

other party to determine whether there is any objection to the motion and must state in the motion whether the other party has any objection.

(4) No motions, responses or other submissions will be accepted for filing by the Clerk of the Board after 4 p.m., Monday through Friday. All written submissions shall be served simultaneously upon the other parties to the proceeding. A certificate of service must be attached showing service by mail, facsimile or personal delivery of the submission to the other parties. Further submissions by either party may be filed only with the approval of the administrative judge or full Board.

(5) All written motions and responses thereto shall include a proposed order, where applicable.

(6) Motions for extension of time will be granted only upon a showing of good cause.

(7) *Oral argument.* The administrative judge may allow oral argument on the motion at his or her discretion.

(c) *Motions for summary judgment.* (1) Either party may move for summary judgment by filing a written motion no later than 14 days prior to the commencement of the hearing or as otherwise ordered by the administrative judge.

(2) Motions for summary judgment must be accompanied by a statement of material facts for which there is no genuine dispute and a statement of reasons in support of the motion. The motion may be supported by documents, affidavits, or other evidence.

(3) Summary judgment will be granted if the pleadings, depositions, answers to interrogatories, admissions, affidavits, if any, and other documents show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(4) A party moving for summary judgment must make a showing sufficient to establish the existence of each element essential to that party's cause of action and for which that party bears the burden of proof.

(5) When a party moves for summary judgment, the Board will evaluate the motion on its own merits, resolving all reasonable inferences against the moving party.

#### **§ 28.22 [Amended]**

■ 20. Amend § 28.22 by removing the words "File recommended or" and adding the word "Issue" in their place in paragraph (b)(12).

■ 21. Amend § 28.24 as follows:

■ a. Revise paragraph (a) introductory text and paragraph (a)(2).

■ b. In paragraph (b), remove the words "an appeal" and add the words "a petition" in their place.

The revision reads as follows:

#### **§ 28.24 Sanctions.**

\* \* \* \* \*

(a) *Failure to comply with an order or subpoena.* When a party fails to comply with an order or subpoena (including an order for the taking of a deposition, for the production of evidence within the party's control, for an admission, or for production of witnesses), the administrative judge may:

(1) \* \* \*

(2) Prohibit the party failing to comply with such order or subpoena from introducing, or otherwise relying upon, evidence relating to the information sought.

\* \* \* \* \*

#### **Parties, Practitioners and Witnesses**

■ 22. Revise the first two sentences of paragraph (a) of § 28.25 to read as follows:

#### **§ 28.25 Representation.**

(a) All parties to a petition may be represented in any matter relating to the petition. The parties shall designate their representatives, if any, in the petition or responsive pleading. \* \* \*

\* \* \* \* \*

■ 23. Amend § 28.27 by revising the first two sentences of paragraph (c) to read as follows:

#### **§ 28.27 Intervenors.**

\* \* \* \* \*

(c) A motion for permission to intervene will be granted where a determination is made by the administrative judge or the Board, where the case is being heard en banc, that the requestor will be affected directly by the outcome of the proceeding. Denial of a motion for intervention may be appealed to the full Board. \* \* \*

\* \* \* \* \*

#### **§ 28.28 [Amended]**

■ 24. Amend § 28.28 by removing the word "appeal" and adding the word "petition" in its place in paragraph (a).

■ 25. Amend § 28.29 by revising paragraph (a)(2) to read as follows:

#### **§ 28.29 Consolidation or joinder.**

(a) \* \* \*

(2) Joinder may occur where one person has two or more petitions pending and they are united for consideration. For example, a single petitioner who has one petition pending challenging a 30-day suspension and another petition pending challenging a

subsequent dismissal might have the cases joined.

\* \* \* \* \*

#### **Discovery**

#### **§ 28.41 [Amended]**

■ 26. Amend § 28.41(b) by removing the word "appeal" in the first sentence and add in its place the word "review".

■ 27. Amend § 28.42 by revising the first sentence of paragraph (d)(5) to read as follows:

#### **§ 28.42 Discovery procedures and protective orders.**

\* \* \* \* \*

(d) \* \* \*

(5) Discovery shall be completed by the time designated by the administrative judge, but no later than 65 days after the service of the notice of filing of a petition. \* \* \*

#### **Subpoenas**

■ 28. Amend § 28.46 as follows:

■ a. Revise paragraph (b).

■ b. Remove paragraph (d).

The revision read as follows:

#### **§ 28.46 Motion for subpoena.**

\* \* \* \* \*

(b) *Motion.* (1) A motion for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under § 28.46(a) shall be submitted to the administrative judge at least 15 days in advance of the date scheduled for the commencement of the hearing.

(2) If the subpoena is sought as part of the discovery process, the motion shall be submitted to the administrative judge at least 15 days in advance of the date set for the attendance of the witness at a deposition or the production of documents.

\* \* \* \* \*

#### **Hearings**

■ 29. Amend § 28.56 by adding a second sentence in paragraph (f) to read as follows:

#### **§ 28.56 Hearing procedures, conduct and copies of exhibits.**

\* \* \* \* \*

(f) \* \* \* Multiple exhibits shall be indexed and tabbed.

\* \* \* \* \*

■ 30. Amend § 28.57 by revising paragraph (b) to read as follows:

#### **§ 28.57 Public hearings.**

\* \* \* \* \*

(b) At the hearing, the petitioner, the petitioner's representative, GAO's legal representative, and a GAO management