

# Rules and Regulations

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## 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

“Initial Scheduling Conference,” which states: “As soon as practicable after the filing of the complaint and answer, the Board shall schedule an initial status conference to discuss the issues of case, the procedures available under the Board’s rules of resolution of the case, and a tentative schedule for such resolution, including the plan for possible discovery required by Rule 8(c), the possibility of alternative dispute resolution (see Rule 24), and the possibility of dispositive motions.” Paragraphs (a) and (b) of the interim rule are renumbered as paragraphs (b) and (c).

Sec. 22.16 [Hearings]. One commentator suggested that the Board clarify whether the Board must honor a party’s election of a hearing when the other party elects to proceed without a hearing. The Board intends to hold a hearing if a hearing is requested. Thus, paragraph (a) of section 22.16 is revised to replace the word “may” with “shall.”

Sec. 22.19 [Findings and Decisions of the Board]. One commentator queried how the Board’s decision will be made available to the public, and how judgments will be paid. As is the current practice, Board decisions will be made available on the Board Web site (<http://www.gao.gov>) and through CCH, Westlaw, and Lexis. The Board declines to address the availability of its decisions and the payment of judgments in its rules.

Sec. 22.24 [Alternative Dispute Resolution]. One commentator suggested that the Board clarify the rule to “enhance” the Board’s delivery of ADR services, address confidentiality restrictions with respect to the Board’s use of ADR, and provide guidance concerning available ADR techniques. As the Board notes in its interim rules, ADR guidelines, procedures, and requirements for implementing ADR will be prescribed by the agreement of the parties and the Board. This recognizes the uniqueness of each case and provides the flexibility to adapt ADR procedures to fit the needs and the concerns of the parties. The Board believes that specifying procedures in its rules would serve only to limit the possible uses of ADR and therefore declines to revise its rule.

#### List of Subjects in 4 CFR Part 22

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

■ Accordingly, the interim rule which was published in the **Federal Register** at 73 FR 36257, June 26, 2008, is adopted as a final rule with the following changes to part 22.

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

■ 1. The authority citation for part 22 continues to read as follows:

**Authority:** Sec. 1501, Pub. L. 110–161, 121 Stat. 2249.

■ 2. Amend § 22.3 by revising paragraph (b)(5) as follows:

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

\* \* \* \* \*

(b) \* \* \*

(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. local time in Washington, DC, or on the next business day if received after 5:30 p.m.

\* \* \* \* \*

■ 3. Amend § 22.8 by adding paragraph (k) as follows:

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

\* \* \* \* \*

(k) *Discovery Motions, Timing.* All motions concerning discovery, including motions to compel discovery, shall be filed on or before the scheduled end date of discovery to the maximum extent practicable. Motions that are filed after the end date of discovery will not be considered except for good cause shown.

#### § 22.13 [Amended]

■ 4. Amend § 22.13 by redesignating paragraphs (a)(1)(A) and (a)(1)(B) as paragraphs (a)(1)(i) and (a)(1)(ii).

■ 5. Revise § 22.15 to read as follows:

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

(a) *Initial Status Conference.* As soon as practicable after the filing of the complaint and answer, the Board shall schedule an initial status conference to discuss the issues of case, the procedures available under the Board’s rules of resolution of the case, and a tentative schedule for such resolution, including the plan for possible discovery required by Rule 8(c), the possibility of alternative dispute resolution (see Rule 24), and the possibility of dispositive motions.

(b) *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.

(c) *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.

■ 6. Amend § 22.16 by revising paragraph (a) to read as follows:

#### § 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 shall proceed with a hearing attended by the remaining parties.

\* \* \* \* \*

■ 7. Revise § 22.28 to read as follows:

#### § 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. local time in Washington, DC, or the next business day if received after 5:30 p.m.

Dated: October 8, 2008.

**James A. Spangenberg,**  
Chairman, Government Accountability  
Contract Appeals Board.

[FR Doc. E8-24340 Filed 10-10-08; 8:45 am]

BILLING CODE 1610-02-P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 315 and 316

RIN 3206-AL29

### Disabled Veterans Documentation

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing final regulations regarding documentation required for appointments of disabled veterans. The purpose of this change is to provide consistency with the policy implemented by the Department of Veterans Affairs.

