



## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

**20 CFR Parts 641, 655, 658, 667, and 683**

#### **Office of Workers' Compensation Programs**

**20 CFR Part 726**

#### **Office of the Secretary of Labor**

**29 CFR Parts 7, 8, 22, 24, 26, 29, 37, 38, and 96**

#### **Office of Labor-Management Standards**

**29 CFR Parts 417 and 458**

#### **Wage and Hour Division**

**29 CFR Parts 500, 525, 530, and 580**

#### **Occupational Safety and Health Administration**

**29 CFR Parts 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, and 1988**

#### **Office of Federal Contract Compliance Programs**

**41 CFR Part 60-30**

**RIN 1290-AA28**

### **Rules of Practice and Procedure Concerning Filing and Service and Amended Rules**

#### **Concerning Filing and Service**

**AGENCY:** Employment and Training Administration, Office of Workers' Compensation Programs, Office of the Secretary, Office of Labor-Management Standards, Wage and Hour Division, Occupational Safety and Health Administration, Office of Federal Contract Compliance Programs.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Department of Labor (Department or DOL) is issuing this Notice of Proposed Rulemaking (NPRM) to seek public comments on a proposal to require electronic

filing (e-filing) and make acceptance of electronic service (e-service) automatic for attorneys and non-attorney representatives representing parties in proceedings before the Administrative Review Board (Board), unless the Board authorizes non-electronic filing and service for good cause. Self-represented persons will have the option of e-filing or of filing papers by conventional means. This proposed rule would establish a new part containing rules of practice and procedure for the Board and amend existing regulations concerning filing and service that would apply where a governing statute or executive order does not establish contrary rules of filing and service. It would also make other minor corrections to update existing regulations.

**DATES:** The Department invites interested persons to submit comments on the proposed rule. To ensure consideration, comments must be in writing and must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may send comments, identified by Regulatory Identification Number (RIN) 1290-AA28, only by the following method: Electronic Comments. Submit comments through the Federal eRulemaking Portal <http://www.regulations.gov>. To locate the proposed rule, use key words such as “Administrative Review Board” to search documents accepting comments.

Follow the instructions for submitting comments. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking. *Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will generally be posted without change to <https://www.regulations.gov>, including any personal information provided. If you need assistance to review the comments or the proposed rule, the Department will consider providing the comments and the proposed rule in other formats upon request. For assistance to review the comments or obtain the proposed rule in an alternate format, contact Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202-693-6319 or [Shepherd.Thomas@dol.gov](mailto:Shepherd.Thomas@dol.gov).

Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202-693-6319 or Shepherd.Thomas@dol.gov.

**I. SUPPLEMENTARY INFORMATION:** This preamble is divided into four sections:

Section I describes the process of rulemaking using a direct final rule with a companion proposed rule; Section II provides general background information on the development of the proposed rulemaking; Section III is a discussion of the proposed changes to the regulatory text; and Section IV covers the administrative requirements for this proposed rulemaking.

**II. Proposed Rule Published Concurrently with Companion Direct Final Rule**

The Department is simultaneously publishing with this proposed rule an identical “direct final” rule elsewhere in this issue of the Federal Register. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. The proposed rule then provides the procedural framework to finalize the rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule is suitable for direct final rulemaking. The proposed enactment of the Board’s procedural regulations and proposed revisions to existing program regulations would require parties to use the Board’s electronic system for filing and serving documents unless exempted by the Board, as well as make technical corrections to addresses, add cross-references to rules of practice and procedure, and specify where the Secretary has delegated authority under a program to the ARB. Some parties are already filing documents through the Board’s existing electronic system on a voluntary basis. Moreover, this

system is similar to those used by courts and other administrative agencies and will thus be familiar to some representatives. The proposed rule would also give self-represented (pro se) parties the option to file and serve documents through the electronic system or via conventional methods. These changes to the Board's procedures and practices should not be controversial. The Department has determined that this rule is exempt from the notice and comment requirements under 5 U.S.C. 553(b) as a rule of agency practice and procedure. Nonetheless, the agency has decided to allow for public input by issuing a direct final rule and concurrent notice of proposed rulemaking.

The comment period for this proposed rule runs concurrently with the comment period for the direct final rule. Any comments received in response to this proposed rule will also be considered as comments regarding the direct final rule and vice versa. For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the direct final rule would be ineffective without the addition.

The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community.

### **III. Background of this rulemaking**

The Department is proposing a rule that would make e-filing mandatory and acceptance of e-service automatic for parties before the Administrative Review Board represented by attorneys and non-attorney representatives. It proposes to do this by enacting its own rules of practice and procedure and amending existing program regulations. Currently, e-filing is optional

and e-service is not available through the Board's existing electronic system: *DOL Appeals*. As a result, the Board receives filings in both paper and electronic form. The Board's long-term goal is to have entirely electronic case files (e-case files), which would significantly benefit both the Board and the participants in Board appeals by allowing the Board to more efficiently process incoming documents, reducing the time it takes to adjudicate claims. Requiring attorneys and non-attorney representatives to use e-filing and e-service will help the Board move toward this goal.

The Board currently uses *DOL Appeals*, a consolidated web-based case tracking system deployed in FY2011 to replace individual legacy applications and streamline business processes specific to each of the three Adjudicatory Boards in the Department: the Board, the Benefits Review Board (BRB), and the Employees' Compensation Appeals Board (ECAB). The Board has been delegated authority by the Secretary of Labor to issue decisions on appeal in cases arising under a variety of worker protection laws, including those governing environmental, transportation, and securities whistleblower protections; H-1B immigration provisions; child labor; employment discrimination; job training; seasonal and migrant workers; and Federal construction and service contracts. The BRB reviews appeals of administrative law judges' decisions arising under the Black Lung Benefits Act, the Longshore and Harbor Workers' Compensation Act and its extensions. ECAB hears appeals taken from determinations and awards under the Federal Employees' Compensation Act with respect to claims of Federal employees injured in the course of their employment.

The *DOL Appeals* case management system has provided a broad range of capabilities to the Boards' staff for inputting, processing, tracking, managing, and reporting specific details on thousands of cases since its initial implementation. In FY2013, the system was enhanced to provide access to the general public. Currently, more than 1,400 individuals are registered users of the *DOL Appeals* system. Users have the ability to check their case status, electronically file motions and briefs, and receive Board issuances electronically. However, users who e-file

documents must still serve those documents on other parties by some other method (typically mail, commercial delivery, or electronic mail), as *DOL Appeals* does not have an automatic e-service function like that of the Federal courts' electronic filing and service systems. Moreover, because e-filing is optional, the Board continues to receive many paper filings, including from attorneys and non-attorney representatives.

At present, the Board lacks sufficient resources to digitally image all pleadings received in paper form, and that option is unduly burdensome and labor intensive. Furthermore, if e-filing remains optional, it is unlikely that the Board will achieve the goal of completely electronic case files. If, however, parties are required to e-file all documents through the Department's electronic case management system, imaging the remaining paper pleadings from authorized parties would be more manageable for the Board. In addition, greater utilization of e-filing and e-service will reduce case processing times by eliminating the timeframes required to allow for the delivery of traditional mailings. These time savings will allow the Board to more efficiently process appeals without any sacrifice to quality of work and will also greatly reduce mailing and copying costs for both the Board and the parties.

Additionally, in an effort to improve e-filing and e-service Department-wide, the rule amends provisions regarding filing and service with the Office of Administrative Law Judges (OALJ) for consistency with proposed amendments to the OALJ rules of practice and procedure in 29 CFR part 18.

#### **IV. Discussion of Changes**

##### **A. Administrative Review Board Rules of Practice and Procedure**

The Department proposes to add a new section to the Code of Federal Regulations at 29 CFR part 26 in order to establish rules of practice and procedure for the Board regarding filing and service and to address some general procedural matters.

##### *§ 26.1 Purpose and Scope.*

This section is a new provision addressing the purpose of part 26 and the scope of the Board's authority. Proposed paragraph (a) provides that part 26 contains the rules of practice of the Board and that these rules shall govern all appeals and proceedings before the Board, except where inconsistent with a governing statute, regulation, or executive order. Proposed paragraph (b) provides that the Board has authority to act as the authorized representative of the Secretary of Labor in review or on appeal of decisions and recommendations, as provided in Secretary's Order 01-2020. The Board shall act as fully and finally as the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01-2020 (or any successor to that order).

*§ 26.2 General Procedural Matters.*

This section is a new provision containing procedural provisions. Proposed paragraph (a) supplies definitions. Proposed paragraph (a)(1) defines the *ARB* to mean the Administrative Review Board. Proposed paragraph (a)(2) defines *Electronic case management system* to mean the Department of Labor's electronic filing and electronic service system for adjudications.

Proposed paragraph (b) addresses computation of time. Proposed paragraph (b)(1) provides that when computing a time period stated in days, the day of the event that triggers the period should be excluded; every day, including intermediate Saturdays, Sundays, and legal holidays, should be counted; and the last day of the period should be included, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday. Proposed paragraph (b)(2) addresses when the "last day" ends. Proposed paragraph (b)(2)(i) provides that for electronic filing via the Department's electronic case management system or via other electronic means, the "last day" ends at 11:59:59 pm Eastern Time on the due date. The Board chose this time zone because of its location in Washington, DC. Proposed paragraph (b)(2)(ii) provides that for non-electronic filing, the "last day" ends at the time the office of the Clerk of the Appellate Boards is scheduled to close in Washington, D.C on the due date. These rules are generally consistent with the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 6(a), and the Federal Rules of Appellate Procedure, *see* Fed.

R. App. P. 26(a)(4). This provides a default where the applicable statute, regulation, executive order, or judge's order is silent. Proposed paragraph (c) provides the Board's mailing address.

*§ 26.3 Filing.*

This section is a new provision containing all filing requirements. Proposed paragraph (a) governs e-filing through the Department's electronic case management system. Proposed paragraph (a)(1) requires attorneys and lay representatives to file all petitions, pleadings, exhibits, and other documents with the Board via the Department's electronic case management system, and notes that paper copies are not required unless requested by the Board. As discussed above, mandating electronic filing and automatically serving documents electronically filed through the system will benefit the parties and improve case processing. This requirement would apply only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, would allow the Office of Administrative Law Judges to update its notices of appeal rights so that by the time e-filing is mandatory, parties will have received a notice of appeal rights with updated information.

Although Federal agencies are required by law to provide information and services via the Internet, agencies must also consider the impact on persons without access to the Internet and, to the extent practicable, ensure that the availability of government services has not been diminished for such persons. *See* 44 U.S.C. § 3501. Accordingly, the Department proposes to authorize non-electronic filing and service for good cause and will make e-filing and e-service optional for self-represented parties. The Board notes in this regard that e-filing is generally mandatory for attorneys in the Federal district courts and U.S. Courts of Appeals, unless an exemption for good cause is granted; only self-represented parties have the option of filing pleadings in paper form. Accordingly, proposed paragraph (a)(2) provides that attorneys and lay representatives may request an exemption to e-filing for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

Proposed paragraph (a)(3) allows self-represented (*i.e., pro se*) parties to file in either electronic or non-electronic format. This gives these parties the flexibility to easily participate in their cases.

Proposed paragraph (a)(4) provides that documents filed via the Department's electronic case management system are filed when received, and are received as of the date and time recorded by the system. Paragraph (a)(5) allows for electronic signatures when a filing is made through a registered user's account and authorized by that person, along with the person's name. This is consistent with the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(d)(3) and the Federal Rules of Appellate Procedure, *see* Fed. R. App. P. 25(2)(B)(iii). Many program regulations require filed documents to be signed, and this provision allows filers to comply while filing via the Department's electronic case management system.

Proposed paragraph (a)(6) provides that a person who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the Board. The Board encourages filers to retain documentation of the failure in these instances. Additionally, if technical malfunction or other issue prevents access to the Department's case management system for a protracted period, the Board by special order may provide appropriate relief pending restoration of electronic access.

Proposed paragraph (b) addresses alternate methods of filing for persons who are excepted from e-filing or who have opted not to use e-filing and provides that documents filed using methods other than the Department's electronic case management system (*e.g.*, by e-mail or mail) are considered filed when received by the Clerk of the Appellate Boards. This is similar to the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(d)(2), and provides a default for when laws governing a particular program do not specify the date of filing.

#### § 26.4 Service.

This section contains all service requirements. Proposed paragraph (a) addresses electronic service. Proposed paragraph (a)(1) provides that electronic service may be completed

by e-mail if consented to in writing by the party being served. Proposed paragraph (a)(2) deems service completed by sending the document to a user registered with the Department's electronic case management system by filing via this system. This is consistent with the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(b)(2)(E), and the Federal Rules of Appellate Procedure, *see* Fed. R. App. P. 25(c)(2), and provides a default for when laws governing a particular program do not specify the date of service. Proposed paragraph (a)(2) further provides that registering to use the Department's electronic case management system constitutes consent to service through the system. The Board would also issue decisions and orders electronically to registered users who are parties to a case.

Proposed paragraph (b) addresses non-electronic service and allows for service to be completed by personal delivery, mail, or delivery via commercial carrier.

Proposed paragraph (c) provides the effective date of each form of service. Proposed paragraph (c)(1) provides that service by personal delivery is effected on the date the document is delivered to the person being served. Proposed paragraph (c)(2) provides that service by mail or commercial carrier is effected on the date the document is mailed or delivered to the commercial carrier. Proposed paragraph (c)(3) provides that service by electronic means, including via the Department's electronic case management system and via e-mail, is effective on sending. This is similar to the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(b)(2), and provides a default for when laws governing a particular program do not specify the date of service.

## B. Additional changes

The Department proposes to revise several parts of the Code of Federal Regulations: 20 CFR parts 641, 655, 658, 667, 683, and 726; 29 CFR parts 7, 8, 22, 24, 29, 37, 38, 96, 417, 458, 500, 525, 530, 580, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987 and 1988; and 41 CFR part 60-30 to harmonize the filing provisions with 29 CFR part 26 and improve e-filing and e-service Department-wide.

1. Changes to requirements for filing and service by mail or personal delivery

Many regulations require parties to file and serve documents by mail or by personal delivery in cases pending before the Board. To ensure that the regulations allow for e-filing and e-service through the Department's electronic case management system, and via e-mail when permissible, the Department proposes to remove requirements for filing and service by mail and personal delivery to allow for e-filing and e-service, except where required by statute. Using the general terms "filing" and "service" will allow for all forms of filing and service permitted by 29 CFR part 26. The Department also proposes to cross-reference the Board's rules of practice and procedure at 29 CFR part 26 and the OALJ's rules of practice and procedure at 29 CFR part 18 where necessary to clarify the application of those parts.

Further, in 29 CFR parts 24 and 1978-88, where the Occupational Safety and Health Administration (OSHA) is required to deliver its findings and orders by certified mail, the Department proposes to allow OSHA to deliver such findings and orders by means that allow it to confirm delivery to all parties of record and each party's legal counsel. This would provide flexibility to the agency and allow for electronic delivery when appropriate.

2. Changes to requirements to send copies of documents

Many regulations require parties to send additional paper copies of all documents to the Board. To allow for better transition to full electronic case management and to simplify the filing process for parties, the Department proposes to remove requirements to send copies of all documents to the Board. Paper copies are not necessary when e-filing, and the Board no longer needs multiple paper copies from self-represented parties or those who are granted an exemption from e-filing.

3. Nomenclature and other technical changes

To update the regulations for clarity, accuracy, and to comply with 29 CFR part 26, the Department proposes to make several technical changes to the regulations. Specifically, the

Department proposes to remove outdated mailing addresses for both the Board and the Office of Administrative Law Judges. The Department also proposes to update the regulations that require documents to be filed with the Executive Director of the Board to require that documents be filed the Clerk of the Appellate Boards. The Department also proposes to update the authorities section in 29 CFR parts 7, 8, and 458 to include the applicable Secretary’s Order, Secretary’s Order 01-2020. Finally, the Department proposes to update the pronouns in 29 CFR 417.15 to account for a previous change from “Secretary” to “Board.”

#### 4. Changes to references to the Secretary

The Department proposes to revise references to the “Secretary” or the “authority head” to the “Administrative Review Board,” “Board,” or “ARB” to clarify the authority and responsibilities of the Board. Many regulations, particularly older ones, contain references to the “Secretary” or “authority head” for responsibilities that have been delegated to the Board by the Secretary. Where necessary, these changes are accompanied by a provision allowing for discretionary review by the Secretary, in accordance with Secretary’s Order 01-2020 (or any successor to that order). In such cases, Board decisions would become final in accordance with the finality provisions of Secretary’s Order 01-2020, or any successor to that order.

### **V. Administrative Requirements of the Proposed Rulemaking**

*Executive Orders 12866, Regulatory Planning and Review; 13563, Improving Regulation and Regulatory Review; and 13777, Reducing Regulation and Controlling Regulatory Costs*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior

regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866. The Department of Labor, in coordination with the Office of Management and Budget (OMB), determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the rule will not have an annual effect on the economy of \$100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the rule does not raise a novel legal or policy issue arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

OMB has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

#### *Regulatory Flexibility Act of 1980*

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act, the regulatory flexibility requirements of the Regulatory Flexibility Act, 5 U.S.C. § 601, do not apply to this rule. *See* 5 U.S.C. § 601(2).

#### *Paperwork Reduction Act (PRA)*

The Department has determined that this proposed rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. §§ 3501 *et seq.* (PRA), as this rulemaking involves administrative actions to which the Federal government is a party or that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

*Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism*

The Department has reviewed this proposed rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1501 *et seq.*, and has found no potential or substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by state, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

*Executive Order 13175, Consultation and Coordination with Indian Tribal Governments*

The Department has reviewed this proposed rule in accordance with Executive Order 13175 and has determined that it does not have “tribal implications.” The proposed rule does not “have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

*Executive Order 13211, Energy Supply, Distribution, or Use*

The Department has reviewed this proposed rule and has determined that the provisions of Executive Order 13211 are not applicable as this is not a significant regulatory action and there are no direct or implied effects on energy supply, distribution, or use.

**List of Subjects**

**20 CFR Part 641**

Administrative practice and procedure, Grievance procedure and appeals process, Senior Community Service Employment Program, Services to participants.

**20 CFR Part 655**

Administrative practice and procedure, Labor certification process for temporary employment.

**20 CFR Part 658**

Administrative practice and procedure, Complaint system, Discontinuation of services, State workforce agency compliance, Federal application of remedial action to state workforce agencies, Wagner-Peyser Act Employment Service.

**20 CFR Part 667**

Adjudication and Judicial Review, Administrative practice and procedure, Oversight and monitoring, Grievance procedures, complaints, and state appeal processes, Sanctions, corrective actions, and waiver of liability, Reporting and recordkeeping requirements, Resolution of findings, Workforce Investment Act.

**20 CFR Part 683**

Adjudication and judicial review, Administrative practice and procedure, Funding and closeout, Grievance procedures, complaints, and state appeal processes, Oversight and resolution of findings, Pay-for-performance contract strategies, Reporting and recordkeeping requirements, Rules, costs, and limitations, Sanctions, corrective actions, and waiver of liability, Workforce Innovation And Opportunity Act.

**20 CFR Part 726**

Administrative practice and procedure, Black lung benefits, Authorization of self-insurers, Civil money penalties.

**29 CFR Part 7**

Administrative practice and procedure, Government contracts, Minimum wages.

**29 CFR Part 8**

Administrative practice and procedure, Government contracts, Minimum wages.

**29 CFR Part 22**

Administrative practice and procedure, Appeal to the Administrative Review Board.

**29 CFR Part 24**

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Retaliation complaints, Environmental protection, Energy Reorganization Act of 1974, as amended.

**29 CFR Part 26**

Administrative practice and procedure.

**29 CFR Part 29**

Administrative practice and procedure, Apprenticeship programs, Labor standards, State apprenticeship agencies.

**29 CFR Part 37**

Administrative practice and procedure, Workforce Investment Act of 1998, Obligations of recipients and governors, Compliance procedures.

**29 CFR Part 38**

Administrative practice and procedure, Compliance procedures, Obligations of recipients and governors, Workforce Innovation and Opportunity Act.

