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GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Part 28

Personnel Appeals Board; Procedural Rules

AGENCY: Government Accountability Office Personnel Appeals Board.

ACTION: Final rule.

SUMMARY: The Government Accountability Office Personnel Appeals Board (PAB or Board) is finalizing amendments to its regulations. The PAB published a proposed rule on November 24, 2023, which contained several significant refinements to the Board's procedures. The General Accounting Office Personnel Act of 1980 provides authority to make these changes.

DATES: This rule is effective as of July 18, 2024.

FOR FURTHER INFORMATION CONTACT: Stuart Melnick, Executive Director, 202-512-3836 or Kevin Wilson, Solicitor, 202-512-7517, pab@gao.gov.

SUPPLEMENTARY INFORMATION: The Board is authorized by Congress, pursuant to 31 U.S.C. 751-755, to hear and decide cases brought by Government Accountability Office (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 authority over GAO's EEO process at the agency. The Board's procedural regulations applicable to GAO appear at 4 CFR parts 27 and 28. The Board is revising two sections of these regulations to ensure consistency with current law and to address a process ambiguity in the current language. The Board is also replacing gendered pronouns with gender-neutral pronouns.

4 CFR 28.95

The Board is amending section 28.95 by specifically referencing the Equal Pay Act of 1963 (29 U.S.C. 206(d)), the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff-1), and the Pregnancy Workers Fairness Act (42 U.S.C. 2000gg-1) in its definition of prohibited EEO discrimination. The addition of the reference to the Equal Pay Act of 1963 is to clarify that the prohibition on discrimination in wages on the basis of sex derives from the Equal Pay Act of 1963's amendment of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)).

The additions of the references to the Genetic Information Nondiscrimination Act of 2008 and the Pregnancy Workers Fairness Act in paragraph (e) and new paragraph (f) of 4 CFR 28.95 reflect types of discrimination that became prohibited on the effective dates of the respective statutes but had not yet been codified into the Board's regulations.

Similarly, the revision of the definition of prohibited discrimination in new paragraph (h) of 4 CFR 28.95 includes a list of activities that may not form the basis for employment actions. Discrimination in retaliation for protected EEO activity became prohibited on the effective dates of the respective EEO statutes. This revision codifies existing prohibitions and does not create a new cause of action.

Five sets of comments responded to the proposed changes to this section. The Women and Gender Liaison Group and the GAO Employees Organization, IFPTE Local 1921, supported the Board's codification of employee protections in the Equal Pay Act of 1963, the Genetic Information Nondiscrimination Act of 2008, and the Pregnant Workers Fairness Act.

28.95(c)

The National Employment Lawyers Association commented that "[t]he edit in proposed 4 CFR § 28.95(c) is legally incorrect, since sex-basis pay discrimination claims do not sound solely in the Equal Pay Act (EPA). Instead, sex-basis pay discrimination claims concurrently sound in both the EPA and in Title VII. . . ." The Board thanks the National Employment Lawyers Association for this comment. The proposed amendment was not intended to give the impression that § 28.95(c) is the only section under

which a claim of sex-basis pay discrimination may be brought. Section 28.95(a), among other things, already includes in its definition of prohibited discrimination claims under Title VII on the basis of sex.

28.95(d)

The National Employment Lawyers Association commented, "GAO should consider modifying proposed 4 CFR § 28.95(d) to also include claims for improper collection, archival and/or dissemination of employees' confidential medical information." The Board thanks the National Employment Lawyers Association for this suggestion. The Board will not consider this suggestion at this time because the Board has not proposed any amendments to § 28.95(d) in its proposed rule, and the Board's stakeholders have not had an opportunity to comment on it.

28.95(h)

Both GAO's Office of General Counsel and the PAB's Office of General Counsel (PAB/OGC) suggested the Board replace the term "employment action" in § 28.95(h). GAO's Office of General Counsel indicated that "employment action" is not a commonly used term in the context of retaliation and suggested that "adverse" or "materially adverse" employment action should be used instead. The PAB/OGC suggested that "employment action" be replaced with a broader term, such as "retaliatory action," "retaliation," or "employer action."