**DATES:** *Effective Date:* November 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** Darlene Phelps at (202) 606-0960, by FAX on (202) 606-2329, TDD at (202) 418-3134, or by e-mail at [Darlene.Phelps@opm.gov](mailto:Darlene.Phelps@opm.gov).

**SUPPLEMENTARY INFORMATION:** On August 20, 2007, OPM proposed regulations at 72 FR 46410 regarding documentation required for noncompetitive temporary and term appointments, and conversion of 30 percent or more disabled veterans from nonpermanent appointments. The Department of Veterans Affairs (VA) considers any VA disability letter issued for purposes of establishing veterans' preference in employment proof of a permanent record of disability, unless the letter specifically states otherwise. We proposed to modify sections 315.707(a)(2)(ii) and (iii), 316.302(b)(4), and 316.402(b)(4) of title 5, Code of Federal Regulations. In addition, in section 315.707(a)(2)(ii) and (iii), we are adding a reference to disability determinations from a branch of the Armed Forces, as these entities may also certify the existence of 30 percent or more disability. These modifications will clarify that a 30 percent or more disabled veteran who has proof of disability from the VA or a branch of the

Armed Forces dated 1991 or later is eligible for a noncompetitive temporary or term appointment. The employee may be noncompetitively converted to a permanent appointment in the competitive service at any time during such an appointment. Lastly, we are adding the word "so" in section 315.707(a)(2)(iii) to clarify that "rated" refers to a service-connected disability rating of 30 percent or more. We inadvertently omitted this clarification in the proposed regulation.

### Comments

Comments on the proposed rule were requested by October 19, 2007. OPM received one comment from a private citizen who noticed a typographical error in sections 316.302(b)(4) and 316.402(b)(4). We have corrected this error by changing "of" to "or" the third time it appears in each of those paragraphs.

### E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will apply only to Federal agencies and employees.

### Paperwork Reduction Act

The information collection requirements contained in this final rule are currently approved by OMB under 3206-0001. This final regulation does not modify this approved collection.

### List of Subjects in 5 CFR Parts 315 and 316

Government employees.

U.S. Office of Personnel Management.

**Michael W. Hager,**  
Acting Director.

■ Accordingly, OPM is amending 5 CFR parts 315 and 316 as follows:

## PART 315—CAREER AND CAREER CONDITIONAL EMPLOYMENT

■ 1. The authority citation for part 315 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Section 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Section 315.606 also issued under E.O. 11219, 3 CFR, 1964-1965 Comp. p. 303. Sec 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608

also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(d). Sec. 315.611 also issued under Section 511, Pub. L. 106-117, 113 Stat. 1575-76. Sec. 315.708 also issued under E.O. 13318. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

## Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

■ 2. In 315.707, revise paragraphs (a)(2)(ii) and (iii) to read as follows:

### § 315.707 Disabled veterans.

(a) \* \* \*

(2) \* \* \*

(ii) Have been rated by the Department of Veterans Affairs since 1991 or later, or by a branch of the Armed Forces at any time, as having a compensable service-connected disability of 30 percent or more; or

(iii) Have been so rated by the Department of Veterans Affairs, or by a branch of the Armed Forces, at the time of a qualifying temporary appointment effected within the year immediately preceding, or a term appointment effected within four years immediately preceding, the conversion.

\* \* \* \* \*

## PART 316—TEMPORARY AND TERM EMPLOYMENT

■ 3. The authority citation for part 316 continues to read as follows:

**Authority:** 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

## Subpart C—Term Employment

■ 4. In 316.302, revise paragraph (b)(4) to read as follows:

### § 316.302 Selection of term employees.

\* \* \* \* \*

(b) \* \* \*

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30 percent or more). The disability must be documented by a notice of retirement or discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated 1991 or later;

\* \* \* \* \*

## Subpart D—Temporary Limited Employment

■ 5. In 316.402, revise paragraph (b)(4) to read as follows: