

# Rules and Regulations

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## GOVERNMENT ACCOUNTABILITY OFFICE

### 4 CFR Part 22

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

**AGENCY:** Government Accountability Office.

**ACTION:** Interim rule.

**SUMMARY:** This document contains the rules of procedures of the Government Accountability Office (GAO) Contract Appeals Board (Board), which will govern all proceedings before the Board. The Board was established pursuant to sec. 1501 of title I of division H of the Consolidated Appropriations Act of 2008 to hear appeals from decisions of contracting officers with respect to any contract entered into by a legislative branch agency. The following rules of procedure are promulgated pursuant to sec. 1501(d) of that act and are applicable to all appeals filed with the Board on or after October 1, 2007. The Board invites comments on this interim rule and intends to publish a final rule after considering all comments received on or before the closing date for comments.

**DATES:** Comments must be submitted on or before August 25, 2008.

**ADDRESSES:** Comments may be submitted by e-mail at [cab@gao.gov](mailto:cab@gao.gov) or by facsimile at 202-512-9749. Due to delivery delays, submission by regular mail is discouraged. Comments may be sent by Federal Express (FedEx) or United Parcel Service (UPS) addressed to: James A. Spangenberg, Chairman, Government Accountability Office Contract Appeals Board, 441 G Street, NW., Room 7182, Washington, DC 20548.

**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 Armed Services Board of Contract Appeals and the Civilian Board of Contract Appeals has been established to resolve appeals of contracting officers' decisions involving contracts with executive branch agencies, pursuant to the Contracts Disputes Act of 1978 (CDA), Public Law 95-563, 41 U.S.C. 601 *et seq.* However, no such permanent board has existed to resolve similar appeals involving contracts with legislative branch agencies. Previously, the GAO provided qualified attorneys to staff various contract appeals boards that were created on an ad hoc basis to consider appeals involving contracts of the Architect of the Capitol. These ad hoc boards were created under either direct appointment by congressional committees or by agreement with the Architect of the Capitol under the Economy Act, 31 U.S.C. 1535. In addition, an ad hoc contract appeals board staffed by qualified GAO attorneys was established in 2006 to consider appeals concerning contracts of the Government Printing Office pursuant to a memorandum of understanding between these agencies under the Economy Act. As a result of the Consolidated Appropriations Act of 2008, further described below, the GAO will no longer decide contract appeals through the various ad hoc boards, but will hear and resolve all newly filed appeals involving contracts with legislative branch agencies through a permanent Board that was established pursuant to the Act. Appeals that are filed on or after October 1, 2007, will be decided by the newly established Board. Appeals that were filed before October 1, 2007, and which are pending before various ad hoc boards, are not affected by this interim rule; the rules of procedure issued by those boards will remain in effect for those appeals.

##### Statutory Authority

Section 1501 of title I of division H of the Consolidated Appropriations Act of 2008, Public Law 110-161, 121 Stat.

1844, 2249-50 (Dec. 26, 2007) (to be codified at 31 U.S.C. 720 note (2008)), established a permanent Board within the GAO to consider appeals involving contracts with legislative branch agencies. Legislative branch agencies are defined to include the Architect of the Capitol; United States Botanic Gardens; GAO; Government Printing Office; Library of Congress; Congressional Budget Office; United States Capitol Police; and any other agency, board, or commissions established in the legislative branch of Government. Six members of the Board, including a Chairman and Vice Chairman, have been competitively appointed, all of whom are GAO attorneys with at least 5 years of public contract experience. The Board shall operate as an independent function within GAO's Office of General Counsel.

With certain identified exceptions, sec. 1501 of title I of division H of the Consolidated Appropriation Act of 2008 applies the CDA to appeals filed with the Board. One notable exception to the CDA, contained within sec. 1501(d), is that contractors do not have a right to directly appeal a decision of a contracting officer to the Court of Federal Claims as is authorized under the CDA. Another exception under sec. 1501(d) is that contractors are required to certify claims exceeding \$50,000, instead of the \$100,000 required by the CDA, as a prerequisite to filing an appeal of a contracting officer's decision.

The rules of procedure for the newly established Board are promulgated pursuant to sec. 1501(d) of title I of division H of the Consolidated Appropriations Act of 2008, which requires the Comptroller General to prescribe regulations for procedures for appeals to the Board that are consistent with procedures under the CDA. This authority has been delegated to the Chairman of the Board. These rules of procedure are based on rules previously issued by the GAO to govern procedures of the various ad hoc boards, as well as those promulgated by the Armed Services Board of Contract Appeals and the Civilian Board of Contract Appeals, with adaptations to achieve greater efficiency in case management and resolution.

## Comments Invited

The GAO is not subject to the Administrative Procedures Act and, accordingly, the Board is not required by law to seek comments before issuing a final rule. However, the Board has decided to invite interested persons to participate in this rulemaking by submitting written comments regarding the proposed revisions. Application of the Administrative Procedures Act to the GAO or the Board is not to be inferred from this invitation for comments.

The Board will consider all comments received on or before the closing date for comments. The Board may revise the interim rule based on comments received.

## List of Subjects in 4 CFR Part 22

Administrative practice and procedure, Contract Appeals Board, Government contracts.

■ For the reasons set out in this preamble, in title 4, chapter I, subchapter B of the Code of Federal Regulations, part 22 is added to read as follows:

## PART 22—RULES OF PROCEDURE OF THE GOVERNMENT ACCOUNTABILITY OFFICE CONTRACT APPEALS BOARD

Sec.

- 22.1 Applicability of Rules [Rule 1].
- 22.2 Board Consideration [Rule 2].
- 22.3 Appeal—How Taken [Rule 3].
- 22.4 Appeal File [Rule 4].
- 22.5 Pleadings [Rule 5].
- 22.6 Motions, Briefs, and Other Statements [Rule 6].
- 22.7 Copies and Service Thereof [Rule 7].
- 22.8 General Discovery Procedures [Rule 8].
- 22.9 Subpoenas [Rule 9].
- 22.10 Sanctions [Rule 10].
- 22.11 Depositions [Rule 11].
- 22.12 Interrogatories [Rule 12].
- 22.13 Requests for Admission [Rule 13].
- 22.14 Production of Documents, Electronically Stored Information, Other Tangible Things, or Entry Onto Land [Rule 14].
- 22.15 Conferences and Orders [Rule 15].
- 22.16 Hearings [Rule 16].
- 22.17 Submission on the Record Without a Hearing [Rule 17].
- 22.18 Closing the Record [Rule 18].
- 22.19 Findings and Decisions of the Board [Rule 19].
- 22.20 Mistakes and Corrections [Rule 20].
- 22.21 Motion for Reconsideration [Rule 21].
- 22.22 Accelerated and Small Claims Procedures [Rule 22].
- 22.23 Suspension of Proceedings [Rule 23].
- 22.24 Alternative Dispute Resolution [Rule 24].
- 22.25 Protective Orders and In Camera Review [Rule 25].
- 22.26 Representation of the Parties [Rule 26].
- 22.27 Ex Parte Communications [Rule 27].