Based on these comments, the Board has accepted these suggestions and replaced "employment action" with "materially adverse action" in the final rule. Materially adverse action is a broader term used by the Supreme Court in the EEO context, and it covers actions that go beyond the terms and conditions of employment. *See Burlington Northern Santa Fe Ry. v. White*, 548 U.S. 53 (2006).

The National Employment Lawyers Association commented that "GAO should also consider modifying proposed 4 CFR § 28.95(h) to include other activity likely to have a chilling effect as giving rise to a possible retaliation claim. In particular, GAO should consider adopting the EEOC's *per se* reprisal line of cases, under *Binseel* and its progeny, which recognize a freestanding *per se* violation

claim for comments or conduct [that] are likely to have a chilling effect on employees' protected EEO activity. . . ."

The Board considered this comment in deciding to replace the phrase "employment action" with "materially adverse action." The Supreme Court described materially adverse action in *Burlington Northern Santa Fe Ry. v. White*, 548 U.S. 53, 57 (2006) to include an action that "could well dissuade a reasonable worker from making or supporting a charge of discrimination." This language is intended to include activities, including nonemployment actions likely to have a chilling effect on making or supporting a claim of discrimination.

GAO's Office of General Counsel also suggested replacing the term "unlawful employment practice" in § 28.95(h) because it is not a commonly used term in the context of retaliation. The term "unlawful employment practice" is based on guidance contained in the EEOC's Enforcement Guidance on Retaliation and Related Issues. The guidance states, "[i]n addition to participation, an individual is protected from retaliation for opposing any practice made unlawful under the EEO laws." Therefore, the Board considered this suggestion, but elected to keep the language in the proposed rule.

GAO's Office of General Counsel commented that "the reference to a 'claim of retaliation that could be raised under § 28.95(h)' in § 28.98(e)(1) also is not clear." The Board intends "a claim of retaliation that could be raised under § 28.95(h)" to mean an EEO-related retaliation claim. The use of "retaliation" here is admittedly redundant because all claims that could be raised under § 28.95(h) are necessarily retaliation claims. The inclusion of it here is designed to help individuals better recognize that § 28.95(h) claims are retaliation claims because the term "retaliation" is not used in § 28.95(h).

4 CFR 28.98

The final rule also resolves ambiguity over when retaliation claims related to discrimination on one of the EEO-protected bases, including claims of retaliation under prohibited personnel practices laws like 5 U.S.C. 2302(b)(9), must go through GAO's EEO process pursuant to GAO Order 2713.2 before a charge containing these claims can be filed with the PAB/OGC and a petition containing them can be filed with the Board. Retaliation claims related to discrimination on one of the EEO-protected bases involving a removal, a suspension of more than 14 days, or a

furlough of not more than 30 days continue to have the option, pursuant to 4 CFR 28.98(c), of filing a discrimination complaint with GAO pursuant to GAO Order 2713.2 or bypassing the EEO process and filing a charge directly with the PAB/OGC. The final rule revisions clarify that other retaliation claims related to discrimination on one of the EEO-protected bases may also bypass GAO's EEO process if they are not reasonably related to the filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2. The PAB/GC will be empowered to decide whether retaliation claims related to discrimination on one of the EEO-protected bases are reasonably related to filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2. If the claims are reasonably related to the filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2, the PAB/OGC would inform the individual that they need to file their complaint with GAO pursuant to GAO Order 2713.2 before the PAB/OGC is permitted to process their charge on these allegations. If the PAB/GC determines the claims are not reasonably related to filing or assisting with a discrimination complaint pursuant to GAO Order 2713.2, the PAB/OGC would advise the individual that the charge containing these claims can be processed by the PAB/OGC without delay. The purpose of giving this unreviewable discretion to the PAB/GC is to give certainty to individuals that their claims may be processed immediately by the PAB/OGC without fear of having the claims subsequently dismissed for failure to exhaust the administrative remedies contained in GAO Order 2713.2.

