

software systems, but failed to do so. Equifax even stored sensitive usernames and passwords in plain text.⁴

The costs of maintaining the status quo approach are significant and mounting. According to industry analysis, the majority of small businesses currently “do not have a cyberattack prevention plan,”⁵ yet nearly half of them have experienced at least one breach within the last year.⁶ Data breaches can be particularly perilous for small businesses and new entrants, with one survey finding that 66 percent could face temporary or permanent closure if their systems are compromised.⁷

The process of putting into place clear rules requiring corporations to prevent abuse and misuse personal data is long overdue. As the agency responsible for data protection across most of the economy, the Federal Trade Commission plays a central role.

While the effort to update the Safeguards Rule is a start, its reach will be limited to certain nonbank financial institutions like Equifax, and violations don’t even come with any civil penalties. Given the ongoing harms to individuals and our country, we should use every tool in our toolbox to address data security issues. The Commission has urged Congress to act, but I agree with Commissioner Rebecca Kelly Slaughter, who has argued that “we cannot simply hold our breath and wait.”⁸ There are many ways that we can curtail the collection, misuse, and abuse of personal data, including launching a rulemaking that broadly applies to companies across sectors so

there are meaningful sanctions for violators. We have this authority today.

Commissioners Wilson and Phillips argue that we must consider the impact of data security on competition. I agree. Data security must also be top of mind in our competition enforcement work across sectors of the economy. We should be reviewing how mergers can lead to a race to the bottom on data security. We need to rigorously scrutinize data deals. Companies are being bought and sold based on the data they have and the data they can continue to collect. Acquired data is being merged into larger databases and used in ways that people may not have authorized when they signed up for the service or initially provided their information.

We need to continue to take a close look at what promises were made in exchange for data access and whether those promises were upheld when the data was sold. We also need to examine how companies are integrating different security systems, whether strong security standards are being maintained, and whether sensitive data is being handled appropriately.

Finally, we need to consider whether there are limits to the amount of data one company can collect and compile, the types of data one company can combine, and the ways in which data can be used and monetized. The scale and scope of data collection that large companies are engaging in has made them—and us—sitting ducks for malicious actors. Since these companies are more fixated on monetizing that data than securing it, their mass surveillance has become a national security threat. Our adversaries know that these large firms have essentially done the dirty work of collecting intelligence on our citizens, and lax security standards make it easy to steal. Ultimately, we need to fix the market structures and incentives that drive firms to harvest and traffic in our private information, so that complacent companies are punished when they don’t care about our security needs or expectations.

The extraordinary step of criminal indictments of members of the Chinese People’s Liberation Army announced by the Attorney General is yet another wake-up call. Until we take serious steps to curb corporate surveillance, the risks to our citizens and country will only grow as bad actors continue to steal and stockpile our data. The FTC will need to act decisively to protect families, businesses, and our country from these unquantifiable harms.

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 641, 655, 656, 658, 667, 683, and 702

Office of the Secretary of Labor

29 CFR Parts 2, 7, 8, 10, 13, 18, 24, 29, 38, and 96

Office of Labor-Management Standards

29 CFR Parts 417 and 471

Wage and Hour Division

29 CFR Parts 501 and 580

Occupational Health and Safety Administration

29 CFR Parts 1978 Through 1988

Office of Federal Contract Compliance Programs

41 CFR Parts 50–203 and 60–30

RIN 1290–AA39

Discretionary Review by the Secretary

AGENCY: Office of the Secretary, DOL.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor is issuing this Notice of Proposed Rulemaking to seek public comments on a proposal to establish a system of discretionary secretarial review over cases pending before or decided by the Board of Alien Labor Certification Appeals and to make technical changes to Departmental regulations governing the timing and finality of decisions of the Administrative Review Board and the Board of Alien Labor Certification Appeals to ensure consistency with the new discretionary review processes proposed in this rule and established in Secretary’s Order 01–2020.

DATES: The Department invites interested persons to submit comments on the proposed rules. To ensure consideration, comments must be in writing and must be submitted (transmitted, postmarked, or delivered) by April 6, 2020.