22.28 Time [Rule 28].

22.29 Inspection of the Record [Rule 29].

**Authority:** Sec. 1501, Public Law 110–161, 121 Stat. 2249.

### § 22.1 Applicability of Rules [Rule 1].

The Government Accountability Office Contract Appeals Board is authorized to hear appeals from decisions of contracting officers with respect to any contract entered into by a legislative branch agency. These rules shall apply to all appeals filed with the Board on or after October 1, 2007.

### § 22.2 Board Consideration [Rule 2].

(a) *Offices.* The office of the Board shall be at the Government Accountability Office, 441 G Street, NW., Washington, DC 20548, or in such other place as may from time to time hereafter be assigned for its use. All files and records of the Board shall be kept at such office. All communications, pleadings, and/or documents addressed to the Board shall be addressed or delivered to the Board at the Government Accountability Office, 441 G Street, NW., Room 7182, Washington, DC 20548; Telephone: 202–512–3342; Facsimile: 202–512–9749; E-mail: [cab@gao.gov](mailto:cab@gao.gov).

(b) *Three Member Panel.* Generally, all appeals will be assigned to a panel of three members of the Board appointed by the Chairman of the Board; said panel may or may not include the Chairman of the Board as a member. Each panel will include a presiding member who is responsible for case management, including scheduling, and who may, without participation of the other panel members, rule on non-dispositive motions and resolve procedural disputes. Hearings on appeals may be held by one or more of the panel members of the Board. Appeals resolved under the Board's small claims or accelerated procedures (see § 22.22 of this part [Rule 22]) may be decided by a single member of the Board. Requests for consideration of a matter by all members of the Contract Appeals Board will not be granted in any appeal filed under these rules.

(c) *Absence or Disability of Chairman.* The activities of the Board shall be performed under the supervision of the Chairman of the Board. In the absence of, or during the disability of, the Chairman, the Vice Chairman of the Board shall act as the Chairman.

### § 22.3 Appeals—How Taken [Rule 3].

(a) *Form.* An appeal by the contractor shall be filed with the Board in the form of a written notice of appeal. The notice shall identify the contract by number,

the name of the government agency and/or department against which the claim is asserted, the contracting officer for the subject dispute, the decision from which the appeal is taken, an estimate of the amount of money in controversy, if any, and shall be signed personally by the appellant (the contractor making the appeal) or by his representative or attorney. The complaint referred to in § 22.5(a) of this part [Rule 5(a)] may be filed with the notice of appeal or the appellant may designate the notice of appeal as a complaint if it otherwise fulfills the requirements of a complaint. The appellant shall promptly provide a copy of the appeal and complaint to the contracting officer.

(b) *Timeliness.* (1) For claims where a contracting officer has issued a final decision, the contractor may file an appeal no later than 90 days after it receives the contracting officer's final decision.

(2) For certified claims submitted to the contracting officer in excess of \$50,000 where the contracting officer has not issued a final decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal citing the failure of the contracting officer to issue a decision.

(3) For claims submitted to the contracting officer in the amount of \$50,000 or less where the contracting officer has not issued a final decision within 60 days of the contractor's request that a final decision be issued within that time, the contractor may file a notice of appeal citing the failure of the contracting officer to issue a decision.

(4) In lieu of a notice of appeal filed under paragraphs (b)(2) or (b)(3) of this section [Rules 3(b)(2) or 3(b)(3)], the contractor may request that the Board direct a contracting officer to issue a decision within a specified period of time, as determined by the Board, in the event of undue delay by the contracting officer in issuing a decision.

(5) An appeal filed with the Board will be deemed "filed" on the date actually received by the Board if received by 5:30 p.m. Eastern Standard Time (EST), or on the next business day if received after 5:30 p.m. EST.

(c) *Service of the Appeal; Copies.* An original plus 3 copies of the appeal shall be filed with the Board by hand delivery, express or priority mail, approved commercial carrier (e.g., UPS or FedEx), facsimile, or e-mail, although e-mail is the preferred method of delivery in all Board matters. The use of first class or parcel post mail is strongly discouraged because the delivery delays and screening process for government

mail could result in untimely filed appeals. If filed by e-mail or facsimile, the appellant shall provide the original plus 3 copies to the Board by hand delivery or commercial carrier within 2 business days of the e-mailed or facsimile transmitted filing. The appellant shall furnish a copy of the appeal to the contracting officer from whose decision, or failure to issue the decision, the appeal is taken using the same method or service as for the Board, or an equal or more expeditious method of service. For service of documents once an appeal has commenced, see § 22.7(b) of this part [Rule 7(b)].

(d) *Docketing*. When the Board receives a notice of appeal from the appellant, the Board will promptly docket the appeal and provide written notice of docketing to all parties, or their counsel, with a copy of these rules.

(e) *Consolidation*. The Board, in its discretion, may consolidate cases involving common issues of law or fact.

#### § 22.4 Appeal File [Rule 4].

(a) *Duties of the Contracting Officer*.

(1) Within 30 days after receipt of the complaint, or within such other period of time as may be established by the Board, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(i) The decision from which the appeal is taken;

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

(iii) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(iv) All documents and other tangible things on which the contracting officer relied in making the decision, and any correspondence relating thereto;

(v) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(vi) Any additional information or evidence considered relevant to the appeal.

(2) Within the same time specified above, the contracting officer shall furnish the appellant a copy of each document he or she transmits to the Board, except those in paragraph (a)(1)(ii) of this section [Rule 4(a)(1)(ii)]. As to the latter, a list furnished to the appellant indicating specific contractual documents transmitted will suffice. Documents filed under this rule, and any supplements, shall be organized

and filed in accordance with paragraph (d) of this section [Rule 4(d)].

(b) *Duties of the Appellant*. Within 30 days after receipt of a copy of the appeal file provided pursuant to paragraph (a) of this section [Rule 4(a)], or within such other period of time as may be established by the Board, the appellant shall transmit to the Board for inclusion in the appeal file any documents not contained therein which the appellant considers to be relevant to the appeal. Within the same period of time, the appellant shall furnish a copy of such documents to the contracting officer or counsel for the government. Documents filed under this rule shall be organized and filed in accordance with paragraph (d) of this section [Rule 4(d)].

(c) *Continuing Duty to Supplement the Record*. All parties have a continuing duty to supplement the record with relevant documents and tangible things, and the appeal file may be supplemented by any party at any time before the closing of the record. In cases where a hearing is requested, these supplements shall be provided well in advance of the pre-hearing conference so that objections to admissibility may be heard and resolved, to the maximum extent possible, in advance of the hearing. All supplements to the appeal file shall be organized and filed in accordance with paragraph (d) of this section [Rule 4(d)].

