

§ 1980.113

issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

[80 FR 11880, Mar. 5, 2015, as amended at 85 FR 30622, May 20, 2020]

§ 1980.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under the Act, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under the Act, a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the appropriate United States district court.

§ 1980.114 District court jurisdiction over retaliation complaints.

(a) If the Secretary has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy. A party to an action brought under this

29 CFR Ch. XVII (7–1–25 Edition)

paragraph shall be entitled to trial by jury.

(b) A proceeding under paragraph (a) of this section shall be governed by the same legal burdens of proof specified in § 1980.109. An employee prevailing in any action under paragraph (a) of this section shall be entitled to all relief necessary to make the employee whole, including:

(1) Reinstatement with the same seniority status that the employee would have had, but for the retaliation;

(2) The amount of back pay, with interest;

(3) Compensation for any special damages sustained as a result of the retaliation; and

(4) Litigation costs, expert witness fees, and reasonable attorney fees.

(c) Within seven days after filing a complaint in federal court, a complainant must file with OSHA, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

§ 1980.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue any orders that justice or the administration of the Act requires.

PART 1981—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 6 OF THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

Sec.

1981.100 Purpose and scope.

1981.101 Definitions.

1981.102 Obligations and prohibited acts.

1981.103 Filing of discrimination complaint.

1981.104 Investigation.

Occu. Safety and Health Admin., Labor

§ 1981.101

1981.105 Issuance of findings and preliminary orders.

Subpart B—Litigation

1981.106 Objections to the findings and the preliminary order and request for a hearing.

1981.107 Hearings.

1981.108 Role of Federal agencies.

1981.109 Decision and orders of the administrative law judge.

1981.110 Decision and orders of the Administrative Review Board.

Subpart C—Miscellaneous Provisions

1981.111 Withdrawal of complaints, objections, and findings; settlement.

1981.112 Judicial review.

1981.113 Judicial enforcement.

1981.114 Special circumstances; waiver of rules.

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SOURCE: 69 FR 17591, Apr. 5, 2004, unless otherwise noted.

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

§ 1981.100 Purpose and scope.

(a) This part implements procedures under section 6 of the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129 (“the Pipeline Safety Act”), which provides for employee protection from discrimination by a person owning or operating a pipeline facility or a contractor or subcontractor of such person because the employee has engaged in protected activity pertaining to a violation or alleged violation of any order, regulation, or standard under chapter 601, subtitle VIII of title 49 of the United States Code or any other provision of Federal law relating to pipeline safety.

(b) This part establishes procedures pursuant to the Pipeline Safety Act for the expeditious handling of discrimination complaints made by employees, or by persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints under the Pipeline Safety Act, investigations, issuance of findings and preliminary orders, objections to find-

ings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

§ 1981.101 Definitions.

“Act” or “Pipeline Safety Act” means section 6 of the Pipeline Safety Improvement Act of 2002, Public Law No. 107-355, December 17, 2002, 49 U.S.C. 60129.

“Assistant Secretary” means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

“Complainant” means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

“Employee” means an individual presently or formerly working for a person owning or operating a pipeline facility or a contractor or subcontractor of such a person, an individual applying to work for a person owning or operating a pipeline facility or a contractor or subcontractor of such a person, or an individual whose employment could be affected by a person owning or operating a pipeline facility or a contractor or subcontractor of such a person.

“Employer” means a person owning or operating a pipeline facility or a contractor or subcontractor of such a person.

“Gas pipeline facility” includes a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation.

“Hazardous liquid pipeline facility” includes a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid.

“Named person” means the person alleged to have violated the Act.

“OSHA” means the Occupational Safety and Health Administration of the United States Department of Labor.

“Person” means a corporation, company, association, firm, partnership, joint stock company, an individual, a State, a municipality, and a trustee, receiver, assignee, or personal representative of a person.

“Pipeline facility” means a gas pipeline facility and a hazardous liquid pipeline facility.

“Secretary” means the Secretary of Labor or persons to whom authority under the Act has been delegated.

§ 1981.102 Obligations and prohibited acts.

(a) No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee’s compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee’s request, engaged in any of the activities specified in paragraphs (b)(1) through (5) of this section.

(b) It is a violation of the Act for any employer to intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee because the employee has:

(1) Provided, caused to be provided, or is about to provide or cause to be provided to the employer or the Federal Government, information relating to any violation or alleged violation of any order, regulation, or standard under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety;

(2) Refused to engage in any practice made unlawful by chapter 601, in subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

(3) Provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, or testimony in any proceeding under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under chapter 601, subtitle VIII of title 49 of the United

States Code or any other Federal law relating to pipeline safety;

(4) Commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety; or

(5) Assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety.

(c) This part shall have no application to any employee of an employer who, acting without direction from the employer (or such employer’s agent), deliberately causes a violation of any requirement relating to pipeline safety under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law.

§ 1981.103 Filing of discrimination complaint.

(a) Who may file. An employee who believes that he or she has been discriminated against by an employer in violation of the Act may file, or have filed by any person on the employee’s behalf, a complaint alleging such discrimination.

(b) Nature of filing. No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.

(c) Place of filing. The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: <http://www.osha.gov>.

(d) Time for filing. Within 180 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery or other means, the complaint is filed upon receipt.

(e) Relationship to section 11(c) complaints. A complaint filed under the Pipeline Safety Act that alleges facts which would constitute a violation of section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), will be deemed to be a complaint filed under both the Pipeline Safety Act and section 11(c). Similarly, a complaint filed under section 11(c) that alleges facts that would constitute a violation of the Pipeline Safety Act will be deemed to be a complaint filed under both the Pipeline Safety Act and section 11(c). Normal procedures and timeliness requirements for investigations under the respective laws and regulations will be followed.

