 already provides that the Board may order a party to provide printed versions of electronically stored information to be included in the record. In addition, section 6101.4(e) similarly provides that the Board may require a party to file either copies or printed versions of electronically stored information.

6101.18 [Election of hearing or record submission]. One commentator suggested that if one party has elected to submit its case on the record and has included affidavits or depositions with its submittal, that party should be required to present at the hearing, for cross-examination by the opposing party, those witnesses for whom it has submitted affidavits or depositions. The Board rejects the suggestion, finding not only that it would not serve the purpose of section 6101.18, which is to permit

submittal of a case on the written record, but also that the opposing party may still call to testify those individuals for whom affidavits or depositions were submitted.

6101.21 [Hearing procedures]. One commentator suggested that section 6101.21(a)(4) be amended to restrict the Board's ability to limit a hearing to issues of entitlement, while reserving the determination of damages, if any, for later proceedings. The commentator argued that bifurcation often results in inefficiency, duplication of efforts, and delay. While this may be true in many cases, it has been the Board's experience that, when parties receive a decision on entitlement, they are usually able to settle the quantum portion of the case without the need for a hearing. In addition, the practice of the Board is to notify the parties of its decision to bifurcate as early as possible before the hearing in order to relieve the parties from unnecessary costs they might incur in preparing to address the issue of damages. The Board believes that bifurcation is a matter best left to the presiding judge's discretion.

A second commentator suggested that section 6101.21(a)(2), which allows the Board to order a joint hearing on matters in separate cases that involve common questions of law or fact, be limited to cases in which the parties or the underlying transaction or occurrence are the same. The Board believes that this, too, is a matter best left to the presiding judge's discretion.

The same commentator also suggested that section 6101.21(g) be revised to require, rather than merely allow, the presiding judge to state for the record the inferences drawn from the refusal of a witness to answer. The commentator argues that the parties should then be permitted to provide additional testimony or evidence to support or rebut those inferences. The Board rejects the suggested change as impractical, given that proper inferences may not be clear until the hearing has been completed and the judge has reviewed all of the evidence.

6101.23 [Briefs and memoranda of law]. A commentator suggested that section 6101.23(b) be revised to require the filing of posthearing reply briefs in 21 rather than 15 days, given the complexity of many cases before the Board. If needed, a party may request an enlargement of time, and no change in the rule is necessary. Section 6101.23(a) is amended, however, to clarify its intent to permit the presiding judge to request prehearing and posthearing briefs and, at any point in the proceedings, memoranda of law.

6101.30 [Award of fees and other expenses]. The Board has revised section 6101.30(b), in response to one commentator's concerns, to add the following sentence: "An application for fees or other expenses may not be filed before the Board's decision is final; a request for fees or other expenses made before the Board's decision is final does not constitute an application." The Board rejected the commentator's suggestion, however, that section 6101.30 include a requirement that an applicant seeking recovery of fees and expenses under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504, file a net worth exhibit. The agency often agrees that the applicant meets the net worth qualification for EAJA recovery, and such an exhibit would therefore be unnecessary.

6101.31 [Payment of Board awards]. To be consistent with the definitions provided at section 6101.1(b), section 6101.31(c) is revised to change "government agency" to "respondent".

6101.51 [Variation from standard proceedings]. Section 6101.51 has been revised in response to a comment that the initial paragraph of the section may be misconstrued to limit the availability of the alternative procedures in sections 6101.51 through 6101.54 to individuals and small businesses. The penultimate sentence of that paragraph is revised to read: "Although any party may ask the Board to vary from standard proceedings, individuals and small businesses may find such variations to be especially useful."

6101.52 [Small claims procedure]. To be consistent with the definitions provided at section 6101.1(b), section 6101.52 is revised to change "Government" to "respondent".

6101.53 [Accelerated procedure]. To be consistent with the definitions provided at section 6101.1(b), section 6101.53 is revised to change "Government" to "respondent".