(d) *Organization of Appeal File*. Only relevant documents and tangible things should be provided as part of the appeal file. Appeal file documents may be originals or true, legible, and complete copies or facsimiles. The appeal file shall be arranged in chronological order with the earliest documents first; bound in a 3-ring binder (or binders) or similar loose-leaf binder(s) no larger than 4 inches in width, except where size or shape makes such binding impracticable; numbered; tabbed; and indexed. Numbering of pages shall be consecutive and continuous from one page to the next (*i.e.*, "Bates" numbered), so that the complete file, including any supplements, will consist of one set of consecutively numbered pages. Preceding each Bates number shall be a designation "A" for appellant or "R" for respondent, indicating which party provided the document. Multiple binders shall be consecutively numbered and include references on the outside cover and binding that state the range of tab numbers and Bates numbers contained therein. Within each binder, tabs shall separate each document; multiple documents shall not be placed behind a single tab, unless each document is separated by a divider. The appeal file shall include an index

identifying each document included in the appeal file by date, brief description of the document, and the tab and Bates numbers where the document can be located in the appeal file. The Board may, in its discretion or upon request of a party, order an alternative organization of the appeal file. If an alternative organization of the appeal file is permitted, such as by document type or topic, documents within that grouping must be presented in chronological order to the extent possible. The Board may impose special requirements on the production of electronic documents and, if any portion of the § 22.4 [Rule 4] file or supplement contains electronic documents, the party submitting such documents shall contact the Board before submission for guidance.

(e) *Submissions on Order of the Board*. The Board may, at any time during the pendency of the appeal, require any party to file documents or tangible things as additional exhibits. The Board may also require a party to file printed versions of electronic records or, conversely, may require electronic versions of printed documents.

(f) *Status of Documents in the Record*. Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object to consideration of a particular document or documents by filing a written objection. Such objections shall be raised by motion pursuant to § 22.6 of this part [Rule 6] and shall be filed as early as necessary to allow the Board, to the maximum extent possible, to resolve the objection in advance of a scheduled hearing, or before the record is closed if no hearing is held.

#### § 22.5 Pleadings [Rule 5].

(a) *Complaint*. Within 15 days after receipt of the docketing notice from the Board, or within such other period of time as may be established by the Board, the appellant will file with the Board, if not previously filed with the notice of appeal, a complaint setting forth simple, concise, and direct statements of each of its claims showing that it is entitled to relief; identifying the contract provision or provisions under which relief is claimed; and stating the amount in controversy or an estimate thereof, if known, and/or the relief requested. The complaint shall be limited to those requests for relief which have been presented to the contracting officer and were either denied or not ruled upon by the contracting officer in accordance with § 22.3 of this part [Rule 3]. No

technical form is required, but each claim should be separately identified. In the event that the complaint is not filed within the time stated above, the appeal may be dismissed by the Board for lack of prosecution.

(b) *Answer.* Within 30 days after receipt of the complaint, or within such other period of time as may be established by the Board, the contracting officer or counsel for the government shall prepare and file with the Board an answer thereto. The answer shall set forth simple, concise, and direct statements of the government's defenses to each claim asserted by the appellant. Each defense shall be stated with as much particularity as is practicable. Defenses which go to the Board's jurisdiction may be included in the answer, or may be raised by motion pursuant to the provisions of § 22.6 of this part [Rule 6]. Motions in lieu of an answer may be filed only with the advance permission of the Board.

(c) *Small Claims and Accelerated Procedures.* When an appellant elects to use the small claims or accelerated procedures described in § 22.22 of this part [Rule 22], the Board may shorten the time for filing the complaint and answer.

(d) *Amendment of Pleadings.* At any time before a hearing on the merits, or before the closing of the record when a hearing is not held, the Board in its discretion may permit a party to amend its complaint or answer concerning matters that are within the proper scope of the appeal, upon conditions that are just to both parties. The Board, upon its own initiative or upon application by a party, may in its discretion order a party to make a more definite statement of its complaint or answer, or to reply to an answer. When issues within the proper scope of the appeal, but not raised by the complaint and answer, are determined by express or implied consent of the parties as having been raised, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the complaint and answer as may be necessary to cause them to conform to the evidence may be made upon motion at any time, but failure to so amend does not affect the result of the hearing of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the complaint and answer, the Board may allow the pleadings to be amended within the proper scope of the appeal and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the Board that the

admission of such evidence would prejudice it in maintaining its appeal or defense on the merits. The Board may, however, grant a continuance to enable the objecting party to respond to such evidence.

#### **§ 22.6 Motions, Briefs, and Other Statements [Rule 6].**

(a) *Motions, Generally.* Motions shall be made in writing, indicate the relief sought and include the grounds therefor, and be filed with the Board as soon as practicable after the grounds therefor are known and as early as necessary to allow the Board to rule on the motion in advance of a scheduled hearing. Except for motions submitted under paragraph (d) of this section [Rule 6(d)], any party may respond to a motion by submitting a written response to the motion within 10 days of receipt of the motion, and the moving party may reply to the response within 5 days of receipt of the response, except that the Board, in its discretion, may shorten or lengthen the time for the response and reply based on the nature of the motion, the nature and timing of the case, and the scheduling needs of the Board. The Board may request additional submissions from the parties and may decide motions on the written submissions without oral argument. The Board shall decide all motions before the hearing on the merits unless the Board determines that a ruling be deferred pending a hearing on both the merits and the motion. Jurisdictional and procedural defenses may be raised at any time by motion, but should be raised as soon as the grounds therefor are known; and the Board, at any time and on its own initiative, may raise an issue of jurisdiction and may decline to proceed with an appeal in which it lacks authority to decide the issues. All motions, responses, replies, and additional submissions required by the Board shall be filed in accordance with paragraphs (b) and (c) of this section [Rules 6(b) and 6(c)].

(b) *Briefs and Citations.* In addition to submissions required by these rules, the Board may require the parties to file legal or factual briefs concerning any matter that may aid in the disposition of the appeal. When such briefs or submissions are required (by rule or by the Board), the brief or submission shall contain citations to the record and legal authority as appropriate, and follow such other format as may be directed by the Board. Citations to the record must be specific (*i.e.*, to Bates number or other similar designation) so that the Board can locate the exact proposition or matter to which the party is referring. The parties should not expect the Board

to search the record for evidence in support of either party's position. Briefs and submissions that are not submitted in the required format, or which do not contain adequate citations to the record or legal authority, may be rejected by the Board or returned to the party with an order that the party resubmit the brief or submission with appropriate revisions.

(c) *Declarations, Affidavits, or Other Statements.* Any declaration, affidavit, or other statement that is submitted to explain the record must, to the maximum extent possible, include citations to the record in support of the statement, argument, or analysis made. Citations to the record must be specific (*i.e.*, to Bates number or similar designation). Declarations, affidavits, or other statements containing inadequate citations may be returned to the party with an order that the party resubmit the statement with appropriate revisions.

(d) *Motions for Summary Judgment—*  
(1) *Generally.* Motions for summary judgment or partial summary judgment shall be filed only when a party believes, based on uncontested material facts, that it is entitled to relief, in whole or in part, as a matter of law. Such motions shall be filed as soon as practicable to allow the Board to rule on the motion in advance of a scheduled hearing. In considering a motion, or partial motion, for summary judgment, the Board will consider the pleadings, depositions, answers to interrogatories, admissions of record, and affidavits provided, and will grant such motion if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In deciding motions for summary judgment, the Board will look to Rule 56 of the Federal Rules of Civil Procedure for guidance.