**29 CFR Part 96**

Administrative practice and procedure, Audit requirements, Grants, contracts, and other agreements.

**29 CFR Part 417**

Administrative practice and procedure, Labor management standards, Procedures for removal of local labor organization officers.

**29 CFR Part 458**

Administrative practice and procedure, Standards of conduct, Labor-Management Reporting and Disclosure Act of 1959.

**29 CFR Part 500**

Administrative practice and procedure, Migrant and seasonal agricultural worker protection, Enforcement, Worker protections, Registration, Motor vehicles, Housing.

**29 CFR Part 525**

Administrative practice and procedure, Workers with disabilities, Wage rates, Special certificates.

**29 CFR Part 530**

Administrative practice and procedure, Homeworkers, Employer Certificates, Denial/revocation of certificates, Civil money penalties.

**29 CFR Part 580**

Administrative practice and procedure, Assessing and contesting, Civil money penalties.

**29 CFR Part 1978**

Administrative practice and procedure, Employee protection, Findings, Investigations Litigation, Retaliation complaints, Surface Transportation Assistance Act of 1982

**29 CFR Part 1979**

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Retaliation complaints, Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

**29 CFR Part 1980**

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Sarbanes-Oxley Act of 2002.

**29 CFR Part 1981**

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Pipeline Safety Improvement Act of 2002, Retaliation complaints.

**29 CFR Part 1982**

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, National Transit Systems Security Act, Federal Railroad Safety Act, Retaliation complaints.

**29 CFR Part 1983**

Administrative practice and procedure, Consumer Product Safety Improvement Act of 2008, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

**29 CFR Part 1984**

Administrative practice and procedure, Affordable Care Act, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

**29 CFR Part 1985**

Administrative practice and procedure, Consumer Financial Protection Act of 2010, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

**29 CFR Part 1986**

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Seaman’s Protection Act.

**29 CFR Part 1987**

Administrative practice and procedure, Employee protection, FDA Food Safety Modernization Act, Findings, Investigations, Litigation, Retaliation complaints.

**29 CFR Part 1988**

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Moving Ahead for Progress in the 21st Century Act, Retaliation complaints.

**41 CFR Part 60-30**

Administrative practice and procedure, Equal opportunity, Executive Order 11246, Property management, Public contracts.

For the reasons discussed in the preamble, the Department proposes to amend Titles 20, 29, and 41 of the Code of Federal Regulations as set forth below:

**DEPARTMENT OF LABOR**

**Title 20: Employees’ Benefits**

**Employment and Training Administration**

**PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE**

**EMPLOYMENT PROGRAM**

1. The authority citation for part 641 continues to read as follows:

Authority: 42 U.S.C. 3056 *et seq.*; Pub. L. 114-144, 130 Stat. 334 (Apr. 19, 2016).

2. In § 641.900, revise paragraphs (d) and (e) to read as follows:

**§ 641.900 What appeal process is available to an applicant that does not receive a grant?**

\* \* \* \* \*

(d) A request for a hearing must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, with one copy to the Departmental official who issued the determination.

(e) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01-2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

\* \* \* \* \*

3. In § 641.920, revise paragraphs (d)(1) and (5) to read as follows:

**§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?**

\* \* \* \* \*

(d) \* \* \*

(1) Within 21 days of receipt of the Department's final determination, the grantee may file a request for a hearing with the Chief Administrative Law Judge, United States Department of Labor, in accordance with 29 CFR part 18, with a copy to the Department official who signed the final determination.

\* \* \* \* \*

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for

review with the ARB (established under Secretary's Order No. 01-2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. The Department will deem any exception not specifically argued to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

## **PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES**

4. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103-206, 107 Stat. 2428; sec. 412(e), Pub. L. 105-277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106-95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107-296, 116 Stat. 2135, as amended; Pub. L. 109-423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115-218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103-206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114-74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105-277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114-74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106-95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109-423, 120 Stat. 2900; and 8 CFR 214.2(h).

\* \* \* \* \*

5. In § 655.182, revise paragraphs (f)(3) and (f)(5)(i) to read as follows:

**§ 655.182 Debarment.**

\* \* \* \* \*

(f) \* \* \*

(3) *Hearing.* The recipient of a Notice of Debarment may request a debarment hearing within 30 calendar days of the date of a Notice of Debarment or the date of a final determination of the OFLC Administrator after review of rebuttal evidence submitted pursuant to § 655.182(f)(2). To obtain a debarment hearing, the debarred party must, within 30 days of the date of the Notice or the final determination, file a written request with the Chief Administrative Law Judge, United States Department of Labor, in accordance with 29 CFR part 18, and simultaneously serve a copy to the OFLC Administrator. The debarment will take effect 30 days from the date the Notice of Debarment or final determination is issued, unless a request for review is properly filed within 30 days from the issuance of the Notice of Debarment or final determination. The timely filing of a request for a hearing stays the debarment pending the outcome of the hearing. Within 10 days of receipt of the request for a hearing, the OFLC Administrator will send a certified copy of the ETA case file to the Chief ALJ by means normally assuring next-day delivery. The Chief ALJ will immediately assign an ALJ to conduct

the hearing. The procedures in 29 CFR part 18 apply to such hearings, except that the request for a hearing will not be considered to be a complaint to which an answer is required.

\* \* \* \* \*

(5) *Review by the ARB.* (i) Any party wishing review of the decision of an ALJ must, within 30 days of the decision of the ALJ, petition the ARB to review the decision in accordance with 29 CFR part 26. Copies of the petition must be served on all parties and on the ALJ. The ARB will decide whether to accept the petition within 30 days of receipt. If the ARB declines to accept the petition, or if the ARB does not issue a notice accepting a petition within 30 days after the receipt of a timely filing of the petition, the decision of the ALJ will be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ will be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding.

\* \* \* \* \*

6. In § 655.473, revise paragraphs (f)(3)(i) and (f)(5)(i) to read as follows:

**§ 655.473 Debarment.**

\* \* \* \* \*

(f) \* \* \*

(3) *Request for review.* (i) The recipient of a Notice of Debarment or Final Determination seeking to challenge the debarment must request review of the debarment within 30 calendar days of the date of the Notice of Debarment or the date of the Final Determination by the OFLC Administrator after review of rebuttal evidence submitted under paragraph (f)(2) of this section. A request for review of debarment must be filed in writing with the Chief ALJ, United States Department of Labor, in accordance with 29 CFR part 18, with a simultaneous copy served on the OFLC Administrator; the request must clearly identify the particular debarment determination for which review is sought; and must set forth the particular grounds for the

request. If no timely request for review is filed, the debarment will take effect on the date specified in the Notice of Debarment or Final Determination, or if no date is specified, 30 calendar days from the date the Notice of Debarment or Final Determination is issued.

\* \* \* \* \*

(5) *Review by the ARB.* (i) Any party wishing review of the decision of an ALJ must, within 30 calendar days of the decision of the ALJ, petition the ARB to review the decision in accordance with 29 CFR part 26. Copies of the petition must be served on all parties and on the ALJ. The ARB will decide whether to accept the petition within 30 calendar days of receipt. If the ARB declines to accept the petition, or if the ARB does not issue a notice accepting a petition within 30 calendar days after the receipt of a timely filing of the petition, the decision of the ALJ is the final agency action. If a petition for review is accepted, the decision of the ALJ will be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding.

\* \* \* \* \*

7. In § 655.845, revise paragraph (f) to read as follows:

**§655.845 What rules apply to appeal of the decision of the administrative law judge?**

\* \* \* \* \*

(f) All documents submitted to the Board shall be filed with the Administrative Review Board in accordance with 29 CFR part 26. Documents are not deemed filed with the Board until actually received by the Board. All documents, including documents filed by mail, shall be received by the Board either on or before the due date.

\* \* \* \* \*

8. In § 655.1245, revise paragraph (f) to read as follows:

**§655.1245 Who can appeal the ALJ's decision and what is the process?**

\* \* \* \* \*

(f) All documents submitted to the Board must be filed with the Administrative Review Board in accordance with 29 CFR part 26. Documents are not deemed filed with the Board until actually received by the Board. All documents, including documents filed by mail, must be received by the Board either on or before the due date.

\* \* \* \* \*

**PART 658 ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE**

9. The authority citation for part 658 continues to read as follows:

Authority: Secs. 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

10. In § 658.710, revise paragraph (d) to read as follows:

**§ 658.710 Decision of the Administrative Law Judge.**

\* \* \* \* \*

(d) If the case involves the decertification of an appeal to the SWA, the decision of the ALJ must contain a notice stating that, within 30 calendar days of the decision, the SWA or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by filing an appeal with the Administrative Review Board in accordance with 29 CFR part 26.

**PART 667 ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT**

11. The authority citation for part 667 continues to read as follows:

Authority: Subtitle C of Title I, Sec. 506(c), Pub. L. 105-220, 112 Stat. 936 (20 U.S.C. 9276(c)); Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

12. In § 667.800, revise paragraph (d) to read as follows:

**§ 667.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?**

\* \* \* \* \*

(d) A request for a hearing must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, with one copy to the Departmental official who issued the determination.

\* \* \* \* \*

13. In § 667.830, revise paragraph (b) to read as follows:

**§667.830 When will the Administrative Law Judge issue a decision?**

\* \* \* \* \*

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01-2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

**PART 683—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT**

14. The authority citation for Part 683 is revised to read as follows:

Authority: Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 186, 189, 195, 503, Public Law 113-128, 128 Stat. 1425 (Jul. 22, 2014).

15. In § 683.800, revise paragraph (d) to read as follows:

**§ 683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?**

\* \* \* \* \*

(d) A request for a hearing must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, with one copy to the Departmental official who issued the determination.

\* \* \* \* \*

16. In § 683.830, revise paragraph (b) to read as follows:

**§ 683.830 When will the Administrative Law Judge issue a decision?**

\* \* \* \* \*

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01-2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. Any exception not specifically raised in the petition is deemed to have been waived. A copy of the petition for review also must be sent to the opposing party and if an applicant or recipient, to the Grant Officer and the Grant Officer's Counsel at the time of filing. Unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review, the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

17. The authority citation for part 726 is revised to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.*, 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 *et seq.*; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990 (as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015)); Pub. L. 114-74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary's Order 10-2009, 74 FR 58834.

