

# Rules and Regulations

Federal Register

Vol. 73, No. 199

Tuesday, October 14, 2008

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## The President

### 3 CFR

#### Proclamation 8296—To Modify Duty-free Treatment Under The Caribbean Basin Economic Recovery Act and for Other Purposes

##### Correction

In Presidential document E8–23562 beginning on page 57475 in the issue of Friday, October 3, 2008, make the following correction:

On page 57483 the Filed date should read “10–2–08”.

[FR Doc. Z8–23562 Filed 10–10–08; 8:45 am]

BILLING CODE 1505–01–D

## GOVERNMENT ACCOUNTABILITY OFFICE

### 4 CFR Part 22

#### Rules of Procedure of the Government Accountability Office Contract Appeals Board

**AGENCY:** Government Accountability Office.

**ACTION:** Final rule.

**SUMMARY:** This document contains the final revisions to the interim rules of procedures of the Government Accountability Office (GAO) Contract Appeals Board (Board), which was published in the *Federal Register* on June 26, 2008. These rules supersede the interim rules of the Board and will govern all proceedings before the Board filed on or after October 1, 2007.

**DATES:** *Effective Date:* October 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** James A. Spangenberg (Chairman), David Ashen (Vice Chairman), or Sharon L. Larkin (Member), 202–512–3342, [cab@gao.gov](mailto:cab@gao.gov). Hearing or speech impaired individuals may contact the Board via TTY by calling the toll-free

Federal Information Relay Service at 800–877–8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Board published in the *Federal Register* at 73 FR 36257, June 26, 2008, 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 that are filed on or after October 1, 2007. The Board has considered all comments received, revised the interim rules in part (as explained below), and now promulgates its final rules of procedure. These rules are promulgated pursuant to the Board’s authority contained in section 1501(d) of title I of division H of the Consolidated Appropriations Act of 2008, and will be contained in 4 CFR part 22.

##### Summary of Comments and Changes

The Board received comments from two commentators, including one legislative branch agency and one bar association. The Board carefully considered each comment and adopted some of the suggestions made by the commentators. In addition, the Board made minor changes to the interim rules to correct numbering of certain paragraphs and to clarify discovery rules to reflect current motions practice before the Board. The comments and changes are discussed below.

Sec. 22.2 [Board Consideration]. One commentator suggested that the Board clarify how all Board members “will be in a position to make an informed decision” in cases where a hearing is conducted by only one member of a three-member Board. In such cases, it is the Board’s practice to make the entire record, including the hearing transcript, available to all members of the panel. The Board does not believe that clarification of the rules is necessary to address this issue.

Secs. 22.3 [Appeals—How Taken] and 22.28 [Time]. One commentator raised concern that the Board’s reference to 5:30 p.m. “Eastern Standard Time” in paragraph (b) of section 22.3 and in section 22.28 could cause confusion because of the use of daylight savings time. The commentator suggested that the Board instead refer to 5:30 p.m.

“local time in Washington, DC.” The Board agrees and has revised the sections accordingly.

One commentator also suggested that paragraph (d) of section 22.3, referring to the Board’s issuance of a docketing notice, be modified to indicate that the Board will identify in the docketing notice the presiding member of the panel, as well as the availability of alternative dispute resolution (ADR). Current Board practice is to provide this information in the docketing notices issued in all cases. The Board believes that these matters can be appropriately addressed in its docketing notices and declines to modify its rule.

Secs. 22.4 [Appeal File] and 22.5 [Pleadings]. One commentator suggested that the Board reverse the order of these sections. The Board declines to do so. The Appeal file is commonly referred to as the Rule 4 file and the placement of the rule at section 22.4 [Rule 4] was intentional so as to avoid confusion. Reference to the “Rule 4” file is consistent with other board practice and with what is expected by experienced practitioners in this field.

Sec. 22.8 [General Discovery Procedures]. The interim rules have led to confusion among some parties as to whether motions concerning discovery must be filed before the end date for discovery. To clarify, the Board adds paragraph (k) to section 22.8 to require parties to file all motions concerning discovery, including motions to compel discovery, on or before the end date of discovery to the maximum extent possible. The revised rule further provides that late-filed motions will not be considered except for good cause shown.

Sec. 22.13 [Requests for Admission]. Paragraphs (a)(1)(A) and (a)(1)(B) are renumbered as (a)(1)(i) and (a)(1)(ii) to be consistent with the numbering in other sections and paragraphs.

Sec. 22.15 [Conferences and Orders]. One commentator suggested that the Board consider holding a mandatory initial scheduling conference after the filing of the complaint and answer to discuss procedural issues, discovery, and case development and resolution. The Board agrees that an initial scheduling conference with the parties is a useful tool to orderly case development and resolution. Therefore, the Board revises section 22.15 to include a new paragraph (a), titled