ADDRESSES: You may send comments, identified by Regulatory Identification Number (RIN) 1290–AA39, by either one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the website instructions for submitting

⁴ *Fed. Trade Comm’n v. Equifax*, Case 1:19-mi-99999-UNA, U.S. District Court for the Northern District of Georgia, Atlanta Division, Complaint for Permanent Injunction and Other Relief at 7–8 (July 22, 2019), https://www.ftc.gov/system/files/documents/cases/172_3203_equifax_complaint_7-22-19.pdf.

⁵ Craig Lurey, *Cyber Mindset Exposed: Keeper Unveils its 2019 SMB Cyberthreat Study*, Keeper Security, (July 24, 2019), <https://www.keepersecurity.com/blog/2019/07/24/cyber-mindset-exposed-keeper-unveils-its-2019-smb-cyberthreat-study/>.

⁶ *Hiscox Cyber Readiness Report 2019*, Hiscox Ltd., (Apr. 23, 2019), <https://www.keepersecurity.com/blog/2019/07/24/cyber-mindset-exposed-keeper-unveils-its-2019-smb-cyberthreat-study/>.

⁷ Press Release, *VIPRE Announces Launch of VIPRE Endpoint Security—Cloud Edition*, Business Wire, (Oct. 2, 2017), <https://www.businesswire.com/news/home/20171002005176/en>.

⁸ Last year, Commissioner Slaughter described how the FTC could use its existing authority to initiate a data protection rulemaking. See Rebecca Kelly Slaughter, Commissioner, Fed. Trade Comm’n, Remarks at the Silicon Flatirons Conference at the University of Colorado Law School: The Near Future of U.S. Privacy Law, (September 6, 2019), https://www.ftc.gov/system/files/documents/public_statements/1543396/slaughter_silicon_flatirons_remarks_9-6-19.pdf.

comments. To facilitate receipt and processing of comments, the Department encourages interested parties to submit their comments electronically.

- *Mail, hand delivery, express mail, courier service, or email.* You may submit your comments and attachments to Mr. Thomas Shepherd, Clerk of the Appellate Boards, Room S-5220, 200 Constitution Avenue NW, Washington, DC 20210, or you may submit them by email to Shepherd.Thomas@dol.gov. The Office of the Clerk is open during business hours on all days except Saturdays, Sundays, and federal holidays, from 8:30 a.m. to 5:00 p.m., Eastern Time.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. All comments received will generally be posted without change to <http://www.regulations.gov>, including any personal information provided.

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

SUPPLEMENTARY INFORMATION: This preamble is divided into five 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 summarizes the proposed regulatory text; Section IV covers the administrative requirements for this proposed rulemaking; and Section V provides additional information and instructions to those wishing to comment on the rule.

This proposed rule is not expected to be an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this as not a major rule as defined by 5 U.S.C. 804(2).

I. Proposed Rule Published Concurrently With Companion Direct Final Rule

The Department is simultaneously publishing with this proposed rule a “direct final” rule elsewhere in this issue of the **Federal Register**, which makes identical changes to the regulatory text. 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 comments within a

specified period. If the agency receives no significant adverse comments in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comments, the agency withdraws the direct final rule and treats such comments 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 revisions to the Department’s internal adjudicatory processes would establish a mechanism by which the Secretary can review cases pending before or decided by BALCA, and make other conforming amendments to Departmental regulations to align with this new system of discretionary review as well as the similar system of discretionary review established in Secretary’s Order 01-2020 over decisions of the ARB. These are rules of agency management and personnel and are entirely procedural changes to how officers within the Department of Labor exercise delegated authority on behalf of the Secretary; therefore, the Department is not required to engage in a notice and comment process to issue them. *See* 5 U.S.C. 553(a)(2), (b)(A). Indeed, the vast majority of the proposed changes are merely technical amendments to rules governing the manner in which the ARB issues decisions that are designed to eliminate any potential for confusion or ambiguity in light of the issuance of Secretary’s Order 01-2020. Further, discretionary review by an agency head over adjudicatory decisions exists in many other executive branch agencies, including at the Department of Justice, the Department of the Interior, and the Department of Education. The proposed rules are thus consistent with well-known and well-established models of internal agency review. In consequence, the proposed changes to the Department’s internal adjudicatory processes should not be controversial.