Finally, the final rule amendments allow the PAB/OGC to hold in abeyance nondiscrimination allegations while related discrimination allegations are being pursued through GAO's EEO process. Once the discrimination complaint resolution process concludes, or the individual opts out, both types of claims could be investigated together. The PAB/GC is to utilize this provision when the claims are so related that the PAB/GC determines it would be most appropriate to conduct a single investigation into them. The PAB/GC will have discretion to revisit this decision at any time and no longer hold a claim in abeyance. For purposes of 4 CFR 28.12(g), the length of time a claim is held in abeyance will count toward the 180-day period, after which a charging party may opt out of the PAB/

OGC's investigation and file a petition with the Board.

All seven commenters to the proposed rule addressed section 28.98. The Board has made several changes based on these comments. These changes are discussed in greater detail in this section.

28.98(b)

The GAO Office of General Counsel requested clarification on "what is meant by 'processes a complaint' (*i.e.*, accepts the complaint for investigation, completes the investigation, issues a FAD, etc.)." The language in § 28.98(b) is intended to have the same meaning as the previous version of this section, which stated, "A charge relating to GAO's disposition of any individual EEO complaint may be filed with the Board's General Counsel at the following times . . ." The final rule changes the language to the active voice and describes the EEO process. It should be interpreted in the same way as the previous § 28.98(b).

28.98(c)

The PAB/OGC suggested adding "certain" to the title of 4 CFR 28.98(c) so that it reads "Special rules for certain adverse and performance-based actions." The PAB/OGC was concerned that there could be confusion over whether "materially adverse action" in 4 CFR 28.98(h) is limited to the commonly known Chapter 75 adverse actions listed in 4 CFR 28.98(c)—namely a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days. The Board's addition of the word "certain" to the title of 4 CFR 28.98(c) is intended to connote that adverse actions listed in 4 CFR 28.98(c) are only a subset of the "materially adverse actions" covered by 4 CFR 28.98(h).

28.98(e)

All seven commenters submitted comments on § 28.98(e). The Office of Opportunity and Inclusiveness (O&I), which is responsible for GAO's discrimination complaint resolution process under GAO Order 2713.2, appeared to oversimplify the proposed § 28.98(e) process when it wrote that "the forum for processing certain retaliation claims would depend on whether the Board's General Counsel determines that the claim relates to retaliation 'for filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2'" The § 28.98(e) process was designed to give individuals the ability to choose the forum where they want to bring their EEO-based retaliation claims. The key is

that individuals choose their desired forum. The PAB/GC does not make this determination for them. The PAB/GC's role is to determine whether an individual's requested forum can be accommodated.

The most commonly raised issue was a request to clarify what claims relate to retaliation for filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2. Two commenters specifically asked whether informal contact with an EEO counselor would be related to filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2.

The phrase "relates to retaliation for filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2" is intended to include retaliation for any task reasonably related to the discrimination complaint process listed in GAO Order 2713.2. Such task need not be limited to participating in the formal complaint process. As such, it should be interpreted to include retaliation for engaging in pre-complaint EEO counseling with O&I. To make clear that the "relates to retaliation" language is not to be strictly interpreted, the Board has added "reasonably" to this phrase so that it reads "reasonably relates to retaliation" in §§ 28.98(e), (e)(1)(i), and (e)(1)(ii).

Several commenters requested examples of actions that relate to retaliation for filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2 and examples of ones that would not. Examples of actions that would reasonably be related to filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2 include: (1) having previously filed a discrimination complaint with O&I pursuant to GAO Order 2713.2, (2) having previously filed a disability complaint with O&I pursuant to GAO Order 2713.2, (3) having provided testimony in another employee's discrimination claim filed with O&I pursuant to GAO Order 2713.2, and (4) having engaged in pre-complaint counseling with O&I pursuant to GAO Order 2713.2. Examples of actions that would not reasonably be related to filing a discrimination complaint filed pursuant to GAO Order 2713.2 include: (1) filing a complaint against an individual with O&I in the anti-harassment portal, (2) filing a reasonable accommodation request with GAO's Reasonable Accommodation Team, (3) providing testimony resulting from another employee's filing a complaint in the anti-harassment portal with O&I, (4) being associated with, such as a family

member or friend, an individual who filed a discrimination complaint with O&I pursuant to GAO Order 2713.2, (5) refusing to follow a discriminatory directive, and (6) opposing discrimination by speaking up at a meeting against a comment that denigrated an ethnic group.