18. In § 726.308, revise paragraphs (a) and (b) to read as follows:

**§ 726.308 Service and computation of time.**

(a) Service of documents under this subpart while the matter is before OWCP shall be made by delivery to the person, an officer of a corporation, or attorney of record, or by mailing the document to the last known address of the person, officer, or attorney. If service is made by mail, it shall be considered complete upon mailing. Unless otherwise provided in this subpart, service need not be made by certified mail. If service is made by delivery, it shall be considered complete upon actual receipt by the person, officer, or attorney; upon leaving it at the person's, officer's, or attorney's office with a clerk or person in charge; upon leaving it at a conspicuous place in the office if no one is in charge; or by leaving it at the person's or attorney's residence.

(b) Service made after a complaint is filed under § 726.309 must be made in accordance with 29 CFR part 18, as appropriate. When proceedings are initiated for review by the Administrative Review Board under § 726.314, service must be made in accordance with 29 CFR part 26, as appropriate.

\* \* \* \* \*

19. In § 726.314, revise the section heading and paragraph (a) to read as follows:

**§ 726.314 Review by the Administrative Review Board.**

(a) The Director or any party aggrieved by a decision of the Administrative Law Judge may petition the Administrative Review Board (Board) for review of the decision by filing a petition within 30 days of the date on which the decision was issued. Any other party may file a

cross-petition for review within 15 days of its receipt of a petition for review or within 30 days of the date on which the decision was issued, whichever is later. Copies of any petition or cross-petition shall be served on all parties and on the Chief Administrative Law Judge.

\* \* \* \* \*

20. Revise § 726.316 to read as follows:

**726.316 Filing and service.**

(a) *Filing.* All documents submitted to the Administrative Review Board (Board) shall be filed in accordance with 29 CFR part 26.

(b) *Computation of time for delivery by mail.* Documents are not deemed filed with the Board until actually received by the Board either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time was made by mail.

(c) *Manner and proof of service.* A copy of each document filed with the Board shall be served upon all other parties involved in the proceeding in accordance with 29 CFR part 26.

21. Revise § 726.317 to read as follows:

**§ 726.317 Discretionary review.**

(a) Following receipt of a timely petition for review, the Administrative Review Board (Board) shall determine whether the decision warrants review, and shall send a notice of such determination to the parties and the Chief Administrative Law Judge. If the Board declines to review the decision, the Administrative Law Judge's decision shall be considered the final decision of the agency. The Board's determination to review a decision by an Administrative Law Judge under this subpart is solely within the discretion of the Board.

(b) The Board's notice shall specify:

(1) The issue or issues to be reviewed; and

(2) The schedule for submitting arguments, in the form of briefs or such other pleadings as the Board deems appropriate.

(c) Upon receipt of the Board notice, the Director shall forward the record to the Board.

22. Revise § 726.318 to read as follows:

**§ 726.318 Decision of the Administrative Review Board.**

The Administrative Review Board's (Board) review shall be based upon the hearing record. The findings of fact in the decision under review shall be conclusive if supported by substantial evidence in the record as a whole. The Board's review of conclusions of law shall be de novo. Upon review of the decision, the Board may affirm, reverse, modify, or vacate the decision, and may remand the case to the Office of Administrative Law Judges for further proceedings. The Board's decision shall be served upon all parties and the Chief Administrative Law Judge in accordance with 29 CFR part 26.

**Title 29: Labor**

**Office of the Secretary of Labor**

**PART 7—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS**

23. The authority citation for part 7 is revised to read as follows:

Authority: Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301, 3 CFR, 1949-1953 Comp., p. 1007; sec. 2, 48 Stat. 948 as amended; 40 U.S.C. 276c; secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331; 65 Stat. 290; 36 FR 306, 8755; Secretary's Order No. 01-2020, 85 FR 13186 (March 6, 2020).

24. Revise § 7.3 to read as follows:

**§ 7.3 Where to file.**

The petition accompanied by a statement of service shall be filed with the Administrative Review Board, U.S. Department of Labor, in accordance with 29 CFR part 26. In addition, copies of the petition shall be served upon each of the following:

(a) The Federal, State, or local agency, or agencies involved;

(b) The officer issuing the wage determination; and

(c) Any other person (or the authorized representatives of such persons) known, or reasonably expected, to be interested in the subject matter of the petition.

25. Revise § 7.7 to read as follows:

**§ 7.7 Presentations of other interested persons.**

Interested persons other than the petitioner shall have a reasonable opportunity as specified by the Board in particular cases to submit to the Board written data, views, or arguments relating to the petition. Such matter should be filed with the Administrative Review Board, U.S. Department of Labor, in accordance with 29 CFR part 26. Copies of any such matter shall be served on the petitioner and other interested persons.

26. In § 7.9, revise paragraph (a) to read as follows:

**§ 7.9 Review of decisions in other proceedings.**

(a) Any party or aggrieved person shall have a right to file a petition for review with the Board within a reasonable time from any final decision in any agency action under part 1, 3, or 5 of this subtitle.

\* \* \* \* \*

27. Revise § 7.12 to read as follows:

**§ 7.12 Intervention; other participation.**

(a) For good cause shown, the Board may permit any interested person or party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing and shall state with precision and particularity:

- (1) The petitioner's relationship to the matters involved in the proceedings; and
- (2) The nature of the presentation which he would make.

(b) Copies of the petition shall be served to all parties or interested persons known to participate in the proceeding, who may respond to the petition. Appropriate service shall be made

of any response.

28. Amend § 7.16 by:

- a. Revising paragraph (a);
- b. Removing paragraph (b);
- c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c); and
- d. Revising newly redesignated paragraph (b).

The revisions read as follows:

**§ 7.16 Filing and service.**

(a) *Filing.* All papers submitted to the Board under this part shall be filed with the Clerk of the Appellate Boards, U.S. Department of Labor.

(b) *Manner of service.* Service under this part shall be by the filing party or interested person and in accordance with 29 CFR part 26. Service by mail is complete on mailing.

\* \* \* \* \*

**PART 8—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL SERVICE CONTRACTS**

29. The authority citation for part 8 is revised to read as follows:

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 76 Stat. 357-359, 40 U.S.C. 327-332; Secretary's Order No. 01-2020, 85 FR 13186 (March 6, 2020).

30. Amend § 8.10 by:

- a. Revising paragraph (a);
- b. Removing paragraph (b);
- c. Redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d); and
- d. Revising newly redesignated paragraph (b).

The revisions read as follows:

**§ 8.10 Filing and service.**

(a) *Filing.* All papers submitted to the Board under this part shall be filed with the Clerk of the Appellate Boards, U.S. Department of Labor.

(b) *Manner of service.* Service under this part shall be in accordance with 29 CFR part 26. Service by mail is complete on mailing. For purposes of this part, filing is accomplished upon the day of service, by mail or otherwise.

\* \* \* \* \*

31. In § 8.12, by revise the introductory text to read as follows:

**§ 8.12 Intervention; other participation.**

For good cause shown, the Board may permit any interested party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing and shall state with precision and particularity:

\* \* \* \* \*

**PART 22—PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986**

32. The authority citation for part 22 continues to read as follows:

Authority: Pub. L. 99-509, §§ 6101-6104, 100 Stat. 1874, 31 U.S.C. 3801-3812.

33. In § 22.2:

- a. Redesignate paragraphs (b) through (r) as paragraphs (c) through (s); and
- b. Add new paragraph (b).

The addition reads as follows:

**§ 22.2 Definitions**

\* \* \* \* \*

(b) *ARB* means the Administrative Review Board delegated to act as the authorized representative of the Secretary of Labor in review or on appeal of decisions and recommendations as provided in Secretary’s Order 01-2020 (or any successor to that order).

\* \* \* \* \*

34. In § 22.10, remove the words “authority head” and add in their place the word “ARB” wherever they occur in paragraphs (h) through (k) and revise paragraph (l).

The revision reads as follows:

**§ 22.10 Default upon failure to file an answer.**

\* \* \* \* \*

(l) If the ARB decides that the defendant’s failure to file a timely answer is not excused, the ARB shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the ARB issues such decision and it becomes final in accordance with Secretary’s Order 01–2020 (or any successor to that order).

35. In § 22.12, revise paragraph (a) to read as follows:

**§ 22.12 Notice of hearing.**

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by 29 CFR part 18. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

\* \* \* \* \*

36. In § 22.14, revise paragraph (a)(2) to read as follows:

**§ 22.14 Separation of functions.**

(a) \* \* \*

(2) Participate or advise in the initial decision or the review of the initial decision by the ARB, except as a witness or a representative in public proceedings; or

\* \* \* \* \*

37. In § 22.16, revise paragraph (f)(3) to read as follows:

**§ 22.16 Disqualification of reviewing official or ALJ.**

\* \* \* \* \*

(f) \* \* \*

(3) If the ALJ denies a motion to disqualify, the ARB may determine the matter only as part of its review of the initial decision upon appeal, if any.

38. In § 22.26, revise paragraphs (b) and (c) to read as follows:

**§ 22.26 Form, filing and service of papers.**

\* \* \* \* \*

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 22.8 shall be made in accordance with 29 CFR part 18. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document, setting forth the manner of service, shall be proof of service.

**§ 22.31 [Amended]**

39. In § 22.31, remove the words “authority head” and add in their place the word “ARB” in paragraphs (a), (b) introductory text, and (c).

40. In § 22.35, revise paragraph (b) to read as follows:

**§ 22.35 The record.**

\* \* \* \* \*

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ, the ARB, and the authority head.

\* \* \* \* \*

41. In § 22.37, revise paragraphs (c) and (d) to read as follows:

**§ 22.37 Initial decision.**

\* \* \* \* \*

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the ARB. If the ALJ fails to meet the deadline contained in this paragraph, the ALJ shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the ARB, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

42. In § 22.38, revise paragraphs (f) and (g) to read as follows:

**§ 22.38 Reconsideration of initial decision**

\* \* \* \* \*

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the ARB in accordance with § 22.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the ARB in accordance with § 22.39.

43. In § 22.39, revise paragraphs (a), (b)(3), (c), (f), and (h) through (l) to read as follows:

**§22.39 Appeal to ARB.**

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the ARB by filing a notice of appeal with the ARB in accordance with this section and with 29 CFR part 26.

(b) \* \* \*

(3) The ARB may extend the initial 30-day period for an additional 30 days if the defendant files with the ARB a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the ARB, and the time for filing motions for reconsideration under § 22.38 has expired, the ALJ shall forward the record of the proceeding to the ARB.

\* \* \* \* \*

(f) There is no right to appear personally before the ARB.

\* \* \* \* \*

(h) In reviewing the initial decision, the ARB shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the ARB that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the ARB shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The ARB may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision. The ARB's decision is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

(k) The ARB shall promptly serve each party to the appeal with a copy of the decision of the ARB and a statement describing the right of any person determined to be liable for a penalty

or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 22.3 is final and is not subject to judicial review.

44. In § 22.41, revise paragraph (a) to read as follows:

**§ 22.41 Stay pending appeal.**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the ARB.

\* \* \* \* \*

**PART 24 PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISIONS OF SIX ENVIRONMENTAL STATUTES AND SECTION 211 OF THE ENERGY REORGANIZATION ACT OF 1974, AS AMENDED**

45. The authority citation for part 24 is revised to read as follows:

Authority: 15 U.S.C. 2622; 33 U.S.C. 1367; 42 U.S.C. 300j-9(i)BVG, 5851, 6971, 7622, 9610; Secretary of Labor's Order No. 5-2007, 72 FR 31160 (June 5, 2007); Secretary's Order No. 01-2020, 85 FR 13186 (March 6, 2020).

46. In § 24.105, revise paragraph (b) to read as follows:

**§ 24.105 Issuance of findings and orders.**

\* \* \* \* \*

(b) The findings and order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and order will inform the parties of their right to file objections and to request a hearing and provide the address of the Chief Administrative Law Judge. The Assistant Secretary will file

a copy of the original complaint and a copy of the findings and order with the Chief

Administrative Law Judge, U.S. Department of Labor.

\* \* \* \* \*

47. In § 24.106, revise paragraph (a) to read as follows:

**§ 24.106 Objections to the findings and order and request for a hearing.**

(a) Any party who desires review, including judicial review, of the findings and order must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and order pursuant to § 24.105(b). The objection and/or request for a hearing must be in writing and state whether the objection is to the findings and/or the order. The date of the postmark, facsimile transmittal, e-mail communication, or electronic submission 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, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

\* \* \* \* \*

48. In § 24.107, revise paragraph (b) to read as follows:

**§ 24.107 Hearings.**

\* \* \* \* \*

(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 otherwise agreed to by the parties. Hearings will be conducted de novo, on the record.

\* \* \* \* \*

49. In § 24.110, revise paragraphs (a) and (c) to read as follows:

**§ 24.110 Decision and orders of the Administrative Review Board.**

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB, U.S. Department of Labor, in accordance with 29 CFR part 26. The decision of the ALJ will become the final order of the Secretary unless, pursuant to this section, a timely petition for review is filed with the ARB and the ARB accepts the case for review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived. A petition must be filed within 10 business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, email communication, or electronic submission 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 ARB. 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.

\* \* \* \* \*

(c) The final decision of the ARB will be issued within 90 days of the filing of the complaint. The decision will be served upon all parties and the Chief Administrative Law Judge. The final 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.

\* \* \* \* \*

50. Add part 26 to read as follows:

**PART 26—ADMINISTRATIVE REVIEW BOARD RULES OF PRACTICE AND PROCEDURE**

Sec.

26.1 Purpose and scope.

26.2 General procedural matters.

26.3 Filing.  
26.4 Service.

Authority: Secretary's Order 01-2020, 85 FR 13186 (March 6, 2020).

**§ 26.1 Purpose and scope.**

(a) This part contains the rules of practice of the Administrative Review Board (ARB) when it is exercising its authority as described in paragraph (b) of this section. These rules shall govern all appeals and proceedings before the ARB except when inconsistent with a governing statute, regulation, or executive order, in which event the latter shall control.

(b) The ARB has authority to act as the authorized representative of the Secretary of Labor in review or on appeal of decisions and recommendations as provided in Secretary's Order 01-2020 (or any successor to that order). The ARB shall act as fully and finally as the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01-2020 (or any successor to that order).

**§ 26.2 General procedural matters.**

(a) *Definitions.* (1) *ARB* means the Administrative Review Board.

(2) *Electronic case management system* means the Department of Labor's electronic filing and electronic service system for adjudications.

(b) *Computing time.* (1) Unless a different time is set by statute, regulation, executive order, or judge's order, when computing a time period stated in days,

(i) Exclude the day of the event that triggers the period;

(ii) Count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(iii) Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday.

(2) Unless a different time is set by statute, regulation, executive order, or judge's order, the "last day" ends:

(i) For electronic filing via the Department's electronic case management system or via other electronic means, at 11:59:59 Eastern Time on the due date.

(ii) For non-electronic filing, at the time the office of the Clerk of the Appellate Boards is scheduled to close in Washington, D.C. on the due date.

(c) *Mailing address.* The mailing address for the ARB is: Administrative Review Board, Clerk of the Appellate Boards, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, D.C. 20210.

### **§ 26.3 Filing.**

(a) *Filing by electronic submission (e-filing) via the Department's electronic case management system—(1) Attorneys and lay representatives.* Except as otherwise provided in this section, beginning on [DATE 45 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], attorneys and lay representatives must file all petitions, pleadings, exhibits, and other documents with the ARB via the Department's electronic case management system. Paper copies are not required unless requested by the ARB.

(2) *Good cause exception.* Attorneys and lay representatives may request an exemption to e-filing for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

(3) *Self-represented persons.* Self-represented persons may use but are not required to use the Department's electronic case management system to file documents.

(4) *Filing – date of receipt.* Unless a different time is set by statute, regulation, executive order, or judge's order, a document is considered filed when received by the Clerk of the Appellate Boards. Documents filed through the Department's electronic case management system are considered received by the Clerk of the Appellate Boards as of the date and time recorded by the Department's electronic case management system.

(5) *Signing*. A filing made through a registered user's account on the Department's electronic case management system and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(6) *Relief for Technical Failures*. A person who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the ARB. If a technical malfunction or other issue prevents access to the Department's case management system for a protracted period, the ARB by special order may provide appropriate relief pending restoration of electronic access.

(b) *Alternate methods of filing*. Unless a different time is set by statute, regulation, executive order, or judge's order, a document filed using a method other than the Department's electronic case management system is considered filed when received by the Clerk of the Appellate Boards.

#### **§ 26.4 Service.**

(a) *Electronic service*. Electronic service may be completed by

(1) Electronic mail, if consented to in writing by the person served; or

(2) Sending it to a user registered with the Department's electronic case management system by filing via this system. A person who registers to use the Department's case management system is deemed to have consented to accept service through the system.

(b) *Non-electronic service*. Unless otherwise provided by statute, regulation, executive order, or judge's order, non-electronic service may be completed by:

(1) Personal delivery;

(2) Mail; or

(3) Commercial delivery.

(c) *When service is effected*. Unless otherwise provided by statute, regulation, executive order, or judge's order,

(1) Service by personal delivery is effected on the date the document is delivered to the recipient.

(2) Service by mail or commercial carrier is effected on mailing or delivery to the carrier.

(3) Service by electronic means is effected on sending.

## **PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS**

51. The authority citation for part 29 is revised to read as follow:

Authority: Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 3145; 5 U.S.C. 301) Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

52. In § 29.10, revise paragraphs (a) introductory text and (c) to read as follows:

### **§ 29.10 Hearings for deregistration.**

(a) Within 10 days of receipt of a request for a hearing, the Administrator of the Office of Apprenticeship must contact the Department's Office of Administrative Law Judges to request the designation of an Administrative Law Judge to preside over the hearing. The Administrative Law Judge shall give reasonable notice of such hearing to the appropriate sponsor. Such notice will include:

\* \* \* \* \*

(c) The Administrative Law Judge should issue a written decision within 90 days of the close of the hearing record. The Administrative Law Judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the Administrative Review Board in accordance with 29 CFR part 26, specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be served on the opposing party at the same time in accordance with 29 CFR part 26. Thereafter, the decision of the Administrative Law Judge remains final agency action unless

the Administrative Review Board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The Administrative Review Board may set a briefing schedule or decide the matter on the record. The Administrative Review Board must issue a decision in any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

53. In § 29.13, revise paragraph (g) introductory text and paragraph (g)(3) to read as follows:

**§ 29.13 Recognition of State Apprenticeship Agencies.**

\* \* \* \* \*

*(g) Denial of state apprenticeship agency recognition.* A denial by the Office of Apprenticeship of a State Apprenticeship Agency's application for new or continued recognition must be in writing and must set forth the reasons for denial. The notice must be sent by certified mail, return receipt requested. In addition to the reasons stated for the denial, the notice must specify the remedies which must be undertaken prior to consideration of a resubmitted request, and must state that a request for administrative review of a denial of recognition may be made within 30 calendar days of receipt of the notice of denial from the Department. Such request must be filed with the Chief Administrative Law Judge for the Department in accordance with 29 CFR part 18. Within 30 calendar days of the filing of the request for review, the Administrator must prepare an administrative record for submission to the Administrative Law Judge designated by the Chief Administrative Law Judge.

\* \* \* \* \*

(3) Within 20 days of the receipt of the recommended decision, any party may file exceptions. Any party may file a response to the exceptions filed by another party within 10 days of receipt of the exceptions. All exceptions and responses must be filed with the Administrative

Review Board with copies served on all parties and amici curiae in accordance with 29 CFR part 26.

\* \* \* \* \*

**PART 37—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998 (WIA)**

54. The authority citation for part 37 continues to read as follows:

Authority: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801, *et seq.*; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101; Title IX of the Education Amendments of 1972, as amended, 29 U.S.C. 1681; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; and Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

55. In § 37.111, revise paragraph (b)(2) introductory text to read as follows:

**§ 37.111 What hearing procedures does the Department follow?**

\* \* \* \* \*

(b) \* \* \*

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges in accordance with 29 CFR part 18.