(2) *Requirements.* Where both parties agree that disposition by summary judgment or partial summary judgment is appropriate, they shall file a stipulation of all material facts necessary for the Board to rule on the motion. Otherwise, the moving party shall file with its motion a "Statement of Undisputed Material Facts" setting forth the claimed undisputed material facts in separately numbered paragraphs, each of which shall be supported by citations to the § 22.4 [Rule 4] file or other evidence establishing the facts. The non-moving party shall file a "Statement of Genuine Issues of Material Facts," responding to each numbered paragraph, demonstrating the existence of genuine issues of material facts where appropriate, and including for each fact citations to the § 22.4 [Rule 4] file or

other evidence in support. A fact properly proposed by one party may be accepted by the Board as undisputed unless the opposing party properly responds and establishes that the fact is in dispute. An opposing party may not rely on mere allegations or denials in its pleadings to demonstrate the existence of a genuine issue of material fact. Either party may rely on affidavits, depositions, answers to interrogatories, or admissions of record to establish the existence of, or to dispute, a material fact. The moving party and non-moving party each shall submit a memorandum of law supporting or opposing summary judgment, and the moving party may file a reply to the non-moving party's opposition of the motion.

(3) *Time.* Generally, the non-moving party shall file its opposition to a motion for summary judgment or partial summary judgment within 20 days of receipt of the motion, and the moving party's reply is due within 10 days of receipt of the opposition, except that the Board, in its discretion, may shorten or lengthen the time for opposition and reply based on the nature of the motion, the nature and timing of the case, and the scheduling needs of the Board.

(4) *Citations.* All motions for summary judgment, oppositions to such motions, briefs, and statements in support of the motions or opposition to the motions shall be filed in conformance with paragraphs (b) and (c) of this section [Rules 6(b) and 6(c)].

#### **§ 22.7 Copies and Service Thereof [Rule 7].**

(a) *Rule 4 File.* For documents provided pursuant to § 22.4 of this part [Rule 4], the original and one copy shall be provided to the Board, and one copy shall be provided to each party. Documents shall be provided by hand delivery, express or priority mail, or approved commercial carrier (e.g., UPS or FedEx); first class and parcel post mail are not permitted unless authorized by the Board.

(b) *Other Submissions Filed with the Board.* Except as otherwise authorized by the Board, all correspondence and submissions, other than documents provided pursuant to § 22.4 of this part [Rule 4] and appeals filed under § 22.3(c) of this part [Rule 3(c)], shall be provided to the Board by e-mail at [cab@gao.gov](mailto:cab@gao.gov), with a courtesy copy of the submission provided by e-mail to each of the members of the Board. All e-mails to [cab@gao.gov](mailto:cab@gao.gov) must identify the case name and docket number in the subject line of the e-mail. In addition, unless the Board directs otherwise, the original plus 3 copies of the e-mailed submission also shall be provided to the

Board by hand delivery, express or priority mail, or approved commercial carrier (e.g., UPS or FedEx) within 2 business days of the e-mailed filing (except that the original and one copy are required for appeals involving small claims or using accelerated procedures). Delivery to the Board by first class or parcel post mail is not permitted. However, the Board may at any time modify the number of copies required or authorize alternative methods of delivery to the Board.

(c) *Service on Parties.* All correspondence and submissions to the Board must be provided to all other parties using the same method of service as used for the Board, or an equal or more expeditious method of service. Except for documents provided pursuant to § 22.4 of this part [Rule 4], e-mail service is preferred. However, where the parties agree to other methods of service, such other methods of service to parties are permitted.

(d) *Proof of Service.* A party sending a document to the Board must represent to the Board that a copy has been sent to the other parties, identify the date on which service was made, and identify the method of delivery used. This may be done by certificate of service, by notation of a photostatic copy (cc:), or by any other means that can reasonably be expected to show the Board that the other party has been provided a copy, the date on which the copy was provided, and the method of delivery used to provide the copy. Proof of service must be provided to the Board at the time of filing. If proof of service is not provided, the Board may decline to consider the document in the appeal.

#### **§ 22.8 General Discovery Procedures [Rule 8].**

(a) *General Policy and Methods of Discovery.* The parties are encouraged to engage in voluntary discovery procedures and may obtain discovery by one or more of the following methods: Depositions; written interrogatories; requests for admissions; and requests for production of documents, electronically stored information, other tangible things, or entry onto land.

(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 involving the pending appeal, whether it relates to a 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 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.

(c) *Discovery Plan, Conferences, and Orders.* Within 30 days of the initial filing of documents in accordance with § 22.4(a) of this part [Rule 4(a)], the parties shall confer and file with the Board a proposed discovery plan, which shall include estimated time frames and proposed dates for completing discovery and when the parties anticipate that a hearing can be scheduled. Upon request of a party or on its own initiative, the Board may at any time hold an informal meeting or telephone conference with the parties to identify outstanding issues relating to discovery; establish a plan and schedule for discovery; set limitations on discovery; compel compliance with discovery; and issue such orders or determine such other matters as are necessary for the proper management of discovery, including imposing sanctions on the parties as may be appropriate.

(d) *Discovery Limits.* On motion or on its own initiative, the Board may make any order necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such order may impose limitations on the scope, method, time and place for discovery, and include provisions for protecting the secrecy of confidential information or documents.

(e) *Discovery Objections.* Unless otherwise ordered by the Board, any objection to a discovery request must be filed with the Board within 15 days of receipt of the request. Objections must be filed in writing and state with specificity the grounds therefor. Upon receipt, the Board will establish a schedule for resolving the objections, which may include additional briefing by the parties or oral argument, and will determine the extent to which discovery will be permitted. A party shall fully respond to any discovery request to which it does not file a timely objection, in accordance with paragraph (f) of this section [Rule 8(f)]. The parties are required to make a good faith effort to resolve objections to discovery requests informally prior to seeking relief from the Board.

(f) *Discovery Responses.* Unless otherwise ordered by the Board, a party is required to respond to written interrogatories, requests for admission, and requests for production of documents, electronically stored information, other tangible things, or entry onto land within 30 days of receipt.

(g) *Duty to Supplement Discovery Responses.* A party that has responded to written interrogatories, requests for admission, or requests for production of documents, electronically stored information, or other tangible things, upon becoming aware of deficiencies or inaccuracies in its original responses, or upon acquiring additional information or documents 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 as are necessary to give a complete and accurate response to the request.

(h) *Voluntary Cooperation.* Each party is expected to cooperate by making available witnesses and evidence under its control when requested by another party, and to secure the voluntary attendance of third-party witnesses and production of evidence by third parties, when practicable.

(i) *Motions to Compel Discovery.* If a party refuses to comply with a discovery request, or a party's response to a discovery request is incomplete or entirely absent, any other party may file a motion to compel a response.

However, such motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(j) *Sanctions.* If, after being properly served with such discovery request, a party fails to appear for deposition, respond to interrogatories or requests for admissions, or respond to a request for production of documents, electronically stored information, other tangible things, or entry onto land, the party seeking discovery may move the Board to impose sanctions under § 22.10 of this part [Rule 10].