6101.54 [Alternative dispute resolution]. Several comments were received concerning section 6101.54. One commentator suggested that, to avoid the appearance of judicial pressure on the parties to participate in alternative dispute resolution (ADR) proceedings, section 6101.54 be amended to prohibit the presiding judge or a panel judge in a case from serving as an ADR neutral. The Board notes that no party should ever feel pressured to participate in ADR or to select the presiding judge to conduct ADR proceedings. There may, however, be good reasons for the parties to request the presiding judge to serve as an ADR neutral, such as the judge's familiarity with the facts and issues of the case.

The Board therefore has not amended the section as suggested.

Similarly, the Board declines the suggestion of another commentator that a judge who has participated as a neutral in an unsuccessful ADR proceeding may not continue with the case in subsequent proceedings before the Board. As with the selection of a presiding or panel judge to serve as ADR neutral, there may be good reasons for the parties to want the ADR neutral to continue to serve on the panel or as the presiding judge, such as familiarity with the facts and issues of the case. The same commentator also suggested that section 6101.54(c)(1) and (2) be amended to preclude any judge who has participated in discussions about mediation in a case from participating in a Board decision of the case if the ADR is unsuccessful. The suggested prohibition is overly broad, encompassing even casual conversations between judges, and therefore is not adopted.

D. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional costs on large or small businesses.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6101, 6102, 6103, 6104, and 6105

Administrative practice and procedure, Agriculture, Freight forwarders, Government procurement, Travel and relocation expenses.

Dated: February 7, 2008.

Stephen M. Daniels,

Chairman, Civilian Board of Contract Appeals, General Services Administration.

■ Accordingly, the interim rule amending 48 CFR Chapter 61 which was published in the **Federal Register** at 72 FR 36794, July 5, 2007, is adopted as a final rule with changes to Part 6101.

CHAPTER 61—RULES OF PROCEDURE OF THE CIVILIAN BOARD OF CONTRACT APPEALS

■ 1. The authority citation for 48 CFR Part 6101 continues to read as follows:

Authority: 41 U.S.C. 601–613.

■ 2. Amend Chapter 61 by revising the Chapter heading as set forth above.

PART 6101—CONTRACT DISPUTE CASES

■ 3. Amend Part 6101 by revising the Part heading as set forth above.

■ 4. Amend section 6101.1 by revising paragraphs (b)(5) and (e) to read as follows:

6101.1 Scope of rules; definitions; construction; rulings, orders, and directions; panels; location and address [Rule 1].

* * * * *

(b) * * *

(5) *Filing.* (i) Any document, other than a notice of appeal or an application for award of fees and other expenses, is filed when it is received by the Office of the Clerk of the Board during the Board's working hours. A notice of appeal or an application for award of fees and other expenses is filed upon the earlier of its receipt by the Office of the Clerk of the Board or if mailed, the date on which it is mailed to the Board. A United States Postal Service postmark shall be prima facie evidence that the document with which it is associated was mailed on the date of the postmark.

(ii) Facsimile transmissions to the Board and the parties are permitted. The filing of a document by facsimile transmission occurs upon receipt by the Board of the entire submission by facsimile. Parties are specifically cautioned that a deadline for filing will not be extended merely because the Board's facsimile machine is busy or otherwise unavailable when a filing is due. Parties are expected to submit their facsimile machine numbers with their filings.

* * * * *

(e) *Panels.* Each case will be assigned to a panel consisting of three judges, with one member designated as the presiding judge, in accordance with such procedures as may be established by the Board. The presiding judge is responsible for processing the case, including scheduling and conducting proceedings and hearings. In addition, the presiding judge may, without participation by other panel members, decide an appeal under the small claims procedure in 6101.52 [Rule 52], rule on nondispositive motions (except for amounts in controversy under 6101.52(a)(2) [Rule 52(a)(2)] and

6101.53(a)(2) [Rule 53(a)(2)]], and dismiss a case as permitted by 6101.12(e) [Rule 12(e)]. All other matters, except for those before the full Board under 6101.28 [Rule 28], are decided for the Board by a majority of the panel.

