if that decision, in whole or in part, has not satisfied the agent for the class.

(c) In class actions in EEO cases, no charge shall be filed or investigated by the General Counsel prior to filing a petition for review with the Board. 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) The parties shall not have a right to a hearing on a petition for review in class actions under this section. Upon a showing of good cause as to why an evidentiary hearing is necessary, the Board may order such a hearing. Alternatively, the Board may, after a review of the administrative record and on its own motion, order a hearing for the purpose of gathering additional evidence. If no hearing is ordered, the Board's decision shall be based upon a review of the administrative record developed in the GAO class complaint process.

(e) Standards. For the purpose of determining whether it is appropriate to treat an appeal as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure.

§ 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

(3) Within 30 days from the receipt by the charging party of a final GAO decision concerning the complaint of discrimination.

(c) *Special rules for adverse and performance based actions.* Where an employee is affected by a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days (whether due to disciplinary, performance-based or other reasons), and the employee wishes to allege that such action was due in whole or part to prohibited discrimination (as defined in § 28.95), the employee may elect to do either (but not both) of the following:

(1) File a charge directly with the Board's General Counsel within 30 days of the effective date of the personnel action and raise the issue of discrimination in the course of the proceedings before the Board; or

(2) File a complaint of discrimination with the GAO pursuant to GAO Order 2713.2. If the employee elects to file a complaint of discrimination with GAO, he or she may still seek Board review of the matter by filing a charge with the Board's General Counsel at the times authorized in paragraph (b) of this section. Where a complaint of discrimination filed with GAO relates to non-EEO issues that are within the Board's jurisdiction in addition to EEO-related allegations, the subsequent charge filed with the Board's General Counsel under paragraph (b) of this section shall be considered a timely appeal of the non-EEO issues. An employee will be deemed to have elected the EEO complaint process if the employee files a timely written complaint of discrimination with GAO before filing a charge with the Board's General Counsel. Consultation with an EEO counselor, without filing a written complaint of discrimination, does not constitute an election of the EEO complaint process.

(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.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994; 61 FR 36811, July 15, 1996]

§ 28.99 Petitions for review to the Board in EEO cases.

(a) The provisions of §§ 28.18 through 28.90, inclusive, shall govern the Board's procedures in processing petitions filed under this subpart.

(b) Remedial action provided in Board orders in these cases may include:

(1) Provision for offers of employment, re-employment or promotion, with or without back pay, when the Board decides such action is required to make whole the individual found to have been discriminated against.

(2) Notification to all GAO employees of the action ordered to be taken to expunge the effect of the discrimination;

(3) Correction of GAO personnel records, as necessary, to reflect the purpose of the Board order; and,

(4) Any other action the Board believes proper to correct the effect of the discrimination found to have occurred.

§ 28.100 [Reserved]

§ 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, the Rehabilitation Act, 29 U.S.C. 791, or the Age Discrimination in Employment Act, 29 U.S.C. 633a, files suit in Federal District Court.

[59 FR 59106, Nov. 16, 1994]

Subpart E—Special Procedures; Representation Proceedings

§ 28.110 Purpose.

The procedures in this subpart relate to the Board's duty under 31 U.S.C. 753(a) (4) and (5) to determine appropriate units of GAO employees for collective bargaining, to conduct elections in order to determine whether the employees in any such units wish to select a labor organization to represent them in collective bargaining, and, thereafter, to certify labor organizations so selected as the designated exclusive bargaining representative. They are referred to in these regulations as ''representation proceedings''.

§ 28.111 Scope.

The Board shall consider, decide and order corrective action (as appropriate) in cases arising from the determination of appropriate units of employment for collective bargaining and cases arising from elections and certifications of collective bargaining representatives. Board decisions in these matters will be made with due regard for relevant provisions of GAO Orders and with the objective of insuring that the GAO labor relations program is consistent with Chapter 71 of Title 5, United States Code, which prescribes the standards for the labor relations program in the executive branch.

§ 28.112 Who may file petitions.

(a) Representation petitions may be filed by:

(1) A labor organization which wishes to be designated as the exclusive representative for collective bargaining by the GAO employees in an appropriate unit, or by a labor organization which desires to replace another currently having that status;

(2) An employee or a group of employees (or an individual on his, her or their behalf) desiring a new election to determine whether a labor organization has ceased to represent a majority of employees in a unit;

(3) The GAO if it has a good faith reason to doubt the continued desire of a group of its employees to be represented by a labor organization which