#### **§ 22.9 Subpoenas [Rule 9].**

(a) *Issuance.* Upon the written request of any party, or on the initiative of the Board, a subpoena may be issued that commands the person to whom it is directed to attend and give testimony at a deposition or hearing, and/or produce documents or electronically stored information (including writings, papers, books, accounts, photographs, drawings, graphs, charts, recordings, and other data or data compilations) or other tangible things designated in the subpoena, or to permit entry onto designated premises for inspection or other purposes. Requests for subpoenas shall identify the Board and state the name and docket number of the appeal; identify the name of the person to

whom the subpoena is directed; command the person to whom the subpoena is directed to, at a specific place and time, appear and testify, or produce designated documents, electronically stored information, or other tangible things, or permit the inspection of designated premises; and state the scope and relevance of the requested testimony or evidence to the appeal. All requests for subpoenas shall be filed at least 15 days before the testimony or evidence is to be provided, except that the Board may, in its discretion, honor requests for subpoenas not made within this time limitation.

(b) *Service.* The party requesting the subpoena shall cause the subpoena to be served upon the person named in the subpoena as soon as practicable after the subpoena has been issued and shall provide proof of service to the Board. Service shall be made by any person who is not a party and not less than 18 years of age by personal delivery to the person named in the subpoena, and shall include tender of the fees for one day attendance and the mileage allowed by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the government, money payments need not be tendered in advance of attendance.

(c) *Motions to Quash.* Upon written motion of the person named in the subpoena or a party, the Board may quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or the Board may require the party in whose behalf the subpoena was issued to advance the reasonable costs of producing subpoenaed evidence. Motions to quash or modify a subpoena must be filed within 10 days of service of the subpoena or by the date and time specified in the subpoena for compliance, whichever is earlier.

(d) *Contumacy.* In the case of contumacy or refusal to obey a subpoena by a person who resides, 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 appear before the Board to give testimony, produce evidence, or both.

#### **§ 22.10 Sanctions [Rule 10].**

(a) *Standards.* All parties and their representatives, attorneys, and any experts/consultants retained by them or their attorneys, must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and persons. As to an attorney, the standards include

the rules of professional conduct and ethics of the jurisdictions in which an attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, and its proceedings. The Board will also look to professional guidelines in evaluating an individual's conduct.

(b) *Imposition of Sanctions.* (1) When a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions may include:

(i) Taking the facts pertaining to the matter in dispute to be established for the purpose of the appeal in accordance with the contention of the party submitting the discovery request;

(ii) Forbidding challenge of the accuracy of any evidence;

(iii) Refusing to allow the noncompliant party to support or pose designated claims or defenses;

(iv) Prohibiting the noncompliant party from introducing in evidence designated documents or items of testimony;

(v) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;

(vi) Dismissing the appeal or any part thereof; and/or

(vii) Imposing such other sanctions as the Board deems appropriate.

(2) Prior to imposing sanctions, the Board will provide the noncompliant party with notice and an opportunity to be heard on the issue of whether sanctions should be imposed. The opportunity to be heard does not mean that the party is entitled to a hearing; the opportunity to provide written argument shall satisfy this requirement.

(c) *Disciplinary Proceedings.* In addition to the above procedures, the Board may discipline individual party representatives, attorneys, and experts/consultants for a violation of any Board order or direction or standard of conduct applicable to such individual where the violation affects the integrity of the Board's process or proceedings. Sanctions may be public or private and may include admonishment, disqualification from a particular matter, referral to an appropriate licensing authority, or such other action as circumstances may warrant. The Board, in its discretion, may suspend an individual from appearing before the Board as a party representative, attorney, or expert/consultant if, after

affording such individual notice and an opportunity to be heard, a majority of all members of the Contact Appeals Board determines that such sanction is warranted.

#### § 22.11 Depositions [Rule 11].

(a) *When Depositions May Be Taken.* After an appeal has been docketed by the Board and a complaint has been filed, either party may take the testimony of any person by deposition upon oral examination or written questions, for the purpose of discovery or for use as evidence in the appeal proceedings, or for both purposes.

(b) *Time, Place, and Manner of Taking.* The time, place, and manner of taking depositions shall be as mutually agreed to by the parties or, failing such agreement, be governed by order of the Board.

(c) *Limits.* The number of depositions taken shall not be limited except as the Board may require to protect a party from annoyance, burden, or harassment.

(d) *Use as Evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at the hearing. Depositions ordinarily will not be received in evidence if the deponent is present and can testify personally at the hearing; however, depositions may be used to contradict or impeach the testimony of a deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced. In any case, the Board, upon the agreement of the parties, may permit the introduction of relevant portions of depositions as designated by the parties. If no hearing has been conducted and the appeal has been submitted on the record pursuant to § 22.17 of this part [Rule 17], the Board, in its discretion, may receive depositions in evidence to supplement the record.

#### § 22.12 Interrogatories [Rule 12].

(a) *When Interrogatories May Be Served.* After an appeal has been docketed by the Board and a complaint has been filed, a party may serve on an adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent who shall furnish such information as is available to the party.

(b) *Answers.* The interrogatories shall be answered separately and fully in writing, signed under oath by the person

answering them, and served on the party submitting the interrogatories. Objections to the interrogatories shall be signed by counsel for the party responding to the interrogatories. An interrogatory is not necessarily objectionable merely because an answer to the interrogatory may involve an opinion or contention that relates to fact or the application of law to fact; however, the Board may order that such interrogatory need not be answered until after discovery has been completed or some other event has occurred.

(c) *Scope and Use as Evidence.* Interrogatories may relate to any matters which can be inquired into under § 22.11 of this part [Rule 11] (Depositions), and the answers may be used to the same extent as provided for the use of the deposition of a party.

(d) *Limits.* The number of interrogatories or sets of interrogatories to be served shall not be limited except as the Board may require to protect a party from annoyance, burden, or harassment.

(e) *Option to Produce Business Records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the record(s) from which the answer may be derived or ascertained and to afford the party serving the interrogatory a reasonable opportunity to examine, audit, or inspect such records and to make copies thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the record(s) from which the answer may be ascertained.

#### § 22.13 Requests for Admission [Rule 13].

(a) *When Requests for Admission May Be Served.* (1) After an appeal has been docketed by the Board and a complaint has been filed, a party may serve on the opposing party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request, or of the truth of any relevant matters of fact set forth in the request. Each of the matters for which an admission is requested shall be deemed admitted unless, within the period designated in § 22.8(c) and § 22.8(f) of this part [Rules 8(e) and 8(f)] for responding to discovery requests, the party to whom the request is directed

serves upon the party requesting the admission either:

(A) A sworn statement denying specifically the matters for which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully admit or deny those matters, or

(B) Written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(2) If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in Rule 8(f). A denial shall fairly meet the substance of the requested admission and, when good faith requires that a party deny only a part of a matter for which an admission is requested, he or she shall specify so much of it as is true and deny only the remainder.

(b) *Limits.* The number of requests for admissions served shall not be limited except as the Board may require to protect a party from annoyance, burden, or harassment.

(c) *Use as Evidence.* 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.

#### § 22.14 Production of Documents, Electronically Stored Information, Other Tangible Things, or Entry Onto Land [Rule 14].

