

**POSTAL SERVICE****39 CFR Part 955****Rules of Practice Before the Postal Service Board of Contract Appeals**

AGENCY: Postal Service.

ACTION: Final rule.

**SUMMARY:** The Postal Service is revising portions of the rules of practice before the Postal Service Board of Contract Appeals to clarify existing procedures, and to modify certain citations to reflect a change in statutory codification.

**DATES:** *Effective date:* July 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Administrative Judge Gary E. Shapiro, (703) 812-1910.

**SUPPLEMENTARY INFORMATION:****A. Executive Summary**

The rules of practice in proceedings before the Postal Service Board of Contract Appeals are contained in 39 CFR part 955, which was substantially revised on May 5, 2009 (74 FR 20592). Subsequently, it became apparent that certain aspects of the rules required further clarification to conform to existing practice. In addition, citations to the Contract Disputes Act required revision to conform to the new codification of title 41, United States Code, under Public Law 111-350, 124 Stat. 3677 (Jan. 4, 2011).

**B. Summary of Changes**

Changes to § 955.1 conform the rules to the new codification of the Contract Disputes Act.

Formerly, § 955.6 provided that either party may apply for a hearing on a motion addressed to the jurisdiction of the Board. The revised rule clarifies existing practice that the Board determines whether to conduct oral argument related to such a motion and that it may do so on its own initiative. The term "oral argument" is substituted for "hearing" as a more accurate descriptor of current practice.

Section 955.7 is revised to reflect that the Board, on its own initiative and in the absence of a request by the appellant, may designate a document to constitute the appellant's complaint, and may do so prior to the time required for the appellant to file its complaint. The revised rule is intended to clarify that the complaint designation determination is to be made by the Board although it may be requested by the appellant.

Section 955.9 is revised to reflect that while the parties may request a hearing, the Board determines whether a hearing will be conducted. Accordingly,

references to the "election" of a party or parties are changed to the "request" of a party or parties. Corresponding changes are made to §§ 955.10 and 955.18.

**List of Subjects in 39 CFR Part 955**

Administrative practice and procedure, Contract Disputes Act of 1978, Postal Service.

For the reasons set forth in the preamble, the Postal Service hereby amends 39 CFR part 955 as set forth below:

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

■ 1. The authority citation for 39 CFR part 955 is revised to read as follows:

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

**§ 955.1 [Amended]**

■ 2. In § 955.1, the first sentence of paragraph (a) and the first sentence of paragraph (b)(2) are amended by removing "41 U.S.C. 601-613", and adding "41 U.S.C. 7101-7109" in its place.

■ 3. In § 955.6, paragraph (a) is revised to read as follows:

**§ 955.6 Motions.**

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Oral argument on the motion may be afforded on application of either party, in the Board's discretion, or on the Board's initiative. The Board may at any time and on its own initiative raise the issue of its jurisdiction to proceed with a particular case.

\* \* \* \* \*

■ 4. In § 955.7, paragraph (a) is revised to read as follows:

**§ 955.7 Pleadings.**

(a) *Appellant.* Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed, and shall serve the respondent with a copy. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Upon the appellant's request or on the Board's own initiative, the appellant's claim, notice of appeal or other document may be deemed to constitute the complaint if in the

opinion of the Board the issues before the Board are sufficiently defined.

\* \* \* \* \*

■ 5. Section 955.9 is revised to read as follows:

**§ 955.9 Hearing request.**

As directed by Board order, each party shall inform the Board, in writing, whether it requests a hearing as prescribed in §§ 955.18 through 955.25, or in the alternative submission of its case on the record without a hearing as prescribed in § 955.12. If a hearing is requested, the request should state where and when the requesting party desires the hearing to be conducted and should explain the reasons for its choices. After considering the parties' requests, the Board will determine whether a hearing will be held.

■ 6. In § 955.10, the first sentence is revised to read as follows:

**§ 955.10 Prehearing briefs.**

Based on an examination of the documentation described in § 955.5, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been ordered pursuant to § 955.9. \* \* \*

■ 7. In § 955.18, the first sentence is revised to read as follows:

**§ 955.18 Hearings—where and when held.**

If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the parties. \* \* \*

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 1**

[GEN Docket No. 86-285; FCC 11-98]

**Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 Through 1.1109 of the Commission's Rules**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** In this document, the Commission amends its rules to clarify that winning bidders in auctions of commercial broadcast spectrum are

required to submit an application filing fee with their post-auction long-form applications. This clarification is intended to rectify a possible inconsistency throughout the Commission's rules, and in an earlier Commission Order.