O&I questioned whether the Board considered replacing "relates to retaliation for filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2" with "participating in an O&I process," which would include both the discrimination complaint resolution process under GAO Order 2713.2 as well as GAO's Anti-Harassment Policy. Yes, the Board did consider this option but decided against requiring retaliation claims related to all O&I activities to be processed first by O&I. The Board did not want individuals with EEO-related retaliation claims to be forced to go through the discrimination complaint resolution process when their claims were insufficiently related to the discrimination complaint resolution process. A former GAO employee commented that having the choice to bypass O&I in such situations was "extraordinarily important and should have been made sooner." The former employee detailed the frustrations they experienced when their claim was required to be reviewed by O&I before it could be filed with the Board. The GAO Employees Organization, IFPTE Local 1921, also supported this change.

O&I requested how a hypothetical would be handled where an individual has an EEO-based retaliation claim that does not relate to filing or assisting with a discrimination complaint pursuant to GAO Order 2713.2 but also contains other bases of discrimination (*e.g.*, sex and race) that involve the same personnel action. Assuming the individual wanted the EEO-related retaliation claim reviewed by the PAB/OGC and not O&I, the employee would still be required to file the other discrimination claims with O&I pursuant to the discrimination complaint resolution process.

After the individual filed the discrimination claims with O&I pursuant to Order 2713.2, the sex and race discrimination claims could later be included in a charge filed with the PAB/OGC at any of the times listed in 4 CFR 28.98(b). While the sex and race discrimination claims were going through O&I's discrimination complaint resolution process, the PAB/GC would have the choice of when to begin the investigation into the EEO-based retaliation claim. Because that claim shares a common personnel action with

the sex and race discrimination claims being reviewed by O&I, the PAB/GC could hold the retaliation claim in abeyance pursuant to 4 CFR 28.98(f) if the PAB/GC determines it would be more appropriate to wait for the sex and race discrimination claims to have completed the discrimination complaint resolution process and investigate all three claims together.

In the context of this same hypothetical, O&I asked, "[h]ow should the General Counsel respond if the individual also raises other discrimination claims, such as harassment based on disability?" If the PAB/GC were to receive a harassment based on a disability claim, the Board would first expect the PAB/GC to determine if the individual were attempting to allege discrimination on the basis of disability. If so, the PAB/OGC could investigate the claim immediately if it involved a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days. 4 CFR 28.98(c). If it involved a different personnel action, the PAB/OGC would instruct the individual to file a claim with O&I. 4 CFR 28.98(a). If the individual was not attempting to allege discrimination based on disability, the Board expects the PAB/OGC to analyze the claim under all statutes within its jurisdiction and make the individual aware of the anti-harassment protections offered by O&I.

Two commenters made suggestions regarding the length of time the PAB/GC has to make a § 28.98(e) determination. The GAO Employees Organization, IFPTE Local 1921, suggested adding a timeline during which the PAB/GC must make this determination. The National Employment Lawyers Association suggested that the date on which a § 28.98(e)(1) claim is filed with the PAB/OGC should be treated as the filing date with O&I for the subsequent filing under the discrimination complaint resolution process. Both commenters appear concerned that a delay by the PAB/GC in making a § 28.98(e) determination may prevent a timely filing with O&I. The Board's Executive Director plans to contact the Managing Director of O&I to find a mutually acceptable resolution to this potential problem. The Board expects these discussions to fully resolve this issue. However, if O&I does not accept a § 28.98(e)(1) complaint on timeliness grounds where an individual acted reasonably yet could not meet O&I's filing deadline, the individual should refile the complaint with the PAB/OGC. The Board expects that in such a situation, it would find "good cause"

under § 28.16(b) to waive its requirement that O&I review the claim. The Board has no intention of allowing an individual to forfeit their claim by undertaking a process the Board created when they experience delays outside of their control.