(a) *When Documents, Electronically Stored Information, Other Tangible Things, or Entry Onto Land May Be Requested.* After an appeal has been docketed by the Board and a complaint has been filed, any party may serve on any other party a request—

(1) To produce and permit the inspection, copying, or photographing of any designated documents or electronically stored information (including writings, papers, books, accounts, photographs, drawings, graphs, charts, recordings, and other data or data compilations), or other tangible things, not privileged, which are in his, her, or its possession, custody, or control and which are within the scope of discovery as described in § 22.8(b) of this part [Rule 8(b)]; or

(2) To permit entry onto designated land or other property in his or its possession or control for the purpose of inspecting, measuring, surveying, filming, or photographing the property or any designated object or operation thereon which is within the scope of

discovery as described in § 22.8(b) of this part [Rule 8(b)].

(b) *Time, Place, and Manner.* The request shall specify the time, place, and manner of making the inspection and taking the copies and photographs. The Board may make an order that the inspection, copying, measuring, surveying, filming, or photographing shall be limited to certain matters; or the Board may make any other order which, in its discretion, it deems appropriate to protect the party from annoyance, burden, or harassment.

#### **§ 22.15 Conferences and Orders [Rule 15].**

(a) *Status Conferences and Reports.* At any time during the appeal, the Board, upon its own initiative or upon the request of one of the parties, may call upon the parties or their attorneys or representatives to appear before the Board (or one or more members thereof) for a status conference to consider or report on whatever matters are necessary to aid in the disposition of the appeal. Such matters may include, for example, the simplification or clarification of issues, the necessity or desirability of amendments to the pleadings, agreements and rulings to facilitate discovery, progress reports during discovery, and pre-hearing procedures and scheduling. Status conferences may be conducted in person or by telephone, and the Board generally will make an order which recites the action taken at the conference(s). From time to time, the Board also may require one or more of the parties, either jointly or individually, to provide status reports concerning any matter that aids in the disposition of the appeal.

(b) *Rulings, Orders, and Directions.* The Board may make such rulings and issue such orders and directions as are necessary to secure the informal, expeditious, and inexpensive resolution of every case before the Board. Any ruling, order, or direction that the Board may make or issue pursuant to the rules of this Board may be made on the motion of any party or on the initiative of the Board. The Board may also amend, alter, or vacate a ruling, order, or direction upon such terms as it deems appropriate. In making rulings and issuing orders and directions, the Board will take into consideration those Federal Rules of Civil Procedure and Federal Rules of Evidence which address matters not specifically covered herein.

#### **§ 22.16 Hearings [Rule 16].**

(a) *Election of Hearing or Record Submission.* Each party shall inform the Board, in writing, whether it elects a

hearing or submission of the case on the record pursuant to § 22.17 of this part [Rule 17]. Such election shall occur no later than 15 days after the conclusion of discovery, unless the Board directs otherwise. In the event that only one party waives a hearing and submits its case on the record, the Board may proceed with a hearing attended by the remaining parties.

(b) *Pre-Hearing Schedule.* (1) Within 30 days of the conclusion of discovery, the parties shall meet and confer and provide the Board with a joint proposed schedule for pre-hearing and hearing disclosures, submissions, and key events. In the absence of agreement, each party shall submit its own proposed schedule. The schedule shall address, at a minimum, deadlines for submitting the following:

(i) Dispositive motions, motions for summary judgment, and motions in limine, which allow sufficient time for the Board to resolve the motions before the hearing;

(ii) Pre-hearing briefs or statements of the case;

(iii) The identification of lay and expert witnesses for hearing, the general substance of testimony to be offered by each witness, and any depositions that will be used in lieu of witness testimony;

(iv) The exchange of expert reports and statements (if not done during discovery);

(v) Proposed stipulations of fact;

(vi) The exchange of hearing exhibit books;

(vii) The production of any additional documents to be used at the hearing that are not already part of the § 22.4 [Rule 4] file;

(viii) Objections to proposed evidence or § 22.4 [Rule 4] file submissions;

(ix) Date for conducting a pre-hearing conference;

(x) Dates and duration of the hearing; and

(xi) Any other matter necessary for resolution before the hearing.

(2) As soon as practicable after receipt of the parties' proposed schedule(s), the Board will issue an order establishing a schedule for pre-hearing submissions and events, taking into account the parties' proposed schedule, the nature of the case, and the scheduling needs of the Board.

(c) *Pre-Hearing Conference.* Prior to the hearing, the Board will conduct a pre-hearing conference to discuss such matters as may be necessary to conduct an orderly and efficient hearing. Objections to evidence may be resolved during the pre-hearing conference or at such other time as established by the Board.

(d) *Pre-Hearing Briefs.* At least 20 days before a scheduled hearing, each party shall file, in accordance with § 22.6(b) of this part [Rule 6(b)], a pre-hearing statement of the case, which shall include the party's legal and factual analysis of the relevant issues, and how the party intends to prove its case.

(e) *Location of Hearing.* Hearings will be held at 441 G Street, NW., Washington, DC 20548, unless otherwise ordered by the Board. The Board will consider a request for a hearing at another location if compelling reasons are timely presented.

(f) *Notice of Hearing.* The parties, or their counsel, will be given at least 15 days notice of the time and place of a hearing on the merits, provided that the parties may, with the approval of the Board, waive notice and fix a mutually satisfactory time for the hearing. Continuances will not be granted except upon written request and for good cause.

(g) *Nature of Hearing.* Hearings may be held by one or more of the panel members of the Board and shall be as informal as may be reasonable and appropriate under the circumstances. Each party may offer the testimony of witnesses, who shall be subject to cross-examination by the opposing party, and such relevant and material evidence as they deem appropriate and as would be admissible under paragraph (h) of this section [Rule 16(h)], subject, however, to the sound discretion of the presiding Board member in supervising the extent and manner of presentation of such evidence. Stipulations of fact agreed upon by the parties must be in writing, must be filed with the Board, and may be used as evidence at the hearing. The parties may also stipulate to the testimony that would be given by a witness if the witness were present. The Board may at any time during the hearing require evidence or argument in addition to that put forth by the parties.

(h) *Admissibility and Weight of Evidence.* In general, any relevant and material evidence that would be admissible under the Federal Rules of Evidence will be admitted to the record. However, evidence which may not be admissible under the Federal Rules of Evidence, including hearsay, may be admitted at the discretion of the presiding Board member. The Board may also exclude evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. The weight to be attached to evidence and credibility to be accorded

witnesses will be determined by the Board, in its discretion.

(i) *Examination of Witnesses.*

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated or the Board shall otherwise order. If the testimony of a witness is not given under oath, the Board may warn the witness that his or her statements may be subject to the provisions of title 18, United States Code, secs. 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 thereof.

(j) *Availability of Witnesses, Documents, and Other Tangible Things.* It is the responsibility of a party desiring to call any witness, or to use any document or other tangible thing as an exhibit in the course of a hearing, to ensure that whoever it wishes to call and whatever it wishes to use is available at the hearing. In the event that a witness does not appear or refuses to answer a question, or evidence requested by the Board is not produced, the Board may draw an adverse inference of the fact in question against the party responsible for providing the witness or evidence.

(k) *Issues Not Raised by the Pleadings.* If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may nevertheless be admitted by the Board, in its discretion, if it is within the proper scope of the appeal. If such evidence is admitted, the pleadings may be amended to conform to the evidence. The Board may also grant the objecting party a continuance to enable it to respond to the evidence.