* * * * *

■ 5. Amend section 6101.4 by revising the introductory text of paragraph (a), and paragraphs (a)(1) thru (a)(3), (e), and (g) to read as follows:

6101.4 Appeal file [Rule 4].

(a) *Submission to the Board by the respondent.* Within 30 calendar days from receipt of the Board's docketing notice or within such time as the Board may allow, the respondent shall file with the Board appeal file exhibits consisting of all documents and other tangible things relevant to the claim and to the contracting officer's decision which has been appealed. Exhibits will be numbered as required by 6101.4(b) [Rule 4(b)] and will include, if any:

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

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

(3) All correspondence between the parties that is relevant to the appeal, including the written claim or claims that are the subject of the appeal, and evidence of their certification;

* * * * *

(e) *Submissions on order of the Board.* The Board may, at any time during the pendency of the appeal, require any party to file other documents and tangible things as additional exhibits. The Board may also require a party to file either copies of electronically stored information or printed versions of electronically stored information.

* * * * *

(g) Use of appeal file as evidence. All exhibits in the appeal file, except for those as to which an objection has been sustained, are part of the evidentiary record upon which the Board will render its decision. Unless otherwise ordered by the Board, objection to any exhibit may be made at any time before the first witness is sworn or, if the appeal is submitted on the record without a hearing pursuant to 6101.19 [Rule 19], at any time prior to or concurrent with the first record submission. The Board may shorten or enlarge the time for such objections and will consider an objection made during a hearing if the ground for objection could not reasonably have been earlier known to the objecting party. If an

objection is sustained, the Board will so note in the record.

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■ 6. Amend section 6101.6 by revising paragraph (c) to read as follows:

6101.6 Pleadings and amendment of pleadings [Rule 6].

* * * * *

(c) *Answer.* No later than 30 calendar days after the filing of the complaint or of the Board's designation of a complaint, the respondent shall file with the Board an answer setting forth simple, concise, and direct statements of its defenses to the claim or claims asserted in the complaint, as well as any affirmative defenses it chooses to assert. A dispositive motion or a motion for a more definite statement may be filed in lieu of the answer only with the permission of the Board. If no answer is timely filed, the Board may enter a general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by paragraph (e) of this section. The Board will inform the parties when it enters a general denial on behalf of the respondent.

* * * * *

■ 7. Amend section 6101.7 by revising paragraph (a) to read as follows:

6101.7 Service of papers other than subpoenas [Rule 7].

(a) *On whom and when service must be made.* Except for subpoenas (6101.16 [Rule 16]) and documents filed *in camera* (6101.9(c) [Rule 9(c)]), when a party sends a document to the Board it must at the same time send a copy to the other party by an equally or more expeditious means of transmittal. The parties will confer and agree upon the method they will use to serve one another. They may agree to use electronic mail, facsimile, overnight courier, hand delivery, or any other mutually acceptable method for accomplishing service promptly and efficiently.

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■ 8. Amend section 6101.8 by revising paragraph (e) to read as follows:

6101.8 Motions [Rule 8].

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(e) *Jurisdictional questions.* The Board may at any time consider the issue of its jurisdiction to decide a case.

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■ 9. Revise section 6101.10 to read as follows:

6101.10 Admissibility of evidence [Rule 10].

In general, any relevant and material evidence will be admitted into the record. The Board may exclude evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. Hearsay evidence is admissible unless the Board finds it unreliable or untrustworthy. As a general matter, and subject to the other provisions of 6101.10 [Rule 10], the Board will look to the Federal Rules of Evidence for guidance when it makes evidentiary rulings.

10. Amend section 6101.12 by revising paragraph (e) to read as follows:

6101.12 Suspensions and dismissals [Rule 12].

* * * * *

(e) *Issuance of order.* The presiding judge alone may issue an order suspending proceedings. An order of dismissal shall be issued by the panel of judges to which the case has been assigned if the motion is contested or if the Board is acting consequent to its own show cause order. An order of dismissal may be issued by the presiding judge alone if the motion to dismiss is not contested.