28.98(e)(1)

The GAO Office of General Counsel indicated that “the reference to a ‘claim of retaliation that could be raised under § 28.95(h)’ in § 28.98(e)(1) also is not clear.” “A claim of retaliation that could be raised under § 28.95(h)” means an EEO-related retaliation claim. The use of “retaliation” here is admittedly redundant because all claims that could be raised under § 28.95(h) are necessarily retaliation claims. The inclusion of it here is designed to help individuals better recognize that § 28.95(h) claims are retaliation claims because the term “retaliation” is not used in § 28.95(h).

The GAO Office of General Counsel commented on the reference to 5 U.S.C. 2302(b)(9) in § 28.98(e)(1). “This paragraph concerns ‘a claim of retaliation that could be raised under § 28.95(h), including the prohibited personnel practices listed in 5 U.S.C. 2302(b)(9).’ The reference to 5 U.S.C. § 2302(b)(9) appears to be overbroad. Section 2302(b)(9) lists several different prohibited personnel practices, including retaliation for filing whistleblower retaliation claims and disclosing information to an Inspector General. A ‘claim of retaliation that could be raised under § 28.95(h),’ however, is limited to EEO-related protected activity. The reference to section 2302(b)(9) therefore should be narrowed given the context.”

The Board recognizes that 5 U.S.C. 2302(b)(9) broadly covers reprisal for engaging in protected activities. Some of these protected activities cannot relate to the EEO laws, including disclosing information to the Inspector General or refusing to obey an order that would require a law, rule, or regulation violation. The reference to 5 U.S.C. 2302(b)(9) is intended to include only those claims that can be brought under sec. 2302(b)(9) that are related to the EEO process. It has no applicability to non-EEO sec. 2302(b)(9) claims. For example, if an employee brought a claim to the PAB/OGC that they were being retaliated against for disclosing information about a non-EEO topic to GAO’s Office of Inspector General, § 28.98(e) would not apply, and no analysis under § 28.98(e) would be performed. Section 28.98(e)(1) only applies to “claim[s] of retaliation that could be raised under § 28.95(h).” In

this example, § 28.95(h) does not apply because the claim is not related to “opposing any unlawful employment practice, or for participating in any manner in an investigation, hearing, or in any stage of an administrative or judicial proceeding, under any of the [EEO laws].”

The GAO Office of General Counsel commented that it was unclear what information the PAB/GC could use in making a § 28.98(e)(1) determination. “[The GAO Office of General Counsel] suggest[s] that this section should delineate the basis on which the determination is made: the employee’s submission(s), an investigation, or something else. It is also unclear how the PAB General Counsel’s decision is communicated to the employee.”

The Board expects the PAB/GC will primarily rely on the information submitted by the charging party’s description of their allegation. The Board does not anticipate any investigation will need to be performed for the PAB/GC to make this determination, but if some investigation is necessary, the final rule’s amendments would not prohibit it. The final rule’s amendments do not address the method of communication of a § 28.98(e) decision to an employee and defer to the PAB/GC on the best manner to perform this task.

The GAO Office of General Counsel comments that “[t]he determination of the General Counsel should be reviewable as it can have significant implications for employees and the exercise of their rights. The General Counsel’s decision also affects GAO with respect to investigating and resolving employee claims. Accordingly, we believe there should be a mechanism for the Board to review this determination.”

