

## § 28.96

sex, national origin or disability. 31 U.S.C. 732(f)(2).

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69302, Dec. 12, 2003]

### § 28.96 Applicability of general procedures.

Except where a different procedure is provided for in this subpart, the procedures to be followed by all parties in cases arising under this subpart shall be the general procedures as prescribed in subpart B of this part.

### § 28.97 Class actions in EEO cases.

(a) Prior to invoking the Board's procedures in a case alleging prohibited discrimination on behalf of a class of GAO employees or applicants for employment, a complaint must first be filed with GAO in accordance with GAO Order 2713.2.

(b) An appeal from GAO's disposition of any EEO class complaint may be submitted to the Board at the following times:

(1) Within 20 days of receipt of a GAO determination rejecting or canceling the class complaint;

(2) Within 20 days of receipt of a GAO determination accepting the class action, but with modifications that are not satisfactory to the agent of the class;

(3) When a period of more than 180 days has elapsed since the formal class complaint was filed and the GAO has not issued a final decision; or

(4) Within 20 days of receipt of a final GAO decision resolving the complaint if that decision, in whole or in part, has not satisfied the agent for the class.

(c) In EEO class actions, employees shall not file charges with the Board's Office of General Counsel and that Office shall not undertake an independent investigation of a class complaint that has been filed with GAO. However, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

(d) An appeal of a GAO disposition of an EEO class complaint shall be decided by the Board based upon a review of the administrative record, including

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any recommended findings and conclusions, developed in the GAO class complaint process. In such cases, the Board will employ the same standards of review set forth in § 28.87.

(e) The parties to an EEO class complaint do not have a right to a de novo evidentiary hearing before the Board. However, either the class representative or GAO may file a motion requesting an evidentiary hearing, rather than having the Board decide the case upon review of the administrative record already developed by GAO. The Board, in its discretion, may grant such motion or, upon its own review of the administrative record, may direct that a new hearing be conducted. If the Board orders a new evidentiary hearing, the class representative shall file a petition on behalf of the class and the case shall be adjudicated before an administrative judge of this Board pursuant to the procedures applicable to an individual EEO complaint processed under § 28.98 of these regulations. For the purpose of determining whether it is appropriate to treat a petition as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69303, Dec. 12, 2003]

### § 28.98 Individual charges in EEO cases.

(a) Except as provided in paragraph (c) of this section, a charge alleging prohibited discrimination (as defined in § 28.95) shall not be filed with the Board's General Counsel unless the charging party has first filed a complaint of discrimination with GAO in accordance with GAO Order 2713.2.

(b) 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:

(1) Within 30 days from the receipt by the charging party of a GAO decision rejecting the complaint in whole or part;

(2) Whenever a period of more than 120 days has elapsed since the complaint was filed, and the GAO has not issued a final decision; or