

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

GENERAL ACCOUNTING OFFICE

4 CFR Part 28

Personnel Appeals Board; Procedural Rules

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Proposed rule.

SUMMARY: The General Accounting Office Personnel Appeals Board proposes to amend its regulations to permit charging parties to bring their cases directly to the Board after the passage of 180 days from the filing of the charge, if the Board's General Counsel has not yet completed the investigation of the charge and issued a Right to Appeal Letter. This amendment would conform Board procedures with those of other agencies that hear employment-related appeals. The Board invites public comments on this proposed change.

DATES: Comments must be received on or before October 30, 2000 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 to hear and decide certain employment-related cases brought by GAO employees. Some of the matters that may be heard by the Board include: appeals from removals and suspensions for more than 14 days, allegations that agency officials have engaged or are engaging in prohibited personnel practices, claims of employment discrimination based on race, color, religion, age, sex, national origin, political affiliation, marital status, or disability, and cases concerning the

right of employees to engage in collective bargaining. The Board performs for GAO employees the functions performed in the executive branch by the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Federal Labor Relations Authority.

In order to bring a case before the Board, an employee must first file a charge with the Board's General Counsel. (The only exception to this rule is for cases involving a Reduction in Force.) The General Counsel investigates the charge and determines whether there are reasonable grounds to believe that the employee's rights have been violated. At the end of the investigation, the General Counsel issues to the employee a "report and recommendation" that explains the results of the investigation. If the General Counsel finds that there are reasonable grounds to believe that the employee's rights have been violated, then the General Counsel offers to represent the employee in a proceeding before the Board. If the General Counsel does not find "reasonable grounds," the General Counsel may not represent the employee. The employee, however, may still bring the case to the Board by representing him- or herself, or by obtaining private representation. Accompanying the report and recommendation, whether favorable or unfavorable, is a "Right to Appeal" Letter which permits the employee to file a petition for review with the Board.

Under the Board's present regulations, an employee may not bring his or her complaint to the Board until the General Counsel's investigation is completed and the employee has received a "Right to Appeal" Letter. The only exception is for employees separated as a result of a Reduction in Force. The Board's procedures contrast with the procedures in effect at other agencies that hear employment-related appeals. A number of other agencies provide a means for employees to "opt-out" of the investigative phase and proceed directly to the hearing stage after they have waited a certain period of time. For example, under the regulations of the Equal Employment Opportunity Commission (EEOC), private employees do not have to await the completion of the EEOC investigation before taking their cases to court. After the passage of 180 days, an employee may request a

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"right to sue" notice from the EEOC and may then have the case heard in federal district court. See 29 CFR 1601.28. Similarly, federal employees in the executive branch do not have to wait indefinitely for the conclusion of the agency investigation into their equal employment opportunity complaints. If the employing agency has not completed the investigation within 180 days, then the employee may immediately request a hearing on the complaint. See 29 CFR 1614.108(g). The Merit Systems Protection Board (MSPB) also allows employees complaining of discrimination to request a hearing if they have waited for 120 days and have not yet received a decision from their agency on their complaint. See 5 CFR 1201.154(b)(2). In case alleging retaliation against whistleblowers, an employee may request a hearing before the MSPB if the Office of Special Counsel has not completed its investigation of the matter within 120 days. See 5 CFR 1209.5(a)(2). Within GAO itself, the agency permits employees to file appeals with the Board concerning equal employment opportunity cases, if GAO has not completed its investigation of the matter within 120 days, or to file a civil action in federal district court if such a case investigation has not been completed within 180 days. See GAO Order 2713.2 ch. 6, ¶¶2, 4 (Dec. 2, 1997).

The Board believes that the approach taken by these agencies is a reasonable and fair one. It therefore proposes to adopt a similar approach for cases within its jurisdiction. Under the proposed rule set forth below, GAO employees will have the option of bringing their cases directly to the Board if 180 days have passed and the Board's General Counsel has not yet completed the investigation and issued a "Right to Appeal" Letter concerning their case. If the proposal is adopted, no employee will have to wait for more than 180 days to have the opportunity to present his or her case to an administrative judge.

The proposed amendments do not require an employee to file with the Board as soon as the 180-day period has expired. An employee would still retain the right to wait for the General Counsel to complete the investigation, before going forward. The proposed regulation gives employees a choice: after 180 days they may either go directly to the Board

or wait for the conclusion of the investigation.

