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GENERAL ACCOUNTING OFFICE

4 CFR Parts 27 and 28

Personnel Appeals Board; Procedural Rules

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Interim rule with request for comments.

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 hereby amends its regulations, on an interim basis, to conform to Board policy recognizing that a quorum of three members of the Board may exercise all the powers of the Board, and that a majority of a quorum may act in any matter requiring consideration by the full Board. The Board invites public comment on this amendment before it becomes final.

DATES: These interim regulations are effective March 30, 1999. Comments on these regulations must be received by the Board on or before June 1, 1999, in order to be considered.

ADDRESSES: Comments may be mailed to: Clerk, General Accounting Office Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548. Comments may also be submitted by facsimile transmission to 202-512-7525.

FOR FURTHER INFORMATION CONTACT: Beth Don, Executive Director, 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 certain employment-related cases brought by GAO employees and to exercise

oversight over equal employment opportunity at the agency. By statute, the Board is composed of five members who serve five-year nonrenewable terms. 31 U.S.C. 751(a) and (c)(1). The statute contains no provision expressly governing Board procedures in the case of a vacancy in Board membership. The statute states that the Board may delegate to a member or panel of members the authority to act under its power to consider and order corrective and disciplinary action. 31 U.S.C. 753(c). A decision of a member or panel is final unless the Board reconsiders the decision either on motion of a party or on its own initiative. 31 U.S.C. 753(c). Further, the statute authorizes the Board to prescribe regulations providing for appeals and providing for the operating procedures of the Board. 31 U.S.C. 753(e).

The Board has followed the common law rule, set forth in Roberts Rules of Order and recognized by the Supreme Court in *FTC v. Flotill Products*, 389 U.S. 179 (1967), that a majority of a quorum constituted of a simple majority of a collective body may act for that body when the enabling statute is silent on the question. This principle was adopted by the Board as a policy statement on May 15, 1995. The amendment to the Board's regulations is intended to formalize the application of the common law rule to the Board's operating procedures. The Board is making this regulation effective immediately upon publication, on an interim basis, to conform the regulation to the Board's practice and to clarify who may act for the Board. The Board, however, welcomes public comment and will carefully consider all comments received before adopting this regulation in final form.

List of Subjects

4 CFR Part 27

Government employees, Organization and functions (government agencies).

4 CFR Part 28

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

For the reasons set forth in the preamble, the General Accounting Office Personnel Appeals Board amends

4 CFR Chapter I, Subchapter B, 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.

2. Section 27.1 is revised to read as follows:

§ 27.1 The Board.

The General Accounting Office Personnel Appeals Board, hereinafter the Board, is composed of five members appointed by the Comptroller General, in accordance with the provisions of 31 U.S.C. 751. For purposes of the regulations in this part and 4 CFR parts 28 and 29, a simple majority of the Board shall constitute a quorum and a majority of a quorum may act for the Board. The Board may designate a panel of its members or an individual Board member to take any action within the scope of the Board's authority, subject to later reconsideration by the Board.

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 28.3 is amended by revising the definition of *Board* to read as follows:

§ 28.3 General definitions.

* * * * *

Board means the General Accounting Office Personnel Appeals Board as established by 31 U.S.C. 751 and explained in 4 CFR 27.1.

* * * * *

Michael Wolf,

Chair, Personnel Appeals Board, U.S. General Accounting Office.

[FR Doc 99-7741 Filed 3-29-99; 8:45 am]

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