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. 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 public. All interested parties should comment at this time because the Department will not initiate an additional comment period on the proposed rule even if it withdraws the direct final rule.

II. Background of This Rulemaking

Two of the four review boards within the Department of Labor were created by voluntary delegations of authority by previous Secretaries of Labor. Specifically, the Administrative Review Board (ARB)—which has authority to hear appeals from the decisions of the Department’s Office of Administrative Law Judges (OALJ) about certain immigration, child labor, employment discrimination, federal construction/service contracts, and other issues—and the Board of Alien Labor Certification Appeals (BALCA)—which has authority over appeals from the decisions of the Employment and Training Administration’s adjudication of foreign labor certification applications—were created, respectively, by a Secretary’s Order and by regulation. Their existence is neither compelled nor governed by statute. Notably, before the ARB was created in 1996, many of the types of cases now subject to its jurisdiction were decided directly by the Secretary. Each board was also entrusted with the power to issue final agency decisions in the name of the Secretary. Currently, the Secretary’s Order and regulations establishing the ARB and BALCA provide no mechanism by which the Secretary can review, where necessary, the decisions of the officers who exercise power on his behalf.

To ensure that the Secretary has the ability to properly supervise and direct the actions of the Department, the Department proposes to establish systems of discretionary secretarial review over the decisions of the ARB and decisions of and appeals before BALCA, which will be accomplished through the proposed rule contained herein and the simultaneous issuance of a Secretary’s Order governing the ARB. The Department’s authority to effect

these reforms derives from 5 U.S.C. 301, which authorizes the heads of agencies to regulate the internal operations of their departments, 5 U.S.C. 305, which provides for continuing review of agency operations, and the Secretary's authority to administer the statutes and programs at issue in ARB and BALCA proceedings. In combination, these statutes establish many of the powers of the Department within the Office of the Secretary, and give the Secretary wide latitude to delegate those powers to his subordinates on the terms he deems appropriate. Thus, the Secretary has the power to delegate his authority to appropriately supervise the adjudicatory process within the Department, and is now exercising that same authority to assert his decision-making prerogatives duly assigned to him by Congress by modifying the terms on which the members of the ARB and BALCA exercise his delegated authority.

The proposed reforms to BALCA (and conforming edits to various Departmental regulations governing the ARB, BALCA, and the OALJ) preserve the existing structures by which the Department processes adjudications while giving the Secretary the option, in his sole discretion, to initiate review directly in a case where the Secretary's involvement is necessary and appropriate. Again, Congress has assigned the administration of various statutes to the Secretary of Labor, meaning that the Secretary is obligated to ensure that those laws are administered, executed, interpreted, and enforced according to law and Executive Branch priorities and policies. Under these reforms, the Secretary will rely on the ARB and BALCA to assist him in identifying cases where secretarial review may be warranted. Consistent with the practice of other agencies, the Department does not anticipate that the power of secretarial review will be used often. The Department similarly anticipates that secretarial review—while completely within the Secretary's discretion as the officer assigned to administer the laws in the first place—will typically be reserved for matters of significant importance. Finally, the Department will ensure that the secretarial review process will be accomplished in a manner that complies with any applicable legal requirements.

Because of significant differences between how the ARB and BALCA operate, the proposed systems of review for each board are designed somewhat differently. Most importantly, whereas with respect to the ARB the Secretary will not exercise review over cases until after a decision has been rendered, the proposed regulations modifying

BALCA's authority would allow the Secretary to assume jurisdiction over most cases even before a decision has been issued. This is because BALCA processes significantly more cases each year than does the ARB, and, due to the nature of the temporary visa programs and DOL's role in administering these programs, does so much more quickly than does the ARB. As a result, under the BALCA regulations, the Secretary will be able to initiate review of a case even before BALCA has issued a decision.