\* \* \* \* \*

56. Revise § 37.112 to read as follows:

**§ 37.112 What procedures for initial and final decisions does the Department follow?**

(a) *Initial decision.* After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties in accordance with 29 CFR part 18.

(b) *Exceptions; final decision—(1) Final decision after a hearing.* The initial decision and order becomes the Final Decision and Order of the Secretary unless exceptions are filed by a party or, in the absence of exceptions, the Administrative Review Board (Board) serves notice that it will review the decision.

(i) A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Board and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof, in accordance with 29 CFR part 26.

(ii) Upon receipt of exceptions, the Administrative Law Judge must index and forward the record and the initial decision and order to the Board within three days of such receipt.

(iii) A party filing exceptions must specifically identify the finding or conclusion to which exception is taken. Any exception not specifically urged is waived.

(iv) Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.

(v) Requests for extensions for the filing of exceptions or replies must be received by the Board no later than 3 days before the exceptions or replies are due.

(vi) If no exceptions are filed, the Board may, within 30 days of the expiration of the time for filing exceptions, on its own motion serve notice on the parties that it will review the decision.

(vii) Final decision and order.

(A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Board, within 30

days of the expiration of the time for filing exceptions and replies, has notified the parties that the case is accepted for review.

(B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Board has served notice on the parties that it will review the decision, as provided in paragraph (b)(1)(vi) of this section.

(viii) In any case reviewed by the Board under this paragraph, a decision must be issued within 180 days of the notification of such review. If the Board fails to issue a Decision and Order within the 180-day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary.

(2) *Final Decision where a hearing is waived.* (i) If, after issuance of a Final Determination under § 37.100 or Notification of Breach of Conciliation Agreement under § 37.104, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in § 37.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary, the Secretary may, within 45 days, issue an order terminating or denying the grant or continuation of assistance or imposing other appropriate sanctions for the grant applicant or recipient's failure to comply with the required corrective and/or remedial actions, or referring the matter to the Attorney General for further enforcement action.

**PART 38—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT**

57. The authority citation for part 38 continues to read as follows:

Authority: 29 U.S.C. 3101 *et seq.*; 42 U.S.C. 2000d *et seq.*; 29 U.S.C. 794; 42 U.S.C. 6101 *et seq.*; and 20 U.S.C. 1681 *et seq.*

58. In § 38.111, revise paragraph (b)(2) introductory text to read as follows:

**§ 38.111 Hearing procedures.**

\* \* \* \* \*

(b) \* \* \*

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges in accordance with 29 CFR part 18.

\* \* \* \* \*

59. In § 38.112, revise paragraphs (a) and (b)(1)(i) and (iv) to read as follows:

**§ 38.112 Initial and final decision procedures.**

(a) *Initial decision.* After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties.

(b) \* \* \*

(1) \* \* \*

(i) *Exceptions.* A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Administrative Review Board and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof, in accordance with 29 CFR part 26.

\* \* \* \* \*

(iv) *Reply.* Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding in accordance with 29 CFR part 26.

\* \* \* \* \*

**PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS**

60. The authority citation for part 96 continues to read as follows:

Authority: 31 U.S.C. 7501 *et seq.* and OMB Circular No. A-133, as amended.

61. In § 96.63, revise paragraphs (b)(1)(i) and (b)(4) to read as follows:

**§ 96.63 Federal financial assistance**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may file a request for hearing with the Chief Administrative Law Judge, United States Department of Labor, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

\* \* \* \* \*

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Administrative Review Board (the Board), specifically identifying the procedure or finding of fact, law, or policy with which exception is taken, in accordance with 29 CFR part 26. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary, unless the Board, within 30 days of such filing, has notified the parties that the case has been accepted for review.

\* \* \* \* \*

## **Office of Labor-Management Standards**

### **PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS**

62. The authority for part 417 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 01-2020, 85 FR 13186 (March 6, 2020).

63. In § 417.14, revise paragraph (a) to read as follows:

#### **§ 417.14 Form and time for filing of appeal with the Administrative Review Board**

(a) An interested person may appeal from the Administrative Law Judge's initial decision by filing written exceptions with the Administrative Review Board within 15 days of the issuance of the Administrative Law Judge's initial decision (or such additional time as the Administrative Review Board may allow), together with supporting reasons for such exceptions, in accordance with 29 CFR part 26. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Administrative Review Board, or an appeal containing such matter or lacking in specification of exceptions may be dismissed.

\* \* \* \* \*

64. Revise § 417.15 to read as follows:

#### **§ 417.15 Decision of the Administrative Review Board.**

Upon appeal filed with the Administrative Review Board pursuant to § 417.14, or within its discretion upon its own motion, the complete record of the proceedings shall be certified to it; it shall notify all interested persons who participated in the proceedings; and it shall review the record, the exceptions filed and supporting reasons, and shall issue a decision as to the adequacy of the constitution and bylaws for the purpose of removing officers, or shall order such further proceedings as it deems appropriate. Its decision shall become a part of the record and shall

include a statement of its findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

## **PART 458—STANDARDS OF CONDUCT**

65. The authority for part 458 is revised to read as follows:

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 01-2020, 85 FR 13186 (March 6, 2020).

66. In § 458.88, revise paragraph (c) to read as follows:

### **§ 458.88 Submission of the Administrative Law Judge's recommended decision and order to the Administrative Review Board; exceptions.**

\* \* \* \* \*

(c) Exceptions to the Administrative Law Judge's recommended decision and order may be filed by any party with the Administrative Review Board within fifteen (15) days after service of the recommended decision and order, in accordance with 29 CFR part 26. The Administrative Review Board may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Administrative Review Board.

67. In § 458.90, revise paragraph (a) introductory text to read as follows:

### **§458.90 Briefs in support of exceptions.**

(a) Any brief in support of exceptions shall be filed in accordance with 29 CFR part 26, contain only matters included within the scope of the exceptions, and contain, in the order indicated, the following:

\* \* \* \* \*

## **Wage and Hour Division**

### **PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION**

68. The authority for part 500 continues to read as follows:

Authority: Pub. L. 97-470, 96 Stat. 2583 (29 U.S.C. 1801-1872); Secretary's Order No. 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114-74, 129 Stat 584.

69. In § 500.20, revise paragraph (b) to read as follows:

#### **§ 500.20 Definitions.**

\* \* \* \* \*

(b) *Administrative Law Judge* means a person appointed as provided in title 5 U.S.C. and qualified to preside at hearings under 5 U.S.C. 557. Chief Administrative Law Judge means the Chief Administrative Law Judge, United States Department of Labor.

\* \* \* \* \*

70. In § 500.263, revise the section heading and introductory text to read as follows:

#### **§ 500.263 Authority of the Administrative Review Board.**

The Administrative Review Board may modify or vacate the Decision and Order of the Administrative Law Judge whenever it concludes that the Decision and Order:

\* \* \* \* \*

71. In § 500.264, revise paragraph (a) to read as follows:

#### **§ 500.264 Procedures for initiating review.**

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Administrative Review Board (Board) a petition for issuance of a Notice of Intent as described under § 500.265. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

\* \* \* \* \*

72. Revise 500.265 to read as follows:

**§ 500.265 Implementation by the Administrative Review Board.**

(a) Whenever, on the Administrative Review Board's (Board) own motion or upon acceptance of a party's petition, the Board believes that a Decision and Order may warrant modifying or vacating, the Board shall issue a Notice of Intent to modify or vacate.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Board shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in accordance with 29 CFR part 26.

73. Revise § 500.266 to read as follows:

**§ 500.266 Responsibility of the Office of Administrative Law Judges.**

Upon receipt of the Administrative Review Board's (Board) Notice of Intent to Modify or Vacate a Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, index, certify, and forward a copy of the complete hearing record to the Board.

74. Revise § 500.267 to read as follows:

**§ 500.267 Filing and service.**

(a) *Filing.* All documents submitted to the Administrative Review Board (Board) shall be filed in accordance with 29 CFR part 26.

(b) *Computation of time for delivery.* Documents are not deemed filed with the Board until actually received by that office. All documents, including documents filed by mail, must be received by the Board either on or before the due date.

(c) *Manner and proof of service.* A copy of all documents filed with the Board shall be served upon all other parties involved in the proceeding. Service under this section shall be in accordance with 29 CFR part 26.

75. Revise § 500.268 to read as follows:

**§ 500.268 Decision of the Administrative Review Board.**

(a) The Administrative Review Board's (Board) Decision and Order shall be issued within 120 days from the notice of intent granting the petition, except that in cases involving the review of an Administrative Law Judge decision in a certificate action as described in § 500.224(b), the Board's decision shall be issued within ninety (90) days from the date such notice. The Board's Decision and Order shall be served upon all parties and the Chief Administrative Law Judge, in accordance with 29 CFR part 26.

(b) Upon receipt of an Order of the Board modifying or vacating the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall substitute such Order for the Decision and Order of the Administrative Law Judge.

(c) The Board's decision is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020 (or any successor to that order).

**PART 525 EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES**

76. The authority citation for part 525 continues to read as follows:

Authority: 52 Stat. 1060, as amended (29 U.S.C. 201-219); Pub. L. 99-486, 100 Stat. 1229 (29 U.S.C. 214).

77. In § 525.22, revise paragraphs (e) through (h) to read as follows:

**§ 525.22 Employee's right to petition**

\* \* \* \* \*

(e) The ALJ shall issue a decision within 30 days after the termination of the hearing and shall serve the decision on the Administrator and all interested parties in accordance with 29 CFR part 18. The decision shall contain appropriate findings and conclusions and an order. If the ALJ finds that the special minimum wage being paid or which has been paid is not justified, the order shall specify the lawful rate and the period of employment to which the rate is applicable. In the absence of evidence sufficient to support the conclusion that the proper wage should be less than the minimum wage, the ALJ shall order that the minimum wage be paid.

(f) Within 15 days after the date of the decision of the ALJ, the petitioner, the Administrator, or the employer who seeks review thereof may request review by the Administrative Review Board (Board). The request must be filed in accordance with 29 CFR part 26 and must include a copy of the ALJ's decision. Any other interested party may file a reply thereto with the Board and the Administrator within 5 working days of receipt of such request for review. The request for review and reply thereto shall be transmitted by the Administrator to all interested parties by a method guaranteeing one-day delivery.