Under the proposed regulations, certain consequences flow from an employee's decision to file a petition for review with the Board before the completion of the General Counsel's investigation. First, the investigation by the Board's General Counsel would be terminated as soon as the employee files a petition for review with the Board. The General Counsel would not gather any further evidence after that point, and the employee would not receive a report from the General Counsel analyzing the facts or law relevant to the employee's case. Second, the Board's rules only permit the General Counsel to represent employees before the Board if the General Counsel completes the investigation and finds "reasonable grounds" to believe that the charge is true. Under the proposed regulations, therefore, an employee who "opts out" of the investigation after 180 days, and files directly with the Board, would forego the opportunity to have the General Counsel present his or her case to the Board. Such an employee could either represent him- or herself, or obtain private representation.

The Board believes that these consequences are necessary features of its proposed regulation. While the Board wishes to extend a choice to employees, it does not believe that it would be justifiable to permit employees to go forward before both the General Counsel's Office and the Board simultaneously. Nor would it be appropriate to permit an employee to be represented at public expense in the absence of a finding of reasonable cause by the General Counsel.

List of Subjects in 4 CFR Part 28

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

For the reasons stated in the foregoing preamble, the General Accounting Office Personnel Appeals Board proposes to amend 4 CFR Chapter I, Subchapter B, Part 28 as follows:

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. Amend § 28.12 by adding a new paragraph (g) to read as follows:

§ 28.12 General Counsel procedures.

* * * * *

(g) If 180 days have elapsed since the filing of the charge, and the General Counsel has not completed the investigation and issued a Right to Appeal Letter, the charging party may bring his or her case directly to the Board by filing a petition for review in accordance with § 28.18. If a charging party exercises this option to file a petition for review with the Board without waiting for the completion of the investigation, the General Counsel shall not represent the charging party in proceedings before the Board. The charging party may represent him- or herself or obtain other representation. The General Counsel shall close the investigation of the charge upon being notified by the Clerk of the Board that the charging party has filed a petition for review with the Board under this paragraph (g).

3. Amend § 28.18 by revising paragraphs (a) and (b) to read as follows:

§ 28.18 Filing a petition for review with the Board.

(a) *Who may file.* Any person who is claiming to be affected adversely by GAO action or inaction that is within the Board's jurisdiction under subchapter IV of chapter 7 of title 31, United States Code, or who is alleging that GAO or a labor organization engaged or is engaging in an unfair labor practice, may file a petition for review if one of the following is met:

(1) The person has received a Right to Appeal Letter from the Board's General Counsel; or

(2) At least 180 days have elapsed from the filing of the charge with the Board's General Counsel and the General Counsel has not issued a Right to Appeal Letter; or

(3) The person was separated due to a Reduction in Force and chooses to file an appeal directly with the Board, without first filing with the Board's General Counsel, as provided in § 28.13.

(b) *When to file.* (1) Petitions for review filed pursuant to paragraph (a)(1) of this section must be filed within 30 days after service upon the charging party of the Right to Appeal Letter from the Board's General Counsel.

(2) Petitions for review filed pursuant to paragraph (a)(2) of this section may be filed at any time after 180 days have elapsed from the filing of the charge with the Board's General Counsel, provided that the General Counsel has not issued a Right to Appeal Letter concerning the charge.

(3) Petitions for review filed pursuant to paragraph (a)(3) of this section must be filed within 30 days after the

effective date of the separation due to a Reduction in Force.

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Michael Wolf,

Chair, Personnel Appeals Board, General Accounting Office.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-CE-48-AD]

RIN 2120-AA64

Airworthiness Directives; Short Brothers & Harland Ltd. Models SC-7 Series 2 and SC-7 Series 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to all Short Brothers & Harland Ltd. (Shorts) Models SC-7 Series 2 and SC-7 Series 3 airplanes. The proposed AD would have required you to revise the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD was the result of reports of in-flight incidents and an accident (on airplanes other than the referenced Shorts airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. Since issuing this NPRM, we have found that all of the affected airplanes incorporate a freezing point fluid system. These airplanes do not have pneumatic deicing boots. Therefore, we have determined that the unsafe condition defined in the NPRM does not exist on these airplanes and we are withdrawing the NPRM.

ADDRESSES: You may look at information related to this action at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-CE-48-AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Larry E. Werth, Airworthiness Directive Coordinator, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4147; facsimile: (816) 329-4090.