The Department appreciates the expeditious nature of many types of BALCA proceedings, such as those involving temporary labor certification, and does not anticipate that the new system of secretarial review established over such cases will significantly disrupt or otherwise impede the way such cases are currently processed. As noted above, the department expects that secretarial review over BALCA decisions will, as with agency head review at other departments, likely not be exercised often. Further, the proposed changes to 29 CFR 18.95 provide that a BALCA decision is the Secretary's final administrative decision unless the Secretary assumes jurisdiction over the case. For example, once the BALCA issues a decision that grants a labor certification or remands for further processing, the private party in the case will be able to proceed immediately to the next step of the application process, and will only be delayed in doing so if the Secretary later decides to undertake review. Moreover, the revised 29 CFR 18.95 limits any potential uncertainty that may exist because of the possibility of secretarial review by placing strict time limits on when the Secretary will have the option of assuming jurisdiction over a case.

III. Analysis of Proposed Rules

The Department proposes to revise several sections of the Code of Federal Regulations including 20 CFR parts 641, 655, 656, 658, 667, 683, and 702; 29 CFR parts 2, 7, 8, 10, 13, 18, 24, 29, 38, and 96; 29 CFR part 471; 29 CFR parts 501 and 580; 29 CFR parts 1978–1988; and 41 CFR parts 50–203 and 60–30 to harmonize the manner in which the ARB issues decisions on behalf of the Secretary under the Department's regulations with the scope of the final decision-making authority delegated to the ARB by the Secretary in Secretary's Order 01–2020. Specifically, references to final decisions of the ARB have been modified or removed to ensure that no regulation contradicts the terms on which an ARB decision becomes final under the Secretary's Order. Certain

provisions governing the timing of petitions for review to the ARB and when the ARB is required to issue decisions have also been amended to eliminate potential ambiguity or confusion over the distinction between when the ARB is required to issue a decision and when such decision becomes the final action of the Department pursuant to the Secretary's Order.

The Department also proposes to revise 29 CFR part 18 by modifying the conditions under which a decision of BALCA becomes the final decision of the Department and by creating a process by which the Secretary of Labor can exercise discretionary review over cases pending before or decided by the BALCA. Technical amendments are also proposed to 20 CFR parts 655 and 656 to harmonize the manner in which BALCA issues decisions on behalf of the Secretary with the new system of discretionary review established in 29 CFR part 18.

The Department of Labor and the Department of Homeland Security (DHS) have determined that it is appropriate to issue a separate rule regarding the Secretary of Labor's review authority over H–2B cases under 29 CFR 18.95 to address the same issues addressed by this rule in the H–2B context. It is the Departments' intent to promulgate this separate rule after the publication of this rule. This determination follows conflicting court decisions concerning DOL's authority to issue legislative rules on its own to carry out its duties in the H–2B program. Although DOL and DHS each have authority to issue rules implementing their respective duties in the H–2B program, the Departments plan to make the amendments to the applicable regulations jointly to ensure that there can be no question about the authority underlying such technical amendments. This approach is consistent with the joint rulemaking governing the Temporary Non-Agricultural Employment of H–2B Aliens in the United States, 80 FR 24042 (Apr. 29, 2015) (codified at 8 CFR part 214, 20 CFR part 655, and 29 CFR part 503).

In order to ensure that all parties appearing before the ARB and BALCA have fair notice of the new systems of discretionary review established in this rulemaking and in Secretary's Order 01–2020, the Secretary will not exercise his review authority over any decision of either Board issued before the passage of 30 calendar days from the date on which the rule becomes effective.

IV. Administrative Requirements of the Proposed Rulemaking

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review

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.

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.

Accordingly, OMB has waived review.

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553 of the Administrative Procedure Act, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 603, 604, do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

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.*, as this rulemaking does not involve any collections of information. See 5 CFR 1320.3(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."

V. Instructions for Providing Comments

A. APA Requirements for Notice and Comment

This proposed rule addresses matters of internal agency management and personnel, as well as matters of agency organization, practice and procedure, and consequently are exempt from the notice and public comments requirements of the Administrative Procedure Act. See 5 U.S.C. 553(a)(2), (b)(A). Nevertheless, the Department wishes to provide the public an opportunity to submit comments.