(g) The decision of the ALJ shall be deemed to be final agency action 30 days after issuance thereof, unless within 30 days of the date of the decision the Board grants a request to review the decision. Where such request for review is granted, within 30 days after receipt of such request the Board shall review the record and shall either adopt the decision of the ALJ or issue exceptions. The decision of the ALJ, together with any exceptions issued by the Board, shall be deemed to be a final agency action, unless the Secretary exercises discretionary review over the decision and exceptions as provided in Secretary's Order 01-2020 (or any successor to that order).

(h) Within 30 days of issuance of the decision of the ALJ, ARB, or Secretary becoming a final action, any person adversely affected or aggrieved by such action may seek judicial review pursuant to chapter 7 of title 5, United States Code. The record of the case, including the record

of proceedings before the ALJ, shall be transmitted by the Board to the appropriate court pursuant to the rules of such court.

## **PART 530 EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES**

78. The authority citation for part 530 continues to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114-74 at §701, 129 Stat 584.

79. In § 530.403, revise paragraph (c) to read as follows:

### **§ 530.403 Request for hearing.**

\* \* \* \* \*

(c) In the case of an emergency revocation, a request for an administrative hearing shall be filed with the Chief Administrative Law Judge in accordance with 29 CFR part 18, and must be received no later than 20 days after the issuance of the notice referred to in § 530.402 of this subpart.

80. In § 530.406, revise paragraph (c) to read as follows:

### **§ 530.406 Decision and order of Administrative Law Judge.**

\* \* \* \* \*

(c) The decision shall be served on all parties and the Secretary. The decision when served by the Administrative Law Judge shall constitute the final order of the Department of Labor unless the Administrative Review Board, as provided for in § 530.407 of this subpart, determines to review the decision.

### **§ 530.407 [Amended]**

81. In § 530.407, remove the word "Secretary" wherever it occurs and add in its place the words "Administrative Review Board".

### **§ 530.408 [Amended]**

82. In § 530.408, remove the word “Secretary” wherever it occurs and add in its place the words “Administrative Review Board”.

83. Revise § 530.409 to read as follows:

**§ 530.409 Decision of the Secretary.**

The Administrative Review Board’s decision shall be served upon all parties and the Administrative Law Judge. The Administrative Review Board’s decision is subject to discretionary review by the Secretary as provided in Secretary’s Order 01–2020 (or any successor to that order).

84. In § 530.411, revise paragraphs (c), (d), and (f) to read as follows:

**§ 530.411 Emergency certificate revocation procedures.**

\* \* \* \* \*

(c) The Office of Administrative Law Judges shall notify the parties, electronically or at their last known address, of the date, time, and place for the hearing, which shall be no more than 60 days from the date of receipt of the request for the hearing. All parties shall be given at least 5 days’ notice of such hearing. No requests for postponement shall be granted except for compelling reasons.

(d) The Administrative Law Judge shall issue a decision pursuant to § 530.406 of this subpart within 30 days after the termination of a proceeding at which evidence was submitted. The decision shall be served on all parties and the Administrative Review Board (“Board”) and shall constitute the final order of the Department of Labor unless the Board determines to review the decision.

\* \* \* \* \*

(f) The Board’s decision shall be issued within 60 days of the notice by the Board accepting the submission, and shall be served upon all parties and the Administrative Law Judge. The Board’s decision is subject to discretionary review by the Secretary as provided in Secretary’s Order 01–2020 (or any successor to that order).

**PART 580 CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES**

85. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

86. In § 580.8, revise paragraphs (a) and (c) to read as follows:

**§ 580.8 Service and computation of time.**

(a) Service of documents under this subpart shall be made to the individual, an officer of a corporation, or attorney of record in accordance with 29 CFR part 18.

\* \* \* \* \*

(c) Time will be computed in accordance with part 18.

87. In § 580.13, revise paragraphs (b) and (d) to read as follows:

**§ 580.13 Procedures for appeals to the Administrative Review Board.**

\* \* \* \* \*

(b) All documents submitted to the Board shall be filed with the Administrative Review Board in accordance with 29 CFR part 26.

\* \* \* \* \*

(d) A copy of each document filed with the Board shall be served upon all other parties involved in the proceeding in accordance with 29 CFR part 26. Service by mail is deemed effected at the time of mailing to the last known address of the party.

88. Revise § 580.16 to read as follows:

**§ 580.16 Decision of the Administrative Review Board.**

The Board's decision shall be served upon all parties and the Chief Administrative Law Judge.

**Occupational Safety and Health Administration**

**PART 1978—PROCEDURES FOR THE HANDLING OF RETALIATION  
COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE  
SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA), AS AMENDED**

89. The authority citation for part 1978 is revised to read as follows:

Authority: 49 U.S.C. 31101 and 31105; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01-2020, 85 FR 13186 (March 6, 2020).

90. In § 1978.105, revise paragraph (b) to read as follows:

**§ 1978.105 Issuance of findings and preliminary orders.**

\* \* \* \* \*

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or the order and to request a hearing. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, 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 a copy of the original complaint and a copy of the findings and/or order.

\* \* \* \* \*

91. In § 1978.106, revise paragraph (a) to read as follows:

**§ 1978.106 Objections to the findings and the preliminary order and request for a hearing.**

(a) Any party who desires review, including judicial review, must file any objections and a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1978.105(c). The objections and request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order. The date of the postmark, facsimile transmittal, or electronic transmittal is considered 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 and the OSHA official who issued the findings.

\* \* \* \* \*

92. In § 1978.107, revise paragraph (b) to read as follows:

**§ 1978.107 Hearings.**

\* \* \* \* \*

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ 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.

\* \* \* \* \*

93. In § 1978.110, revise paragraph (c) to read as follows:

**§ 1978.110 Decisions and orders of the Administrative Review Board.**

\* \* \* \* \*

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

\* \* \* \* \*

**PART 1979—PROCEDURES FOR THE HANDLING OF DISCRIMINATION  
COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION  
INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY**

94. The authority citation for part 1979 is revised to read as follows:

Authority: 49 U.S.C. 42121; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01-2020, 85 FR 13186 (March 6, 2020).

95. In § 1979.105, revise paragraph (b) to read as follows:

**§ 1979.105 Issuance of findings and preliminary orders.**

\* \* \* \* \*

(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.

\* \* \* \* \*

96. In § 1979.106, revise paragraph (a) to read as follows:

**§ 1979.106 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 30 days of receipt of the findings and preliminary order pursuant to § 1979.105(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.

\* \* \* \* \*

97. In § 1979.107, revise paragraph (b) to read as follows:

**§ 1979.107 Hearings.**

\* \* \* \* \*

(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 as hearings de novo, on the record. Administrative law judges shall have broad discretion to limit discovery in order to expedite the hearing.

\* \* \* \* \*

98. In § 1979.110, revise paragraphs (a) and (c) to read as follows:

**§ 1979.110 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 shall 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 shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or electronic transmittal 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.

\* \* \* \* \*

(c) The decision of the Board shall be issued within 120 days of the conclusion of the hearing, which shall 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 reconsideration 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.

\* \* \* \* \*

**PART 1980—PROCEDURES FOR THE HANDLING OF RETALIATION  
COMPLAINTS UNDER SECTION 806 OF THE SARBANES-OXLEY ACT OF 2002, AS  
AMENDED**

99. The authority citation for part 1980 is revised to read as follows:

Authority: 18 U.S.C. 1514A, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203 (July 21, 2010); Secretary of Labor's Order No. 01-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020, 85 FR 13186 (March 6, 2020).

100. In § 1980.105, revise paragraph (b) to read as follows:

**§ 1980.105**

\* \* \* \* \*

(b) The findings, and where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings, and where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding \$1,000 from the administrative law judge (ALJ) regardless of whether the respondent has filed objections, if the complaint was frivolous or brought in bad faith. The findings, and where appropriate, the preliminary order, also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, 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 a copy of the original complaint and a copy of the findings and/or order.

\* \* \* \* \*

101. In § 1980.106, revise paragraph (a) to read as follows:

**§ 1980.106 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 respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under the Act, must file any objections and/or a request

for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1980.105(b). The objections and/or request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered 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, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

\* \* \* \* \*

102. In § 1980.107, revise paragraph (b) to read as follows:

**§ 1980.107 Hearings.**

\* \* \* \* \*

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ 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. ALJs have broad discretion to limit discovery in order to expedite the hearing.

\* \* \* \* \*

103. In § 1980.110, revise paragraph (c) to read as follows:

**§ 1980.110 Decision and orders of the Administrative Review Board.**

\* \* \* \* \*

(c) The decision of the ARB shall be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the

conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, even if the Assistant Secretary is not a party.

\* \* \* \* \*

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

104. The authority citation for Part 1981 is revised to read as follows:

Authority: 49 U.S.C. 60129; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01-2020, 85 FR 13186 (March 6, 2020).

105. In § 1981.105, revise paragraph (b) to read as follows:

**§ 1981.105 Issuance of findings and preliminary orders.**

\* \* \* \* \*

(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.

\* \* \* \* \*

106. In § 1981.106, revise paragraph (a) to read as follows:

**§ 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.

\* \* \* \* \*

107. In § 1981.107, revise paragraph (b) to read as follows:

**§ 1981.107 Hearings.**

\* \* \* \* \*

(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.

\* \* \* \* \*

108. In § 1981.110, revise paragraph (c) to read as follows:

**§ 1981.110**

\* \* \* \* \*

(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 reconsideration 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.

\* \* \* \* \*

**PART 1982--PROCEDURES FOR THE HANDLING OF RETALIATION  
COMPLAINTS UNDER THE NATIONAL TRANSIT SYSTEMS SECURITY ACT AND  
THE FEDERAL RAILROAD SAFETY ACT**

109. The authority citation for part 1982 is revised to read as follows:

Authority: 6 U.S.C. 1142 and 49 U.S.C. 20109; Secretary of Labor's Order 01-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020, 85 FR 13186 (March 6, 2020).

110. In § 1982.105, revise paragraph (b) to read as follows:

**§ 1982.105 Issuance of findings and preliminary orders.**

\* \* \* \* \*

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and

of the right of the respondent under NTSSA to request award of attorney fees not exceeding \$1,000 from the administrative law judge (ALJ) regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, 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 a copy of the original complaint and a copy of the findings and/or order.

\* \* \* \* \*

111. In § 1982.106, revise paragraph (a) to read as follows:

**§ 1982.106 Objections to the findings and the preliminary order and requests for a hearing.**

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under NTSSA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1982.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered 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, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

\* \* \* \* \*

112. In § 1982.107, revise paragraph (b) to read as follows:

**§ 1982.107 Hearings.**

\* \* \* \* \*

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ 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.

\* \* \* \* \*

113. In § 1982.110, revise paragraph (c) to read as follows:

**§ 1982.110 Decision and orders of the Administrative Review Board.**

\* \* \* \* \*

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

\* \* \* \* \*

**PART 1983—PROCEDURES FOR THE HANDLING OF RETALIATION  
COMPLAINTS UNDER SECTION 219 OF THE CONSUMER PRODUCT SAFETY  
IMPROVEMENT ACT OF 2008**

114. The authority citation for part 1983 is revised to read as follows:

Authority: 15 U.S.C. 2087; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01-2020, 85 FR 13186 (March 6, 2020).

115. In § 1983.105, revise paragraph (b) to read as follows:

**§ 1983.105 Issuance of findings and preliminary orders.**

\* \* \* \* \*

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney's fees not exceeding \$1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, 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 a copy of the original complaint and a copy of the findings and/or order.

\* \* \* \* \*

116. In § 1983.106, revise paragraph (a) to read as follows:

**§ 1983.106 Objections to the findings and the preliminary order and requests for a hearing.**

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees under CPSIA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1983.105. The objections, request for a hearing, and/or request for attorney's fees must be in writing and state whether the objections are 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 is considered 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, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

\* \* \* \* \*

117. In § 1983.107, revise paragraph (b) to read as follows:

**§ 1983.107 Hearings.**

\* \* \* \* \*

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ 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. ALJs have broad discretion to limit discovery in order to expedite the hearing.

\* \* \* \* \*

118. In § 1983.110, revise paragraph (c) to read as follows:

**§ 1983.110 Decision and orders of the Administrative Review Board.**

\* \* \* \* \*

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on

the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

\* \* \* \* \*

## **PART 1984—PROCEDURES FOR THE HANDLING OF RETALIATION**

### **COMPLAINTS UNDER SECTION 1558 OF THE AFFORDABLE CARE ACT**

119. The authority citation for part 1984 is revised to read as follows:

Authority: 29 U.S.C. 218C; Secretary of Labor’s Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary’s Order No. 01-2020, 85 FR 13186 (March 6, 2020).

120. In § 1984.105, revise paragraph (b) as follows:

#### **§ 1984.105 Issuance of findings and preliminary orders.**

\* \* \* \* \*

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party’s legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding \$1,000 from the administrative law judge (ALJ), regardless of whether the respondent has filed objections, if respondent alleges that the complaint was frivolous or brought in bad faith. The findings, and where appropriate, the preliminary order, also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, 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 a copy of the original complaint and a copy of the findings and/or order.

\* \* \* \* \*

121. In § 1984.106, revise paragraph (a) to read as follows:

#### **§ 1984.106 Objections to the findings and the preliminary order and requests for a hearing.**

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under section 18C of the FLSA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1984.105(b). The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings and/or the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered 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, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

\* \* \* \* \*

122. In § 1984.107, revise paragraph (b) to read as follows:

**§ 1984.107 Hearings.**

\* \* \* \* \*

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ 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. ALJs have broad discretion to limit discovery in order to expedite the hearing.

\* \* \* \* \*

123. In § 1984.110, revise paragraph (c) to read as follows:

**§ 1984.110 Decision and orders of the Administrative Review Board.**

\* \* \* \* \*

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

\* \* \* \* \*

**PART 1985—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS  
UNDER THE EMPLOYEE PROTECTION PROVISION OF THE CONSUMER  
FINANCIAL PROTECTION ACT OF 2010**

124. The authority citation for part 1985 is revised to read as follows:

Authority: 12 U.S.C. 5567; Secretary of Labor's Order No. 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020, 85 FR 13186 (March 6, 2020).

125. In § 1985.105, revise paragraph (b) to read as follows:

**§ 1985.105 Issuance of findings and preliminary orders.**

\* \* \* \* \*

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding \$1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the

preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, 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 a copy of the original complaint and a copy of the findings and/or order.

\* \* \* \* \*

126. In § 1985.106, revise paragraph (a) to read as follows:

**§ 1985.106 Objections to the findings and the preliminary order and requests for a hearing.**

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under CFPA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1985.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered 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, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

\* \* \* \* \*

127. In § 1985.107, revise paragraph (b) to read as follows:

**§ 1985.107 Hearings.**

\* \* \* \* \*

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ 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. ALJs have broad discretion to limit discovery in order to expedite the hearing.

\* \* \* \* \*

128. In § 1985.110, revise paragraph (c) to read as follows:

**§ 1985.110 Decision and orders of the Administrative Review Board.**

\* \* \* \* \*

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

\* \* \* \* \*

**PART 1986—PROCEDURES FOR THE HANDLING OF RETALIATION  
COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE  
SEAMAN'S PROTECTION ACT (SPA), AS AMENDED**

129. The authority citation for part 1986 is revised to read as follows:

Authority: 46 U.S.C. 2114; 49 U.S.C. 31105; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01-2020, 85 FR 13186 (March 6, 2020).

130. In § 1986.105, revise paragraph (b) to read as follows:

**§ 1986.105 Issuance of findings and preliminary orders.**

\* \* \* \* \*

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or the order and to request a hearing. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, 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 a copy of the original complaint and a copy of the findings and/or order.

\* \* \* \* \*

131. In § 1986.106, revise paragraph (a) to read as follows:

**§ 1986.106 Objections to the findings and the preliminary order and request for a hearing.**

(a) Any party who desires review, including judicial review, must file any objections and a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1986.105(c). The objections and request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order. The date of the postmark, facsimile transmittal, or electronic transmittal is considered 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, and the OSHA official who issued the findings.

\* \* \* \* \*

132. In § 1986.107, revise paragraph (b) to read as follows:

**§ 1986.107 Hearings.**

\* \* \* \* \*

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ 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. ALJs have broad discretion to limit discovery in order to expedite the hearing.

\* \* \* \* \*

133. In § 1986.110, revise paragraph (c) to read as follows:

**§ 1986.110 Decision and orders of the Administrative Review Board.**

\* \* \* \* \*

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision also will be served on the Assistant Secretary and on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

\* \* \* \* \*

**PART 1987—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS  
UNDER SECTION 402 OF THE FDA FOOD SAFETY MODERNIZATION ACT**

134. The authority citation for part 1987 is revised to read as follows:

Authority: 21 U.S.C. 399d; Secretary of Labor's Order No. 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020, 85 FR 13186 (March 6, 2020).

135. In § 1987.105, revise paragraph (b) to read as follows:

**§ 1987.105 Issuance of findings and preliminary orders.**

\* \* \* \* \*

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding \$1,000 from the administrative law judge (ALJ), regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, 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 a copy of the original complaint and a copy of the findings and/or order.

\* \* \* \* \*

136. In § 1987.106, revise paragraph (a) to read as follows:

**§ 1987.106 Objections to the findings and the preliminary order and requests for a hearing.**

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under FSMA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1987.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered 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, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

\* \* \* \* \*

137. In § 1987.107, revise paragraph (b) to read as follows:

**§ 1987.107 Hearings.**

\* \* \* \* \*

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ 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. ALJs have broad discretion to limit discovery in order to expedite the hearing.

\* \* \* \* \*

138. In § 1987.110, revise paragraph (c) to read as follows:

**§ 1987.110 Decision and orders of the Administrative Review Board.**

\* \* \* \* \*

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

\* \* \* \* \*

**PART 1988—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS  
UNDER SECTION 31307 OF THE MOVING AHEAD FOR PROGRESS IN THE 21ST  
CENTURY ACT (MAP-21)**

139. The authority citation for part 1988 is revised to read as follows:

Authority: 49 U.S.C. 30171; Secretary of Labor’s Order No. 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary’s Order No. 01-2020, 85 FR 13186 (March 6, 2020).

140. In § 1988.105, revise paragraph (b) to read as follows:

**§ 1988.105 Issuance of findings and preliminary orders.**

\* \* \* \* \*

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party’s legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding \$1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, 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 a copy of the original complaint and a copy of the findings and/or order.

\* \* \* \* \*

141. In § 1988.106, revise paragraph (a) to read as follows:

**§ 1988.106 Objections to the findings and the preliminary order and requests for a hearing.**

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad

faith who seeks an award of attorney fees under MAP–21, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1988.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered 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, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

\* \* \* \* \*

142. In § 1988.107, revise paragraph (b) to read as follows:

**§ 1988.107 Hearings.**

\* \* \* \* \*

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ 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. ALJs have broad discretion to limit discovery in order to expedite the hearing.

\* \* \* \* \*

143. In § 1988.110, revise paragraph (c) to read as follows:

**§ 1988.110 Decision and orders of the Administrative Review Board.**

\* \* \* \* \*

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for

reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

\* \* \* \* \*

**Title 41: Public Contracts and Property Management**

**PART 60-30 RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246**

144. The authority citation for part 60-30 continues to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319, 32 FR 14303, as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 4212, as amended.

145. In § 60-30.4, revise paragraphs (b) and (c) to read as follows:

**§ 60-30.4 Form, filing, service of pleadings and papers.**

\* \* \* \* \*

(b) *Service*. Service upon any party shall be made by the party filing the pleading or document in accordance with 29 CFR part 26. When a party is represented by an attorney, the service shall be upon the attorney.

(c) *Proof of service*. A certificate of the person serving the pleading or other document, setting forth the manner of service, shall be proof of the service.

Signed on this 14th day of December, 2020, in Washington, D.C.

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Eugene Scalia,  
Secretary of Labor.

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