The Board agrees that § 28.98(e) determinations will have significant implications for employees and the exercise of their rights. Notably, § 28.98(e) will take away no employee rights. Individuals retain the same right to bring EEO claims directly to O&I pursuant to the discrimination complaint resolution process. The final rule attempts to clarify that certain EEO-related retaliation claims must be brought to O&I first. The discrimination complaint resolution process must proceed before the PAB/OGC can investigate them. Other EEO-related retaliation claims may be brought directly to the PAB/OGC and investigated without going through the discrimination complaint resolution process. The PAB/GC is tasked with applying the Board’s standard to

determine which EEO-related retaliation claims fall into each category.

The Board acknowledges that if the PAB/GC were to determine that a claim falls under § 28.98(e)(1)(ii), GAO would be directly affected as these claims would no longer go through O&I’s discrimination complaint review process where they could potentially be resolved. Specifically, GAO would be required to investigate the claims much earlier than if the claims were processed pursuant to the discrimination complaint review process. The Board considered various options on reviewability but elected to give the PAB/GC the sole authority to make § 28.98(e)(1) determinations for three reasons. First, other than stay requests the PAB has historically not been involved in the PAB/OGC’s processes before a petition is filed with the Board. Second, § 28.98(e)(1) was designed to give individuals certainty and allow § 28.98(e)(1)(ii) claims to be investigated more expeditiously without having to go through the O&I process, which can be quite lengthy. A review mechanism would defeat this purpose. Third, the Board Members do not want to be prejudiced by the parties’ descriptions of legal claims and evidence before a petition is even filed, because they may subsequently be assigned the case as an Administrative Judge or review it in an *en banc* appeal.

The PAB/OGC requested that the word “instruct” in § 28.98(e)(1)(i) be replaced with “advise” so the relevant portion would read, “the Board’s Office of General Counsel shall advise the charging party to file the claim as a complaint of discrimination pursuant to GAO Order 2713.2.” The PAB/OGC believes the word “instruct” was too strong, and by replacing it with “advise,” the PAB/OGC would be able to address § 28.98(e)(1)(i) claims similarly to how it already addresses EEO discrimination claims where the charging party has not exhausted the O&I process. The Board considered and agreed with this suggestion.

28.98(e)(2)

GAO’s Office of General Counsel and the PAB/OGC commented that the reference to § 28.95(g) in § 28.98(e)(2) should be a reference to § 28.95(h). The Board thanks the commenters for identifying the error and has made this change.

28.98(f)

The PAB/OGC commented that “Section 28.98(f) contains the sub-title, ‘Claims related to EEO matters pending with EEO.’ Instead of referencing ‘matters pending with EEO,’ the PAB/

OGC suggests that ‘EEO’ be replaced with ‘GAO’s Office of Opportunity and Inclusiveness’ or ‘GAO’s EEO Office.’” The Board considered and agreed with the suggestion, finding that it more accurately described the section than the previous title. The Board opted for the second of the two suggestions, replacing “EEO” with “GAO’s EEO Office.” The Board concluded that more individuals would understand a reference to “EEO Office” than O&I, which is a name and office unique to GAO. Additionally, O&I’s jurisdiction concerns more than EEO matters and the use of “GAO’s EEO Office” instead of “GAO’s Office of Opportunity and Inclusiveness” more accurately describes the type of claims addressed in § 28.98(f)(3).

28.98(f)(3)

The GAO Office of General Counsel commented, “Similar to our comment on § 28.98(e)(1) above, it is unclear what information the PAB General Counsel would use to determine whether a claim is ‘sufficiently related to a discrimination complaint.’” The Board anticipates that the PAB General Counsel would primarily rely upon information submitted by the charging party but could request and consider information from O&I about the potentially related claims.

The GAO Office of General Counsel had several questions related to holding a claim in abeyance. “What happens if the employee decides not to file a charge under § 28.98(b) for the related claim?” If no charge is filed regarding a claim, the PAB/OGC will not investigate that claim. “Is there a timeframe for the abeyance, or may the claim be held in abeyance indefinitely?” The PAB/GC should not hold a claim in abeyance longer than the time it takes O&I (GAO’s EEO Office) to process the sufficiently related claim(s) pursuant to the discrimination complaint review process, which culminates with either O&I’s dismissal of the claim or a Final Agency Decision. “Must the charging party/GAO be notified of the General Counsel’s determination to hold a claim in abeyance and/or to resume an investigation?” The PAB/OGC is expected to notify the charging party and GAO of both the GC’s determination to hold a claim in abeyance as well as to resume an investigation. The final rule’s amendments are silent on the method by which this information is to be transmitted, which is intended to give the PAB/OGC discretion on how to communicate these notifications.