**DATES:** Effective June 28, 2011.

**ADDRESSES:** Roland Helvajian, Federal Communications Commission, Office of the Managing Director, Revenue and Receivables Operations Group, 445 12th Street, SW., Washington, DC 20445.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of the Managing Director, Revenue and Receivables Operations Group, (202) 418-0444 or [Roland.Helvajian@fcc.gov](mailto:Roland.Helvajian@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Order, FCC 11-98, adopted June 17, 2011, and released June 20, 2011.

### Synopsis of Order

1. In the *Notice of Proposed Rulemaking* (NPRM) in this proceeding, the Commission proposed to clarify the rules on payment of post-auction long-form filing fees by winning bidders in auctions of construction permits in the broadcast services. It noted an inconsistency between *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order (13 FCC Rcd 15920, 15984-85 para. 164 (1998)), in which the Commission required that winning broadcast auction bidders pay filing fees with their post-auction long-form applications, and 47 CFR 1.1104, the Schedule of Charges for Media Bureau Service filings, which requires payment of a fee when the long-form application is filed, on the one hand, and 47 CFR 1.2107(c), which suggests that a filing fee need not accompany a high bidder's long-form application, on the other. To rectify this inconsistency and conform the rules to the Commission's stated intent in the Broadcast Competitive Bidding First Report and Order, the Commission proposed in the NPRM to amend 47 CFR 1.2107(c) to read, "Except as otherwise provided in § 1.1104 of the rules, high bidders need not submit an additional application fee with their long-form applications." By amending 47 CFR 1.2107(c), the Commission clarifies that high bidders filing long-form applications for media services must still pay any fees required by 47 CFR 1.1104 when filing their post-auction long-form application.

2. The Commission received no comments or reply comments regarding

the proposed rule change. Therefore, the Commission adopts the change to 47 CFR 1.2107(c) as set forth herein.

### Ordering Clauses

3. The rule adopted in this *Second Order* is a rule of agency procedure that does not substantially affect the rights or obligations of non-agency parties, and is exempt from the requirements of the Congressional Review Act pursuant to 5 U.S.C. 804(3)(C).

4. *It is ordered* that the Commission's rules *are hereby amended* as set forth herein.

5. *It is further ordered* that the rule change in this Second Order *will become effective* June 28, 2011.

### List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 to read as follows:

### PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.2107 is amended by revising paragraph (c) to read as follows:

#### § 1.2107 Submission of down payment and filing of long-form applications.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder. Except as otherwise provided in § 1.1104, high bidders need not submit an additional application filing fee with their long-form applications. Specific procedures for filing applications will be set out by Public Notice. Ownership disclosure requirements are set forth in § 1.2112. Beginning January 1, 1999, all long-form applications must be filed electronically. An applicant that fails to submit the required long-form application under this paragraph and fails to establish good cause for any late-filed submission, shall be deemed to

have defaulted and will be subject to the payments set forth in § 1.2104.

\* \* \* \* \*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**49 CFR Parts 105, 107, 109, 171, 172, 173, 174, 175, 176, 178, and 180**

[Docket No. PHMSA-2011-0132; Notice No. 11-5]

### Notification of Anticipated Delay in Administrative Appeal Decisions

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that PHMSA is currently reviewing numerous administrative appeals (*i.e.*, petitions for reconsideration) on recently issued final rules. In accordance with applicable regulatory requirements, this notice provides notification to parties having brought certain administrative appeals of the anticipated delay in processing these administrative appeals.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Betts, Director, Standards and Rulemaking Division, Office of Hazardous Materials Safety, (202) 366-4512, PHMSA, 1200 New Jersey Avenue, SE., Washington, DC 20590.

### SUPPLEMENTARY INFORMATION:

#### I. Appeals

The Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Standards recently received a number of petitions for reconsideration of several recent PHMSA final rules, which are known as "administrative appeals" under PHMSA's applicable regulations, 49 CFR 106.110 *et seq.* The administrative appeals that are the subject of this **Federal Register** notice focus on four recently published final rules. Key information on the administrative appeals, including the rulemaking docket number, are provided below. Interested persons may go to <http://www.regulations.gov> and search by the rulemaking docket number to view rulemakings, administrative appeals, comments, and other rulemaking related documentation. The administrative appeals now being considered by PHMSA, organized by final rule, are as follows: