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## GENERAL ACCOUNTING OFFICE

### 4 CFR Parts 28 and 29

#### Personnel Appeals Board; Procedural Regulations

**AGENCY:** General Accounting Office Personnel Appeals Board.

**ACTION:** Final rule.

**SUMMARY:** The General Accounting Office Personnel Appeals Board is issuing a final rule to govern appeals of employees who are separated from employment as a result of a Reduction in Force (RIF) action. The rule is published according to the Board's authority under section 753(d) of the General Accounting Office Personnel Act of 1980 (GAOPA). The revision provides affected employees with an optional streamlined process for pursuing appeals of RIF-based terminations.

**EFFECTIVE DATE:** July 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Catherine McNamara, Solicitor, Personnel Appeals Board, 202-512-6137.

**SUPPLEMENTARY INFORMATION:** The Personnel Appeals Board (PAB) authority with respect to employment practices within the General Accounting Office (GAO or the agency) includes authority over appeals from RIF actions taken by the agency. The GAO recently revised Order 2351.1, Reduction in Force, applicable to GAO employees.

The PAB has long had published regulations which define the role of its Office of General Counsel (PAB/OGC) and the procedures to be followed in pursuing an appeal before the Board. See 4 CFR part 28. Previous regulations required that in all cases an individual obtain a Right to Appeal Letter from the PAB's Office of General Counsel before filing with the Board. See 4 CFR 28.18(a). The Board or an administrative judge can waive a PAB regulation in an

individual case for good cause shown, consistent with the requirements of the GAOPA. 4 CFR 28.16(b).

On March 7, 1996, the Board adopted interim regulations (61 FR 9089) to provide employees who are separated from employment as a result of a RIF action with the option of appealing directly to the PAB without first filing a charge with the Board's Office of General Counsel, as prescribed in § 28.11 of this part, and obtaining a Right to Appeal Letter. This change was designed to expedite the appeal process, at the employee's option, in situations in which the RIF action results in separation from employment. Because of the need to have regulations in place prior to agency implementation of its RIF order, the revisions were made effective immediately on an interim basis. With several modifications as explained below, the regulations are adopted as final. Because the appeal period for recent RIF action at GAO is currently running, this final rule is made effective immediately.

#### Brief Summary of the Interim Regulations

The interim regulations published by the Board on March 7, 1996, contained a new § 28.13, defining a special procedure for actions challenging a RIF-based termination to bypass the PAB/OGC at the option of the employee. See 61 FR 9089 (March 7, 1996). In addition, the interim regulations amended § 28.18, paragraphs (a) and (b), to specify that a person whose employment was terminated as a result of a RIF action may choose to file directly with the Board, and that such an action must be filed within 30 days of the effective date of the RIF action.

The PAB invited comments from the public through May 31, 1996, and stated that it would carefully consider such comments before the regulations were adopted in final form. See 61 FR 9089. In addition to publishing the interim regulations in the Federal Register, the PAB also provided GAO employees with notice of the revised procedures, applicable to individuals separated from employment because of a RIF, by means of a summary of the changes in the "GAO Management News." See GAO Management News, Vol. 23, No. 25 (Week of April 8-12, 1996).

The Board received one comment concerning the interim regulations. That comment, submitted by Patricia Shahren,

Acting Director of GAO's Affirmative Action/Civil Rights Office, addressed a perceived ambiguity in the regulations as revised. The perceived ambiguity involved whether an employee raising discrimination issues in challenging a RIF-based separation may bypass the Civil Rights Office as well as the PAB/OGC.

In revised § 28.13, the Board streamlined the appeal process for employees separated by a RIF by allowing them to file directly with the Board without first filing a charge with the PAB's Office of General Counsel. Ms. Shahren's comment pointed out that under 4 CFR 28.98(a), employees raising charges of prohibited discrimination are required to file a discrimination complaint with GAO's Civil Rights Office before filing such a complaint with the PAB General Counsel. Section 28.98(c) provides an exception to this rule for employees affected by a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days. If an employee alleges that the subject action was due at least in part to unlawful discrimination, he or she may elect to file a charge directly with the PAB General Counsel. The comment pointed out that the exception in § 28.98(c) does not specifically refer to RIF actions.

Ms. Shahren expressed concern that the revised regulations "could be interpreted to mean that employees who allege discrimination because of a RIF, may go directly to the Board without going through the Civil Rights Office process; but if they want to go through the PAB General Counsel, they must first go through the Civil Rights Office process. This does not seem to be the intent of the proposed regulation."

#### Summary of Changes

After carefully considering the comment received, the Board has adopted several modifications to the regulations to clarify their effect on RIF-based termination actions raising discrimination claims. In addition, conforming changes were made to assure that the streamlined procedures would be available to Board employees, and several technical changes were made to reflect a revision to the Board's address.

Section 28.13, added in the interim regulations, is revised to clarify that individuals raising discrimination issues in RIF-based actions may avail

themselves of the streamlined procedures which allow bypassing the PAB/OGC. The revised section also specifies that, pursuant to § 28.98, such individuals also may bypass the agency Civil Rights Office in the interest of reaching an expeditious resolution of their complaints.

Section 28.98, which was not specifically addressed in the interim regulations, is amended to clarify that in RIF-based actions raising discrimination claims, an employee may elect to (1) file directly with the PAB/OGC, (2) proceed through the agency's discrimination complaint processing system, or (3) file directly with the PAB, thus bypassing both the PAB/OGC and the Civil Rights Office. The Board notes that when § 28.98(c) was published for comment, the agency did not object to the change which gave employees a choice of procedures for adverse or performance-based actions alleged to be due to discrimination. See 58 FR 61988, 61990-91 (November 23, 1993).

In reconsidering the regulatory revisions, the Board also concluded that a further change was necessary to clarify that PAB personnel may avail themselves of the streamlined procedures for pursuing RIF-based termination appeals. Section 28.17(a) was revised to specify that Board employees, whether or not raising equal employment opportunity (EEO) claims, may choose to file an appeal of a RIF-based termination directly with the PAB.

Several technical changes were made in 4 CFR parts 28 and 29 to reflect the Board's change of address. These sections specify where to file at the PAB or the PAB/OGC: §§ 28.11(c) (1) and (2); 28.18(c) (1) and (2); 28.86(b) (1) and (2); 29.8(c) (1) and (2); and 29.10(c) (1) and (2).

Accordingly, 4 CFR parts 28 and 29 are amended and the interim rule amending title 4, part 28, Code of Federal Regulations, which was published at 61 FR 9089 on March 7, 1996, is adopted as final, with changes as follows.

List of Subjects

4 CFR Part 28

Administrative practice and procedure, Equal employment opportunity, Government employees, Labor-management relations, Reductions in force.

4 CFR Part 29

Administrative practice and procedure, Equal employment opportunity, Government employees.

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

1. The authority citation for part 28 continues to read as follows:

Authority: 31 U.S.C. 753.

2. Section 28.11, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised to read as follows:

**§ 28.11 Filing a charge with the General Counsel.**

\* \* \* \* \*

(c) \* \* \*

(1) *Filing in person:* A charge may be filed in person at the Office of the General Counsel, Suite 580, Union Center Plaza II, 820 First Street, NE., Washington, DC.

(2) *Filing by mail:* A charge may be filed by mail addressed to the General Counsel, Personnel Appeals Board, Suite 580, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548.

\* \* \* \* \*

3. Section 28.13 is revised to read as follows:

**§ 28.13 Special procedure for Reduction in Force.**

In the event of a Reduction in Force resulting in an individual's separation from employment, an aggrieved employee may choose to file an appeal directly with the Personnel Appeals Board, without first filing the charge with the PAB's Office of General Counsel pursuant to § 28.11. This option is available to individuals raising discrimination issues in connection with a RIF action. Pursuant to § 28.98, such individuals need not file a complaint with GAO's Civil Rights Office before pursuing a RIF challenge alleging discrimination, either by filing directly with the PAB or by filing a charge with the PAB's Office of General Counsel.

4. In § 28.17, paragraphs (a)(2) and (a)(3) are revised to read as follows:

**§ 28.17 Internal appeals of Board employees.**

(a) \* \* \*

(1) \* \* \*

(2) When an employee of the Board believes that he or she has been denied his or her right to equal employment opportunity, the employee shall consult either with the Solicitor or with the General Counsel and seek advice on filing an EEO complaint. If the matter cannot be resolved within 10 days, the Solicitor or General Counsel shall notify

the employee of his or her right to file an EEO complaint. The employee shall have 20 days from service of this notice to file an EEO complaint with the General Counsel. Upon receipt of an EEO complaint, the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the EEO allegations involve challenge to a RIF-based separation, the employee may choose to expedite the procedures by filing a charge directly with the Board.

(3) When an employee of the Board wishes to raise any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the challenged action is a RIF-based separation from employment, the employee may choose to expedite the procedures by filing a charge directly with the Board.

