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GENERAL ACCOUNTING OFFICE

4 CFR Parts 27, 28 and 29

Personnel Appeals Board; Procedural Rules

AGENCY: General Accounting Office, Personnel Appeals Board.

ACTION: Final rule.

SUMMARY: The General Accounting Office Personnel Appeals Board (PAB) has authority with respect to employment practices within the General Accounting Office (GAO or agency), pursuant to the General Accounting Office Personnel Act of 1980. The PAB revises its procedural regulations. The changes are intended to clarify the meaning of some sections, to correct a few provisions affected by changes in law or agency structure, and to refine certain procedures.

DATES: Effective date: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Beth Don, Executive Director, or Susan Inzeo, Solicitor, 202-512-6137.

SUPPLEMENTARY INFORMATION: The General Accounting Office Personnel Appeals Board is authorized by Congress, pursuant to 31 U.S.C. 751-755, to hear and decide cases brought by GAO employees concerning various personnel matters including adverse or performance-based actions, claims of discrimination, alleged prohibited personnel practices, and labor-management relations. The Board also exercises oversight authority over equal employment opportunity at the agency, and has authority to consider, decide, and order corrective action in labor-management representation matters. The Board's current procedural regulations applicable to GAO appear at 4 CFR parts 27 and 28. The Board is revising these regulations for the purpose of clarifying the meaning of some sections, correcting a few provisions affected by changes in law or

agency structure, and streamlining certain procedures. The proposed changes were published for comment in the **Federal Register** at 68 FR 41742, July 15, 2003. The significant changes were summarized and explained in the supplementary information section of the published proposed rules. The Board will not repeat all that explanatory material here.

Comments on Proposed Revisions

The only comments received during the sixty-day comment period were submitted by the Personnel Appeals Board General Counsel. The Board has fully considered these comments and responds as follows.

The General Counsel raised concern regarding the changes to § 27.3 (The General Counsel). The Board's revision deletes the phrase "unless to do so would create a conflict of interest for the General Counsel" following the summary statement of the General Counsel's statutory responsibility, at Board request, to "investigate matters under the jurisdiction of the Board, and otherwise assist the Board in carrying out its functions." The revision more closely tracks the language of the statute and the deleted language is superfluous.

The General Counsel also raised concern about § 28.98(c) (Individual charges in EEO cases; Special rules for adverse and performance-based actions). Specifically, the comment raised the possibility of confusion concerning the provision's applicability to performance-related actions that do not rise to the level of removal. The Board considers that the provision is clear in reference to performance-based removals and actions that rise to the level of adverse actions. Moreover, paragraph (c) of § 28.98 was not proposed for revision at this time.

The General Counsel objected to the reference in the revised § 28.133 (Stay proceedings) that a stay may be requested by the Office of General Counsel rather than the General Counsel. The final version of this provision reflects the Board's acceptance of this comment.

List of Subjects in 4 CFR Parts 27, 28, and 29

Administrative practice and procedures, Equal employment opportunity, Government employees, Labor management relations.

For the reasons stated in the preamble, the General Accounting Office Personnel Appeals Board amends 4 CFR chapter I, subchapter B, parts 27, 28, and 29 as follows:

PART 27—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; ORGANIZATION

- 1. The authority citation for part 27 continues to read as follows:

Authority: 31 U.S.C. 753.

§ 27.1 [Amended]

- 2. Amend § 27.1 as follows:
 - a. Remove the words "parts 28 and 29" in the second sentence and add in their place "part 28".
 - b. In the third sentence, remove the word "reconsideration" and add in its place the word "review".
- 3. Amend § 27.3 by revising the last sentence to read as follows:

§ 27.3 The General Counsel.

* * * The General Counsel, at the request of the Board, shall investigate matters under the jurisdiction of the Board, and otherwise assist the Board in carrying out its functions.

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE

- 4. The authority citation continues to read as follows:

Authority: 31 U.S.C. 753.

Subpart A—Purpose, General Definitions, and Jurisdiction

- 5. Amend § 28.1 by revising paragraphs (a), (b), and the first sentence of paragraph (c) to read as follows:

§ 28.1 Purpose and scope.

(a) The regulations in this part implement the Board's authority with respect to employment practices within the General Accounting Office (GAO), pursuant to the General Accounting Office Personnel Act of 1980 (GAOPA), 31 U.S.C. 751-755.

(b) The purpose of the rules in this part is to establish the procedures to be followed by:

(1) The GAO, in its dealings with the Board;