(l) *Delay by the Parties.* If the Board determines that the hearing is being unreasonably delayed by the failure of a party to produce evidence, or by the undue prolongation of the presentation of evidence, it may, by written order or by ruling from the bench, prescribe a time or times within which the presentation of evidence must be concluded, establish time limits on the direct or cross-examination of witnesses, and enforce such order or ruling by appropriate sanctions.

(m) *Exhibits.* Unless otherwise directed by the Board, each party shall prepare (jointly or individually) hearing exhibit books for use during the hearing, and shall provide such books to the Board and opposing counsel at least 3 days before the hearing commences. The books shall consist of documents (or relevant excerpts from documents)

placed in a 3-ring binder or similar loose-leaf binder bound on the left margin, separated by numbered tabs, with an index of the documents in the front of each binder. The index shall identify the document by name and, where applicable, the § 22.4 [Rule 4] file citation (tab and Bates numbers). Each document page included in the exhibit books must be marked with the corresponding Bates number or applicable numerical markings used in the § 22.4 [Rule 4] file. Documents not contained within the hearing books shall be marked by the Board during the hearing. Documents contained in the hearing book that are not admitted into evidence during the hearing will not become part of the record unless already part of the § 22.4 [Rule 4] file, or unless their inclusion in the record is requested by the presenting party and permitted by the Board.

(n) *Copies.* Copies of documents may be offered and received into evidence as exhibits, provided that 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 so directs, the 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 in evidence, an accurate copy thereof may be substituted in evidence for the original by leave of the Board at any time.

(o) *Absence of Parties or Counsel.* The unexcused absence of a party or his authorized representative at the time and place set for the hearing will not be occasion for delay. In such event, the hearing will proceed and the case will be regarded as submitted by the absent party unless he or she appears before the conclusion of the hearing and offers additional evidence.

(p) *Transcripts.* Unless the Board orders otherwise, all hearings will be stenographically or electronically recorded and transcribed. Other conferences and proceedings may be recorded or transcribed by order of the Board. Generally, the Board will arrange for the stenographer to record and transcribe the proceeding. Each party is responsible for purchasing its own copy of the transcript(s) or recording(s). Waiver of recordation and transcription may be especially suitable for appeals resolved under the small claims procedure prescribed in § 22.22(c) of this part [Rule 22(c)].

(q) *Post-Hearing Briefs.* The Board may require the submission of post-hearing briefs. In such case, briefs shall be filed within 30 days after receipt of

the transcript of the hearing, and reply briefs shall be filed within 15 days after receipt of the initial post-hearing briefs, unless such other time period has been established by the Board. Post-hearing briefs shall be filed in accordance with the requirements of § 22.6(b) of this part [Rule 6(b)].

(r) *Post-Hearing Evidence.* No evidence shall be submitted by any party after the hearing has concluded, including but not limited to post-hearing declarations, unless authorized by the Board in its discretion.

**§ 22.17 Submission on the Record Without a Hearing [Rule 17].**

(a) *General Requirements.* Pursuant to § 22.16(a) of this part [Rule 16(a)], either party may elect to submit its case on the record without a hearing. Submission of a case without a hearing does not relieve the parties from the necessity of proving the facts supporting their claims or defenses.

(b) *Conference in Lieu of Hearing.* If neither side desires a hearing, either party may request that a conference be held in lieu of a hearing with one or more members of the panel designated to decide the appeal, and such request may be granted at the discretion of the Board. The purpose of the conference is not to introduce new matters or evidence, but to permit explanations and argument of matters of record. If any new matter is introduced at the conference by either party, consideration of the appeal will be deferred until the opposing party has been apprised thereof and has had an opportunity to reply. Both parties will be afforded the right to be present at any such conference. At the request of a party, or on the Board's initiative, the conference may be stenographically or electronically recorded and transcribed pursuant to § 22.16(p) of this part [Rule 16(p)].

(c) *Statement of the Case.* The Board, at its discretion, may order a party that submits its case on the record without a hearing to submit a written statement of the case, including a legal and factual analysis of the relevant issues, within such period of time as the Board allows. The Board may also order parties to submit reply briefs. Briefs will be filed in accordance with the requirements of § 22.6(b) of this part [Rule 6(b)].

**§ 22.18 Closing the Record [Rule 18].**

(a) *Closing the Record.* The record will be closed on a date announced by the Board by written notice.

(b) *Supplementing the Record After the Record is Closed.* Except as the Board may otherwise order in its discretion, no evidence shall be

received after the record is closed. However, at any time after the closing of the record and prior to a decision of the appeal by the Board, at the request of a party or upon its own initiative, the Board may reopen the record for the purpose of receiving newly discovered evidence or for such other reason as may appear to the Board to be appropriate.

**§ 22.19 Findings and Decisions of the Board [Rule 19].**

(a) *Generally.* All proceedings shall be concluded and appeals disposed of as expeditiously as possible, commensurate with sound adjudicatory procedure. The findings and decision in each appeal shall be made by the members of the panel which considered that appeal, and the findings and decision of the majority thereof shall constitute the findings and decision of the Board. The absence or withdrawal of one member of the panel which considered that appeal shall not invalidate the proceedings, and the decision of the remaining panel members shall constitute the decision of the Board. All decisions and findings of the Board shall be made in writing and copies thereof shall be forwarded to the parties or their counsel.

(b) *Record Upon Which Findings and Decisions are Based.* (1) The record upon which any decision of the Board will be rendered consists of the following:

- (i) Notice of appeal;
- (ii) Pleadings, motions, written briefs and statements, and responses thereto;
- (iii) Rule 4 file and any supplements other than those to which an objection has been sustained;
- (iv) Hearing exhibits other than those to which an objection has been sustained;
- (v) Orders, rulings, and directions to the parties issued by the Board;
- (vi) Written transcripts and electronic recordings of proceedings;
- (vii) Stipulations, party admissions, depositions or parts thereof received in evidence, and written interrogatories and responses received in evidence;
- (viii) Anything else that the Board may designate.

(2) All other documents and electronically stored information are part of the administrative record of the proceedings and are not included in the record upon which the Board's decision will be rendered.

**§ 22.20 Mistakes and Corrections [Rule 20].**

(a) *To Decisions and Orders.* Clerical mistakes in decisions or orders of the Board may be corrected at any time on

the Board's own initiative or upon motion of a party, except that if an appeal has been filed with another tribunal, such mistakes may be corrected only with leave of that tribunal.

(b) *To the Official Transcript.* Corrections to an official transcript of a hearing will be made only when they involve errors affecting its substance. The Board may order such corrections on motion or on its own initiative and only after notice to the parties giving them an opportunity to object. Such corrections will ordinarily be made either by hand with pen and ink or by the appending of an errata sheet, or the Board may require that the reporter provide substitute or additional pages.

**§ 22.21 Motion for Reconsideration [Rule 21].**

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 15 days of receipt of a copy of the Board's decision. Mere disagreement with a decision, re-argument of points already made, or the presentation of new evidence that could have been presented during the appeal but was not, are not sufficient grounds for reconsideration. A motion pending under § 22.21 [Rule 21] does not affect the finality of a decision or suspend its operation.