B. Publication of Comments

Please be advised that the Department will generally post all comments without making any change to the comments, including any personal information provided. The www.regulations.gov website is the Federal e-rulemaking portal, and all comments received electronically or by mail, hand delivery, express mail, or courier service will be available and accessible to the public on this website. Therefore, the Department recommends that commenters safeguard their personal information by not including social security numbers, personal addresses, telephone numbers, or email addresses in comments. It is the responsibility of the commenter to safeguard his or her information.

C. Access to Docket

In addition to all comments received by the Department being accessible on www.regulations.gov, the Department will make all the comments available for public inspection during normal business hours at the office listed in the **ADDRESSES** section above. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the proposed rule available, upon request, in large print or electronic file on portable digital media. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments or obtain the proposed rule in an alternate format, contact Thomas Shepherd at the office of the Clerk of the Appellate Boards, at (202)–693–6319 or 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.

Dated: February 21, 2020.

Eugene Scalia,
Secretary of Labor.

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 processes for temporary employment.

20 CFR Part 656

Administrative practice and procedure, Fraud, Reporting and recordkeeping requirements, Wages.

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 702

Administrative practice and procedure, Claims, Penalties, Reporting and recordkeeping requirements, Whistleblowing, Workers' compensation.

29 CFR Part 2

Administrative practice and procedure, Claims, Courts, Government employees.

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 10

Administrative practice and procedure, Construction industry, Government procurement, Law enforcement, Reporting and recordkeeping requirements, Wages.

29 CFR Part 13

Administrative practice and procedure, Government contracts, Law enforcement, Reporting and recordkeeping requirements, Wages.

29 CFR Part 18

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

29 CFR Part 24

Administrative practice and procedure, Review of other proceedings and related matters, Review of wage determinations.

29 CFR Part 29

Administrative practice and procedure, Apprenticeship programs,

Labor standards, State apprenticeship agencies.

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

Labor management standards, Procedures for removal of local labor organization officers.

29 CFR Part 471

Administrative practice and procedure, Complaint procedures, Compliance review, Contractor obligations, Federal labor law.

29 CFR Part 501

Administrative practice and procedure, Contract obligations; Enforcement, Immigration and Nationality Act, Temporary alien agricultural workers.

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,

Federal Railroad Safety Act, Findings, Investigations, Litigation, National Transit Systems Security 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 50–203

Administrative practice and procedure, Government procurement, Minimum wages, Occupational safety and health.

41 CFR Part 60–30

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

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR chapters V and VI, 29 CFR subtitle A and chapters IV, V, and XVII, and 41 CFR parts 50–203 and 60–30 as follows:

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 paragraph (e) to read as follows:

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

* * * * *

(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. The mailing address for the ARB is 200 Constitution Ave. NW, Room N5404, Washington, DC 20210. 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 paragraph (d)(5) to read as follows:

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

* * * * *

(d) * * *

(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. The mailing address for the ARB is 200 Constitution Ave. NW, Room N5404, Washington, DC 20210. 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 § 655.171, revise paragraphs (a) and (b)(2) to read as follows:

§ 655.171 Appeals.

* * * * *

(a) *Administrative review.* Where the employer has requested administrative review, within 5 business days after receipt of the ETA administrative file the ALJ will, on the basis of the written record and after due consideration of any written submissions (which may not include new evidence) from the parties involved or amici curiae, either affirm, reverse, or modify the CO's

decision, or remand to the CO for further action. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, the CO, the OFLC Administrator and DHS by means normally assuring next-day delivery.

(b) * * *

(2) *Decision.* After a de novo hearing, the ALJ must affirm, reverse, or modify the CO's determination, or remand to the CO for further action, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, CO, OFLC Administrator, and DHS by means normally assuring next-day delivery.

■ 6. In § 655.181, revise paragraph (b)(3) to read as follows:

§ 655.181 Revocation.

* * * * *

(b) * * *

(3) *Appeal.* An employer may appeal a Notice of Revocation, or a final determination of the OFLC Administrator after the review of rebuttal evidence, according to the appeal procedures of § 655.171.

* * * * *

■ 7. In § 655.182, revise paragraph (f)(6) to read as follows:

§ 655.182 Debarment.