■ 11. Amend section 6101.13 by revising paragraphs (a)(3), (b), and (g) to read as follows:

6101.13 General provisions governing discovery [Rule 13].

(a) * * *

(3) Requests for production of documents, electronically stored information, or other tangible or intangible things; and

* * * * *

(b) *Scope of discovery.* Except as otherwise limited by order of the Board, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, whether it relates to the claim or defense of a party, including the existence, description, nature, custody, condition, and location of any books, documents, electronically stored information, or other tangible or intangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

* * * * *

(g) *Failure to make or cooperate in discovery.* If a party fails to appear for a deposition, after being served with a proper notice; to serve answers or

objections to interrogatories submitted under 6101.14 [Rule 14], after proper service of interrogatories; or to serve a written response to a request for inspection, production, and copying of any documents, electronically stored information, and things under 6101.14 [Rule 14], the party seeking discovery may move the Board to impose appropriate sanctions under 6101.33 [Rule 33].

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■ 12. Amend section 6101.14 by revising paragraphs (c), (d), and (f) to read as follows:

6101.14 Interrogatories to parties; requests for admission; requests for production [Rule 14].

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(c) *Written requests for admission.* A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents or electronically stored information, is to be answered in writing and signed within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) [Rule 13(f)(2)]. Otherwise, the matter therein may be deemed to be admitted. Any matter admitted is conclusively established for the purpose of the pending action, unless the Board on motion permits withdrawal or amendment of the admission. Any admission made by a party under this paragraph (c) is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against the party in any other proceeding.

(d) *Written requests for production.* A written request for the production, inspection, and copying of any documents, electronically stored information, or things shall be answered within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) [Rule 13(f)(2)].

* * * * *

(f) *Responses.* A party that has responded to written interrogatories, requests for admission, or requests for production of documents, electronically stored information, or things, upon becoming aware of deficiencies or inaccuracies in its original responses, or upon acquiring additional information or additional documents, electronically stored information, or things relevant thereto, shall, as quickly as practicable, and as often as necessary, supplement its responses to the requesting party with correct and sufficient additional

information and such additional documents, electronically stored information, and things as are necessary to give a complete and accurate response to the request.

■ 13. Amend section 6101.16 by revising paragraph (b)(3) to read as follows:

6101.16 Subpoenas [Rule 16].

* * * * *

(b) * * *

(3) Produce the books, papers, documents, electronically stored information, and other tangible and intangible things designated in the subpoena.

* * * * *

■ 14. Amend section 6101.17 by revising paragraph (b) to read as follows:

6101.17 Exhibits [Rule 17].

* * * * *

(b) *Copies as exhibits.* Except upon objection sustained by the Board for good cause shown, copies of documents may be offered and received into evidence as exhibits, provided they are of equal legibility and quality as the originals, and such copies shall have the same force and effect as if they were the originals. If the Board directs, a party offering a copy of a document as an exhibit shall have the original available at the hearing for examination by the Board and any other party. When the original of a document has been received into evidence as an exhibit, an accurate copy may be substituted in evidence for the original by leave of the Board at any time. The Board may require a party to provide either copies of electronically stored information or printed versions of electronically stored information to be included in the record.

* * * * *

■ 15. Amend section 6101.23 by revising the introductory text of paragraph (a) to read as follows:

6101.23 Briefs and memoranda of law [Rule 23].

(a) *Form and content of briefs and memoranda of law.* Briefs and memoranda of law shall be on standard size 8 1/2 by 11-inch paper. They shall be double-spaced with text in the body and in the footnotes no smaller than 12 point. Otherwise, no particular form or organization is prescribed. The presiding judge may request prehearing and posthearing briefs and may also request, at any point in the proceedings, memoranda of law. Prehearing and posthearing briefs should, at a minimum, succinctly set forth:

* * * * *

■ 16. Amend section 6101.30 by revising paragraph (b) to read as follows:

6101.30 Award of fees and other expenses [Rule 30].

* * * * *

(b) *Time for filing.* A party seeking an award may submit an application no later than 30 calendar days after a final disposition in the underlying appeal. The Board's decision becomes final (for purposes of 6101.30 [Rule 30]) when it is not appealed to the United States Court of Appeals for the Federal Circuit within the time permitted for appeal or, if the decision is appealed, when the time for petitioning the Supreme Court for certiorari has expired. An application for fees or other expenses may not be filed before the Board's decision is final; a request for fees or other expenses made before the Board's decision is final does not constitute an application.