Gender Neutral Pronouns

In addition to the amendments to § 28.95 and § 28.98, the final rule replaces the gendered pronouns in all the Board’s regulations with gender-neutral ones. The Women and Gender Liaison Group and the GAO Employees Organization, IFPTE Local 1921, supported these changes.

List of Subjects in 4 CFR Part 28

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

For the reasons stated in the preamble, the Government Accountability Office amends title 4, chapter I, subchapter B, part 28 of the Code of Federal Regulations as follows:

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

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

Authority: 31 U.S.C. 753.

PART 28 [Amended]

- 2. Amend part 28 by removing the word or phrase indicated in the left column of the table from wherever it appears in the part and adding the word or phrase indicated in the right column in its place:

Remove	Add
“him or her”	“them”.
“him- or herself”	“themselves”.
“himself or herself” ...	“themselves”.
“his or her”	“their”.
“his/her”	“their”.
“he or she has”	“they have”.
“he or she is”	“they are”.

§ 28.80 [Amended]

- 3. Amend § 28.80 by removing the words “he or she determines” in the second sentence and adding in their place the words “they determine”.
- 4. Amend § 28.95 by:
 - a. Revising paragraph (c);
 - b. In paragraph (d) removing the word “or” at the end of the paragraph; and
 - c. Redesignate paragraph (e) as paragraph (g); and adding a new paragraph (e) and paragraphs (f) and (h).

The revision and additions read as follows:

§ 28.95 Purpose and scope.

* * * * *

(c) Section 6(d) of the Fair Labor Standard Act of 1938 as amended by the

Equal Pay Act of 1963 (29 U.S.C. 206(d)), prohibiting discrimination in wages on the basis of sex;

* * * * *

(e) Section 202 of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff–1), prohibiting discrimination on the basis of genetic information;

(f) Section 103 of the Pregnant Workers Fairness Act (42 U.S.C. 2000gg–1), prohibiting discrimination on the basis of pregnancy, childbirth or related medical conditions; or

* * * * *

(h) Prohibited discrimination also includes any materially adverse action taken against an employee or applicant for employment for opposing any unlawful employment practice, or for participating in any manner in an investigation, hearing, or in any stage of an administrative or judicial proceeding, under any of the statutes or laws identified in paragraphs (a) through (g) of this section.

- 5. Amend § 28.98 by:
 - a. Revising paragraphs (a), (b) introductory text, (b)(1) and (2);
 - b. Revising the paragraph (c) heading;
 - c. Adding the words “Office of” between the words “Board’s” and “General” in paragraph (c)(1);
 - d. Revising the second, third, and fourth sentences of paragraph (c)(2) and revising paragraph (d);
 - e. Redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e); and
 - f. Adding a heading to newly redesignated paragraph (f) and adding paragraph (f)(3).

The revisions and additions read as follows:

§ 28.98 Individual charges in EEO cases.

(a) *General rule for filing EEO claims.* Except as provided in paragraphs (c) and (e) of this section, an employee or applicant alleging prohibited discrimination (as defined in § 28.95) must first file a complaint with GAO in accordance with GAO Order 2713.2 and may not file directly with the Board’s General Counsel.