§ 1981.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (redacted to protect the identity of any confidential informants). The Assistant Secretary will also notify the named person of his or her rights under paragraphs (b) and (c) of this section and paragraph (e) of § 1981.110. A copy of the notice to the named person will also be provided to the Department of Transportation.

(b) A complaint of alleged violation shall be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a *prima facie* showing as follows:

(i) The employee engaged in a protected activity or conduct;

(ii) The named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

(2) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.*, to give rise to an inference that the named person knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the unfavorable personnel action. Normally the burden is satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.

(c) Notwithstanding a finding that a complainant has made a *prima facie* showing, as required by this section, an investigation of the complaint shall not be conducted if the named person, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct. Within 20 days of receipt of the notice of the filing of the complaint, the named person may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating his or her position. Within the same 20 days, the

named person may request a meeting with the Assistant Secretary to present his or her position.

(d) If the named person fails to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the behavior protected by the Act, the Assistant Secretary will conduct an investigation. Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of title 29 of the Code of Federal Regulations.

(e) Prior to the issuance of findings and a preliminary order as provided for in § 1981.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the named person has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the named person to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The named person will be given the opportunity to submit a written response, to meet with the investigators to present statements from witnesses in support of his or her position, and to present legal and factual arguments. The named person will present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the named person can agree, if the interests of justice so require.

§ 1981.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary shall issue, within 60 days of filing of the

complaint, written findings as to whether or not there is reasonable cause to believe that the named person has discriminated against the complainant in violation of the Act.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she shall accompany the findings with a preliminary order providing relief to the complainant. The preliminary order shall include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. Where the named person establishes that the complainant is a security risk (whether or not the information is obtained after the complainant's discharge), a preliminary order of reinstatement would not be appropriate. At the complainant's request the order shall also assess against the named person the complainant's costs and expenses (including attorney's and expert witness fees) reasonably incurred in connection with the filing of the complaint.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the administrative law judge, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

(c) The findings and the preliminary order will be effective 60 days after receipt by the named person pursuant to paragraph (b) of this section, unless an objection and a request for a hearing has been filed as provided at § 1981.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon receipt of the findings and preliminary order.

[69 FR 17591, Apr. 5, 2004, as amended at 86 FR 1790, Jan. 11, 2021]

Subpart B—Litigation

§ 1981.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file any objections and/or a request for a hearing on the record within 60 days of receipt of the findings and preliminary order pursuant to § 1981.105(b). The objection or request for attorney's fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or electronic transmittal will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b)(1) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which shall not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the named person's receipt of the findings and pre-

liminary order, regardless of any objections to the order. The named person may file a motion with the Office of Administrative Law Judges for stay of the Assistant Secretary's preliminary order.

(2) If no timely objection is filed with respect to either the findings or the preliminary order, the findings or preliminary order, as the case may be, shall become the final decision of the Secretary, not subject to judicial review.

[69 FR 17591, Apr. 5, 2004, as amended at 86 FR 1790, Jan. 11, 2021]

§ 1981.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A, part 18 of title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the named person object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The administrative law judge may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

[69 FR 17591, Apr. 5, 2004, as amended at 86 FR 1790, Jan. 11, 2021]

§ 1981.108 Role of Federal agencies.

(a)(1) The complainant and the named person will be parties in every

proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as *amicus curiae* at any time at any stage of the proceedings. This right to participate includes, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision approving or rejecting a settlement agreement between the complainant and the named person.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) The Secretary of Transportation may participate as *amicus curiae* at any time in the proceedings, at the Secretary of Transportation's discretion. At the request of the Secretary of Transportation, copies of all pleadings in a case must be sent to the Secretary of Transportation, whether or not the Secretary of Transportation is participating in the proceeding.

§ 1981.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (b) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected behavior. Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1981.104(b) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the

completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge will hear the case on the merits.

(b) If the administrative law judge concludes that the party charged has violated the law, the order shall direct the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the administrative law judge shall assess against the named person all costs and expenses (including attorney and expert witness fees) reasonably incurred. If, upon the request of the named person, the administrative law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding \$1,000.

(c) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the named person, and will not be stayed by the filing of a timely petition for review with the Administrative Review Board. All other portions of the judge's order will be effective 10 business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1981.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the Administrative Law Judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board ("the Board"). The decision of the Administrative Law Judge will become the final order of the Secretary

unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within 10 business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the administrative law judge will become the final order of the Secretary unless the Board, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the administrative law judge will be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement will be effective while review is conducted by the Board, unless the Board grants a motion to stay the order. The Board will specify the terms under which any briefs are to be filed. The Board will review the factual determinations of the administrative law judge under the substantial evidence standard.

(c) The decision of the Board shall be issued within 90 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the Administrative Law Judge—i.e., 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsider-

ation has been filed with the Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the party charged has violated the law, the ARB shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney and expert witness fees) reasonably incurred. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(e) If the ARB concludes that the party charged has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person reasonable attorney fees, not exceeding \$1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

[69 FR 17591, Apr. 5, 2004, as amended at 85 FR 30622, May 20, 2020; 86 FR 1790, Jan. 11, 2021]

Subpart C—Miscellaneous Provisions

§ 1981.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant

Secretary will then determine whether to approve the withdrawal. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 60-day objection period described in §1981.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 60-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(d)(1) Investigative settlements. At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) Adjudicatory settlements. At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement will be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board will constitute the final order of the Secretary and may be enforced pursuant to §1981.113.

§ 1981.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Secretary is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

[69 FR 17591, Apr. 5, 2004, as amended at 85 FR 30622, May 20, 2020]

§ 1981.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1981.114 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties, waive any rule or issue any orders that justice or the administration of the Act requires.