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■ 17. Amend section 6101.31 by revising paragraph (c) to read as follows:

6101.31 Payment of Board awards [Rule 31].

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(c) *Procedure.* Whenever the Board issues a decision or an order awarding an appellant any amount of money, it will attach to the copy of the decision sent to each party forms such as those contained in the Appendix to the rules of this chapter. Unless the appellant files a timely appeal from the decision, the appellant will complete the Certificate of Finality, sign it, and forward it to the person or persons who entered an appearance in the appeal on behalf of the respondent. Upon receipt of a completed and executed Certificate of Finality, unless the respondent files a timely appeal from the decision, the person or persons who entered an appearance in the appeal on behalf of the respondent will promptly transmit the appellant's Certificate of Finality, along with a certified copy of the Board's decision and any other necessary documentation, to the United States Department of the Treasury for payment.

■ 18. Amend section 6101.51 by revising the introductory paragraph and paragraph (d) to read as follows:

6101.51 Variation from standard proceedings [Rule 51].

The ultimate purpose of any Board proceeding is to resolve fairly and expeditiously any dispute properly before the Board. When, during the normal course of a Board proceeding, the parties agree that a change in established procedure will promote this purpose, the Board will make that change if it is deemed to be feasible and in the best interest of the parties, the Board, and the resolution of the issue(s) in controversy. Although any party may ask the Board to vary from standard proceedings, individuals and small businesses may find such variations to be especially useful. The following are examples of these changes:

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(d) Developing a record regarding relevant facts through an on-the-record round-table discussion with sworn witnesses, counsel, and the presiding judge rather than through formal direct and cross-examination of each of these same witnesses. This discussion shall be controlled by the presiding judge. It may be conducted, for example, through the presentation of narrative statements of witnesses or on an issue by issue basis. The presiding judge may also request that the parties' counsel or representatives present opening and/or closing statements in lieu of written briefs.

■ 19. Amend section 6101.52 by revising the introductory text of paragraph (a)(1), and paragraphs (a)(2), (b), and (d) to read as follows:

6101.52 Small claims procedure [Rule 52].

(a) *Election.* (1) The small claims procedure is available solely at the appellant's election. Such election shall be made no later than 30 calendar days after the appellant's receipt of the agency answer, unless the presiding judge enlarges the time for good cause shown. The appellant may elect this procedure when:

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(2) At the request of the respondent, or on its own initiative, the Board may determine whether the amount in dispute and/or the appellant's status makes the election inappropriate. The respondent shall raise any objection to the election no later than 10 working days after receipt of a notice of election.

(b) *Decision.* The presiding judge may issue a decision, which may be in summary form, orally or in writing. A decision which is issued orally shall be reduced to writing; however, such a decision takes effect at the time it is rendered, prior to being reduced to writing. A decision shall be final and conclusive and shall not be set aside except in case of fraud. A decision shall have no value as precedent.

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(d) *Time of decision.* Whenever possible, the presiding judge shall resolve an appeal under this procedure within 120 calendar days from the Board's receipt of the election. The time for processing an appeal under this procedure may be extended if the appellant has not adhered to the established schedule. Either party's failure to abide by the Board's schedule may result in the Board drawing evidentiary inferences adverse to the party at fault.

■ 20. Amend section 6101.53 by revising paragraphs (a) and (b) to read as follows:

6101.53 Accelerated procedure [Rule 53].

(a) *Election.* (1) The accelerated procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is \$100,000 or less. Such election shall be made no later than 30 calendar days after the appellant's receipt of the agency answer, unless the presiding judge enlarges the time for good cause shown.

(2) At the request of the respondent, or on its own initiative, the Board may determine whether the amount in dispute is greater than \$100,000, such that the election is inappropriate. The respondent shall raise any objection to the election no later than 10 working days after receipt of a notice of election.

(b) *Decision.* Each decision shall be rendered by the presiding judge with the concurrence of one of the other judges assigned to the panel; in the event the two judges disagree, the third judge assigned to the panel will participate in the decision.

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