(b) *Time limits to file EEO claims with PAB/OGC.* After GAO processes a complaint in accordance with GAO Order 2713.2, an employee or applicant for employment may file an individual EEO charge with the Board’s General Counsel as follows:

- (1) Within 30 days from the receipt by the charging party of a GAO decision rejecting the complaint in whole or part; or
- (2) Whenever a period of more than 120 days has elapsed since the

complaint was filed, and a final GAO decision has not been issued; or

* * * * *

(c) *Special rules for certain adverse and performance-based actions.* * * *

(2) * * * If the employee elects to file a complaint of discrimination with GAO, they may still seek Board review of the matter by filing a charge with the Board's Office of General Counsel at the times authorized in paragraph (b) of this section. Where a discrimination complaint filed with GAO relates to one or more non-EEO issues that are within the Board's jurisdiction in addition to an EEO-related allegation, the subsequent charge filed with the Board's Office of General Counsel under paragraph (b) of this section shall be considered a timely appeal of the non-EEO issue(s). An employee will be deemed to have elected the EEO complaint process if they file a timely written complaint of discrimination with GAO before filing a charge with the Board's Office of General Counsel.

(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 challenge that action by filing directly with the PAB, thus bypassing both the Office of Opportunity and Inclusiveness and the Board's Office of General Counsel.

(e) *Special rules in certain retaliation actions.* (1) Except as outlined in paragraph (c) of this section, whenever a charging party raises a claim of retaliation that could be raised under § 28.95(h), including the prohibited personnel practices listed in 5 U.S.C. 2302(b)(9), and that claim has not already been filed pursuant to GAO Order 2713.2, the Board's General Counsel has authority to, and shall determine whether the claim reasonably relates to retaliation for filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2. The General Counsel's determination shall not be reviewable.

(i) If the Board's General Counsel determines the claim as described in this paragraph (e)(1) reasonably relates to retaliation for filing or assisting with a discrimination complaint filed pursuant to GAO Order 2713.2, the Board's Office of General Counsel shall advise the charging party to file the claim as a complaint of discrimination pursuant to GAO Order 2713.2.

(ii) If the Board's General Counsel determines the claim as described in this paragraph (e)(1) does not reasonably relate to retaliation for filing or assisting with a discrimination complaint pursuant to GAO Order 2713.2, the Board's Office of General Counsel shall investigate the claim in accordance with § 28.12.

(2) A charging party who files a claim that could be raised under § 28.95(h) may bring the retaliation claim both as a complaint of discrimination under § 28.95 and as a prohibited personnel practice under 5 U.S.C. 2302(b)(9).

(f) *Claims related to EEO matters pending with GAO's EEO Office.* * * *

(3) Where the Board's General Counsel concludes that one or more claims are sufficiently related to a discrimination complaint filed by the same claimant pursuant to GAO Order 2713.2 and that it would be appropriate to investigate all claims together, the Board's Office of General Counsel may hold the related claim(s) in abeyance until the Board's General Counsel receives a charge pursuant to paragraph (b) of this section with respect to the formal discrimination complaint or decides that the investigation should resume.

§ 28.112 [Amended]

■ 6. Amend § 28.112 in paragraph (a)(2) by removing the words "his, her or".

Carole W. Wilson,

Chair, Personnel Appeals Board, U.S. Government Accountability Office.

[FR Doc. 2024-13064 Filed 6-17-24; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2024-0034]

RIN 3150-AL07

List of Approved Spent Fuel Storage Casks: NAC International, Inc., NAC-UMS Universal Storage System, Certificate of Compliance No. 1015, Renewal of Initial Certificate and Amendment Nos. 1 Through 9

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of July 15, 2024, for the direct final rule that was published in the **Federal Register** on April 29, 2024.

This direct final rule amended the initial certificate and Amendment Nos. 1 through 9 of Certificate of Compliance No. 1015 for the NAC International, Inc., NAC-UMS Universal Storage System.

DATES: *Effective date:* The effective date of July 15, 2024, for the direct final rule published April 29, 2024 (89 FR 33184), is confirmed.

ADDRESSES: Please refer to Docket ID NRC-2024-0034 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0034. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The renewal of Certificate of Compliance No. 1015 and associated changes to the technical specifications, and final safety evaluation report are available in ADAMS under Accession ML24151A008.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher Markley, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-6293, email: Christopher.Markley@nrc.gov and Greg Trussell, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-6244, email: Gregory.Trussell@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.