* * * * *

(f) * * *

(6) *ARB decision.* The ARB's decision must be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ. If the ARB fails to issue a decision within 90 days from the notice granting the petition, the ALJ's decision will be the final agency decision.

* * * * *

■ 8. In § 655.183, revise paragraph (c) to read as follows:

§ 655.183 Less than substantial violations.

* * * * *

(c) *Failure to comply with special procedures.* If the OFLC Administrator determines that the employer has failed to comply with special procedures required pursuant to paragraph (a) of this section, the OFLC Administrator will send a written notice to the employer, stating that the employer's otherwise affirmative H–2A certification determination will be reduced by 25 percent of the total number of H–2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year. Notice of such a reduction in the number of workers requested will be

conveyed to the employer by the OFLC Administrator in the OFLC Administrator's written certification determination. The notice will offer the employer an opportunity to request administrative review or a de novo hearing before an ALJ. If administrative review or a de novo hearing is requested, the procedures prescribed in § 655.171 will apply, provided that if the ALJ or the Secretary affirms the OFLC Administrator's determination that the employer has failed to comply with special procedures required by paragraph (a) of this section, the reduction in the number of workers requested will be 25 percent of the total number of H-2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year.

■ 9. In § 655.461, revise paragraph (e) to read as follows:

§ 655.461 Administrative review.

* * * * *

(e) *Scope of review.* BALCA will, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95, affirm, reverse, or modify the CO's determination, or remand to the CO for further action. BALCA will reach this decision after due consideration of the documents in the Appeal File that were before the CO at the time of the CO's determination, the request for review, and any legal briefs submitted. BALCA may not consider evidence not before the CO at the time of the CO's determination, even if such evidence is in the Appeal File, request for review, or legal briefs.

* * * * *

■ 10. In § 655.472, revise paragraph (b)(3) to read as follows:

§ 655.472 Revocation.

* * * * *

(b) * * *

(3) *Request for review.* An employer may appeal a Notice of Revocation or a final determination of the OFLC Administrator after the review of rebuttal evidence to BALCA, according to the appeal procedures of § 655.461.

* * * * *

■ 11. In § 655.473, revise paragraph (f)(6) to read as follows:

§ 655.473 Debarment.

* * * * *

(f) * * *

(6) *ARB Decision.* The ARB's decision must be issued within 90 calendar days from the notice granting the petition and served upon all parties and the ALJ.

■ 12. In § 655.845, revise paragraphs (h) and (i) to read as follows:

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

* * * * *

(h) The Board's decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Board's decision shall be served upon all parties and the administrative law judge.

(i) After the Board's decision becomes final, the Board shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § 655.850.

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 13. The authority citation for part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1182(p)(1); sec.122, Public Law 101-649, 109 Stat. 4978; and Title IV, Public Law 105-277, 112 Stat. 2681.

■ 14. In § 656.27, revise paragraph (c) to read as follows:

§ 656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.

* * * * *

(c) *Review on the record.* The Board of Alien Labor Certification Appeals must review a denial of labor certification under § 656.24, a revocation of a certification under § 656.32, or an affirmation of a prevailing wage determination under § 656.41 on the basis of the record upon which the decision was made, the request for review, and any Statements of Position or legal briefs submitted and, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95, must:

(1) Affirm the denial of the labor certification, the revocation of certification, or the affirmation of the PWD; or

(2) Direct the Certifying Officer to grant the certification, overrule the revocation of certification, or overrule the affirmation of the PWD; or

(3) Direct that a hearing on the case be held under paragraph (e) of this section.

* * * * *

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

■ 15. 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.

■ 16. In § 658.711, revise paragraph (b) to read as follows:

§ 658.711 Decision of the Administrative Review Board.

* * * * *

(b) The decision of the Administrative Review Board must be in writing, and must set forth the factual and legal basis for the decision. After the Board's decision becomes final, notice of the decision must be published in the **Federal Register**, and copies must be made available for public inspection and copying.

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

■ 17. 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.

■ 18. 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. 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

■ 19. The authority citation for part 683 continues to read as follows:

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

- 20. 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. 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.