**§ 22.22 Accelerated and Small Claims Procedures [Rule 22].**

(a) *Variation from Standard Proceedings.* The ultimate purpose of any Board proceeding is to resolve fairly and expeditiously any dispute properly before the Board. The Board may at any time during an appeal modify the procedures contained in these rules if it is deemed feasible and furthers the resolution of the issue(s) in controversy.

(b) *Accelerated Procedure.* The accelerated procedure is available solely at the appellant's election, and only when the monetary amount in dispute is \$100,000 or less. Such election shall be made no later than 15 days after receipt of the government's answer to the complaint, unless the Board enlarges the time for good cause shown. Promptly after receiving a timely filed election, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings may be simplified, discovery and other pre-hearing activities may be restricted or eliminated, and the appeal may be decided by a single member of the Board. Either party's failure to adhere to the Board's schedule may result in the Board drawing evidentiary

inferences adverse to the party at fault. Whenever possible, the Board shall resolve an appeal under this procedure within 180 days from the Board's receipt of the election.

(c) *Small Claims Procedure.* The small claims procedure is available solely at the appellant's election, and only when the monetary amount in dispute is \$50,000 or less (or in the case of a small business concern is \$150,000 or less). Such election shall be made no later than 15 days after receipt of the government's answer to the complaint, unless the Board enlarges the time for good cause shown. Promptly after receiving a timely filed election, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings may be simplified, discovery and other pre-hearing activities may be restricted or eliminated, and the appeal may be decided by a single member of the Board. Either party's failure to adhere to the Board's schedule may result in the Board drawing evidentiary inferences adverse to the party at fault. Whenever possible, the Board shall resolve an appeal under this procedure within 120 days from the Board's receipt of the election.

**§ 22.23 Suspension of Proceedings [Rule 23].**

At any time, the Board may suspend the proceedings by agreement of the parties for settlement discussions, or for good cause shown.

**§ 22.24 Alternative Dispute Resolution [Rule 24].**

(a) *Docketed Appeals.* The Board considers Alternative Dispute Resolution (ADR) to be an efficient way to timely resolve many contract disputes, and therefore encourages the parties to use ADR as an effective means to resolve their contract dispute. ADR with Board participation is available at the initiative of the Board or upon the joint motion of both parties. Guidelines, procedures, and requirements for implementing ADR will be prescribed by agreement of the parties and the Board. Ordinarily, ADR will be performed by a Board member, designated by the Chairman of the Board, that is not one of the three panel members deciding the dispute.

(b) *Other Matters.* Upon request and in the Board's discretion, the Board can make an ADR neutral available for an ADR proceeding, even if the contracting officer's decision has not been issued or is not contemplated. Such a request should be directed to the Chairman of the Board.

**§ 22.25 Protective Orders and In Camera Review [Rule 25].**

(a) *Protective Orders.* Upon motion of any party, or on the Board's initiative, the Board may issue a protective order to hold materials under conditions that would limit access to them on the ground that such documents are privileged or confidential, or sensitive in some other way. Any motion filed under this rule must state with specificity the grounds for such limited access. The manner in which such materials will be held, the persons that shall have access to them, and the conditions under which such access will be allowed will be specified in an order of the Board.

(b) *In Camera Review.* Generally, all documents and evidence provided to the Board must also be provided to all other parties to the appeal or their legal counsel or representative. However, in limited circumstances, such as in deciding matters of privilege, it may be appropriate for the Board to review documents or evidence in camera. In camera review may be requested upon motion to the Board, or on the Board's initiative. Any motion filed under this rule must state with specificity the grounds for seeking in camera review.

**§ 22.26 Representation of Parties [Rule 26].**

(a) *The Appellant.* Any appellant may appear before the Board represented by an attorney duly licensed in any State, Commonwealth, Territory, or in the District of Columbia. An individual appellant may appear before the Board in person; a corporation may be represented by an officer thereof; a partnership or joint venture may be represented by a member thereof. Under special circumstances, the Board may authorize a contractor to appear before the Board represented by a duly authorized representative other than those mentioned herein for the purposes of that appeal only.

(b) *The Respondent.* The respondent may appear before the Board represented by an attorney duly licensed in any State, Commonwealth, Territory, or in the District of Columbia. Such attorney shall be designated with authority to represent the government's interests before the Board. Alternatively, if not otherwise prohibited, the respondent may appear before the Board represented by the contracting officer or the contracting officer's authorized representative.

(c) *Others.* The Board may, on motion, in its discretion, permit a special or limited appearance, such as by amicus curiae. Permission to appear, if granted,

will be for such purposes and in such manner as established by the Board.

(d) *Notice of Appearance.* An attorney or other duly authorized representative representing a party before the Board shall file a notice of appearance. Such notice shall provide the person's name, address, direct dial telephone number, fax number, and e-mail address. If multiple attorneys or law firms represent a party, the contact information for each attorney shall be provided to the Board. In such instances, the party shall designate a single attorney or individual as the primary point of contact for the party. Notices of appearance shall be filed at the commencement of the appeal and shall be updated as necessary during the appeal.

**§ 22.27 Ex Parte Communications [Rule 27].**

No member of the Board shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal without the knowledge and consent of the adverse party. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

**§ 22.28 Time [Rule 28].**

In computing any period of time described in these rules, "days" refer to calendar days, unless otherwise specified in these rules. The first day from which the period begins to run is not counted, and when the last day of the period is Saturday, Sunday, or a Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or a Federal holiday. Documents shall be deemed "filed" on the date and time received by the Board if received before 5:30 p.m. EST, or the next business day if received after 5:30 p.m. EST.

**§ 22.29 Inspection of the Record [Rule 29].**

The notice of appeal, the complaint, the answer, the documents required to be filed therewith pursuant to § 22.4 of this part [Rule 4], all papers filed by the parties with the Board pursuant to these rules, and all correspondence exchanged between the Board and the parties or their attorneys shall be available for inspection at the offices of the Board. Prior arrangements for inspection of the file should be made with a member of the Board.

Dated: June 20, 2008.

**James A. Spangenberg,**

*Chairman, Government Accountability Contract Appeals Board.*

[FR Doc. E8-14355 Filed 6-25-08; 8:45 am]

BILLING CODE 1610-02-P

**DEPARTMENT OF AGRICULTURE****Rural Housing Service****7 CFR Part 1944****RIN 0575-AC76****Housing Preservation Grants**

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Housing Service (RHS), hereafter referred to as U.S. Department of Agriculture Rural Development is amending its regulations for the Housing Preservation Grants Program to include faith-based and community organizations. Faith-based and community organizations receiving Housing Preservation Grants (HPG) Program funding for the purpose of repairing and rehabilitating housing will operate within the guidance of the 7 CFR 1944, subpart N, as well as, comply with the terms specified in the HPG grant agreement. The intended effect is to improve the delivery and operation of the HPG Program.

**DATES:** This rule is effective September 9, 2008, unless we receive written adverse comments or written notices of intent to submit adverse comments on or before August 25, 2008. If we receive such comments or notice, we will publish a timely document in the **Federal Register** withdrawing the rule.

**ADDRESSES:** You may submit adverse comments or notice of intent to submit adverse comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, USDA Rural Development, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, USDA Rural Development, 300 7th Street, SW., Washington, DC 20024.

All written comments will be available for public inspection during