\* \* \* \* \*

5. Section 28.18, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised as follows:

**§ 28.18 Filing a petition for review with the Board.**

\* \* \* \* \*

(c) \* \* \*

(1) *Filing in person:* A petition may be filed in person at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail:* A petition may be filed by mail addressed to the Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548. \* \* \*

\* \* \* \* \*

6. Section 28.86, paragraph (b)(1) and the first sentence of paragraph (b)(2) are revised to read as follows:

**§ 28.86 Board procedures; recommended decisions.**

\* \* \* \* \*

(b) \* \* \*

(1) *Filing by hand delivery:* Exceptions may be filed by hand delivery at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail:* Exceptions may be filed by mail addressed to the Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street, NW., Washington DC 20548. \* \* \*

\* \* \* \* \*

7. Section 28.98 is amended by redesignating paragraph (d) as (e)(1), by adding new paragraphs (d) and (e)(2), by revising the paragraph heading of

paragraph (c) and by revising newly redesignated paragraph(e)(1) as follows:

**§ 28.98 Individual charges in EEO cases.**

(c) *Special rules for adverse and performance based actions.* \* \* \*  
 (d) *Special rules for RIF based actions.* An individual alleging discrimination issues in connection with a RIF-based separation may follow the procedures outlined above in paragraph (c) of this section for adverse and performance based actions, or may choose instead a third option. In accordance with the provisions of § 28.13, such an individual may appeal that action by filing directly with the PAB, thus bypassing both the Civil Rights Office and the PAB's Office of General Counsel.

(e)(1) The charging party shall file the charge with the General Counsel in accordance with § 28.11. The General Counsel shall investigate the charge in accordance with § 28.12.

(2) A charging party challenging a RIF action by filing directly with the PAB shall follow the procedures prescribed in § 28.13 and § 28.18.

**PART 29—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT AT THE ARCHITECT OF THE CAPITOL**

8. The authority citation for part 29 continues to read as follows:

Authority: 31 U.S.C. 753.

9. Section 29.8, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised to read as follows:

**§ 29.8 Filing a charge with the General Counsel.**

(1) *Filing in person:* A charge may be filed in person at the Office of the General Counsel, Suite 580, Union Center Plaza II, 820 First St. NE., Washington, DC.

(2) *Filing by mail:* A charge may be filed by mail addressed to the General Counsel, Personnel Appeals Board, Suite 580, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548.

10. Section 29.10, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised to read as follows:

**§ 29.10 Filing a petition for review with the Board.**

(1) *Filing in person:* A petition may be filed in person at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail:* A petition may be filed by mail addressed to the Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street, NW., Washington DC 20548.

Nancy A. McBride,  
 Chair, Personnel Appeals Board General Accounting Office.  
 [FR Doc. 96-17873 Filed 7-12-96; 8:45 am]  
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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket 96-016-9]

**Karnal Bunt; Public Forum**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of public forum.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service is hosting a public forum in Washington, DC, on the Agency's program to control and eradicate Karnal bunt. The forum will provide an additional opportunity for the public to comment on the regulations established and amended by a series of interim rules published in the Federal Register since March, 1996. The regulations quarantine portions of Arizona, California, New Mexico, and Texas because of infestations of Karnal bunt, restrict the movement of regulated articles from the quarantined areas, and provide compensation for certain individuals in order to mitigate losses and expenses incurred because of Karnal bunt. Comments will also be accepted addressing any aspect of the Karnal bunt program not included in the regulations, including control and survey activities conducted in the quarantined areas, the national Karnal bunt survey program, and the certification of wheat for export. Information gathered at the public forum will be considered by the Department in developing guidelines and procedures for conducting the Karnal bunt program for the 1996-97 wheat growing season. USDA intends to schedule additional public forums on the Karnal bunt program, to be held in Arizona, California, and Kansas over the

next 2 months. We will give notice of these additional forums in the Federal Register.

**DATES:** The public forum will be held in Washington, DC, on Wednesday, July 17, 1996, from 9 a.m. until 5 p.m.

Consideration will be given only to comments received on or before September 3, 1996.

**ADDRESSES:** The public forum will be held in room 107A, Jamie L. Whitten Federal Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC. Persons attending the forum should use the entrance to the building facing the Mall, and will be required to show picture identification at the Guard Desk. Any persons who are unable to attend the forum, but who wish to comment on any aspect of the Karnal bunt program, may send written comments.

Please send an original and three copies of written comments to Docket No. 96-016-9, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-106-9. Comments received, including a transcript from the public forum, may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

**SUPPLEMENTARY INFORMATION:** This public forum is being held concerning the Animal and Plant Health Inspection Service's (APHIS) program to control and eradicate Karnal bunt. Comments will be accepted on the regulations established and amended by a series of interim rules published by APHIS in the Federal Register since March, 1996. These interim rules were published on March 28, 1996 (61 FR 13649-13655, Docket No. 96-016-3), April 25, 1996 (61 FR 18233-18235, Docket No. 96-016-5), and July 5, 1996 (61 FR 35107-35109, Docket No. 96-016-6 and 61 FR 35102-35107, Docket No. 96-016-7). The public forum in Washington, DC, will be held on Wednesday, July 17, 1996, in room 107A, Jamie L. Whitten Federal Building, United States Department of Agriculture, 14th Street