

**§ 28.95 Purpose and scope.**

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(a) Section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16), prohibiting discrimination based on race, color, religion, sex or national origin;

\* \* \* \* \*

(d) Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a) prohibiting discrimination on the basis of disability; or

\* \* \* \* \*

■ 40. Amend § 28.97 by revising paragraph (b) introductory text, the first sentence of paragraph (c), paragraphs (d), and (e) to read as follows:

**§ 28.97 Class actions in EEO cases.**

\* \* \* \* \*

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

\* \* \* \* \*

(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.

(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 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.

■ 41. Amend § 28.98 by revising paragraphs (d) and (e)(1) to read as follows:

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

\* \* \* \* \*

(d) *Special rules for WRA based actions.* An individual alleging discrimination issues in connection with a WRA-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)(1) The charging party shall file the charge with the Board's Office of General Counsel in accordance with § 28.11. That Office shall investigate the charge in accordance with § 28.12.

\* \* \* \* \*

**§ 28.99 [Amended]**

■ 42. Amend § 28.99 as follows:

■ a. Remove "for review" in the heading.

■ b. In paragraph (b)(1), add "Agency" after "Provision for."

■ 43. Revise § 28.101 to read as follows:

**§ 28.101 Termination of Board proceedings when suit is filed in Federal District Court.**

Any proceeding before the Board shall be terminated when an employee or applicant who is alleging violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16, Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, the Age Discrimination in Employment Act, 29 U.S.C. 633a, or the Rehabilitation Act, 29 U.S.C. 791, files suit in Federal District Court on the same cause of action pending before the Personnel Appeals Board.

■ 44. Amend § 28.112 by revising paragraph (a)(3) to read as follows:

**§ 28.112 Who may file petitions.**

(a) \* \* \*

(3) The GAO if it has a good faith reason to doubt that a majority of employees in the bargaining unit wish to be represented by the labor organization which is currently the exclusive representative of those employees;

\* \* \* \* \*

■ 45. Amend § 28.113 by revising paragraph (a)(7), the second sentence of

paragraph (b), and the first sentence of paragraph (c) to read as follows:

**§ 28.113 Contents of representation petitions.**

(a) \* \* \*

(7) Membership cards, dues records, or signed statements by employees indicating their desire to support the petition of the labor organization, or similar evidence acceptable to the Board, showing that at least 30 percent of the employees in the proposed unit support the representation petition.

(b) \* \* \* Additionally, a petition under § 28.112(a)(2) shall include evidence satisfactory to the Board that at least 30 percent of the employees in the unit support the petition to determine whether the employees wish to continue to be represented by the labor organization currently having bargaining rights.

(c) The contents of petitions filed under § 28.112(a)(3) shall conform to those provided in petitions under paragraph (a) of this section except that the information required by paragraphs (a)(4) and (a)(7) of this section need not be supplied.

\* \* \* \* \*

**Subpart F—Special Procedures; Unfair Labor Practices****§ 28.121 [Amended]**

■ 46. Amend § 28.121(c) as follows:

■ a. Remove "for review" after the word "petition".

■ b. Remove the term "14b" and add in its place the term "15e".

■ c. Add the words "Office of" before the phrase "General Counsel".

**§ 28.122 [Amended]**

■ 47. Amend § 28.122 as follows:

■ a. Remove ";compelling need" from the heading.

■ b. In paragraph (e) remove "\$§ 28.86-28.87" and in its place add "\$ 28.87".

■ 48. Amend § 28.123 as follows:

■ a. Revise paragraph (a)(4).

■ b. In paragraph (c), remove the words "Labor/Management Relations" and add the words "Employment Standards" in their place.

The revision reads as follows:

**§ 28.123 Standards of conduct for labor organizations.**

(a) \* \* \*

(4) Fiscal integrity.

\* \* \* \* \*

**Subpart G—Corrective Action, Disciplinary and Stay Proceedings****§ 28.131 [Amended]**

■ 49. Amend paragraph (d) of § 28.131 by removing the words "for review" after