Office of Workers' Compensation Programs Longshoremen's and Harbor Workers' Compensation Act and Related Statutes

PART 702—ADMINISTRATION AND PROCEDURE

- 21. The authority citation for part 702 continues to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.*; 33 U.S.C. 901 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

- 22. In § 702.433, revise paragraphs (e) and (f) to read as follows:

§ 702.433 Requests for hearing.

* * * * *

(e) The administrative law judge will issue a recommended decision after the termination of the hearing. The recommended decision must contain appropriate findings, conclusions, and a recommended order and be forwarded, together with the record of the hearing, to the Administrative Review Board for a decision. The recommended decision must be served upon all parties to the proceeding.

(f) Based upon a review of the record and the recommended decision of the

administrative law judge, the Administrative Review Board will issue a decision.

- 23. Revise § 702.434 to read as follows:

§ 702.434 Judicial review.

(a) Any physician, health care provider, or claims representative who participated as a party in the hearing may obtain review of the Department's final decision made by the Administrative Review Board or the Secretary, as appropriate, regardless of the amount of controversy, by commencing a civil action within sixty (60) days after the decision is transmitted to him or her. The pendency of such review will not stay the effect of the decision. Such action must be brought in the Court of Appeals of the United States for the judicial circuit in which the plaintiff resides or has his or her principal place of business, or the Court of Appeals for the District of Columbia pursuant to section 7(j)(4) of the Act, 33 U.S.C. 907(j)(4).

(b) As part of the Department's answer, the Administrative Review Board must file a certified copy of the transcript of the record of the hearing, including all evidence submitted in connection therewith.

(c) The findings of fact contained in the Department's final decision, if based on substantial evidence in the record as a whole, shall be conclusive.

Title 29: Labor

Office of the Secretary of Labor

PART 2—GENERAL REGULATIONS

- 24. The authority citation for part 2 continues to read as:

Authority: 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258; Executive Order 13559, 75 FR 71319, 3 CFR 2011 Comp., p. 273.

- 25. Revise § 2.8 to read as follows:

§ 2.8 Final agency decisions.

Final agency decisions issued under the statutory authority of the U.S. Department of Labor may be issued by the Secretary of Labor, or by his or her designee under a written delegation of authority. The Administrative Review Board, an organizational entity within the Office of the Secretary, has been delegated authority to issue final agency decisions under the statutes, executive orders, and regulations according to, and except as provided in Secretary's Order 01–2020.

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

- 26. The authority citation for part 7 continues to read as:

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.

- 27. In § 7.1, revise paragraph (d) to read as follows:

§ 7.1 Purpose and scope.

* * * * *

(d) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor. The Board shall act as fully and finally as might the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01–2020.

* * * * *

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

- 28. The authority citation for part 8 continues to read as:

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.

- 29. In § 8.1, revise paragraph (c) to read as follows:

§ 8.1 Purpose and scope.

* * * * *

(c) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor and shall act as fully and finally as might the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01–2020.

* * * * *

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

- 30. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 301; section 2, E.O. 13838, 83 FR 25341; section 4, E.O. 13658, 79 FR 9851; Secretary's Order 01–2014, 79 FR 77527.

- 31. Revise § 10.57 to read as follows:

§ 10.57 Administrative Review Board proceedings.

(a) *Authority*—(1) *General*. The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under § 10.51(c)(1) or (2), Administrator's rulings issued under § 10.58, and decisions of Administrative Law Judges issued under § 10.55.

(2) *Limit on scope of review*. (i) The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions*. The Board's decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders*. If the Board concludes a violation occurred, an order shall be issued mandating action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Board shall determine whether an order imposing debarment is appropriate. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

PART 13—ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

■ 32. The authority citation for part 13 continues to read as follows:

Authority: 5 U.S.C. 301; E.O. 13706, 80 FR 54697, 3 CFR, 2016 Comp., p. 367; Secretary's Order 01–2014, 79 FR 77527.

■ 33. Revise § 13.57 to read as follows:

§ 13.57 Administrative Review Board proceedings.

(a) *Authority*—(1) *General*. The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions

of law and fact from investigative findings letters of the Administrator issued under § 13.51(c)(1) or the final sentence of § 13.51(c)(2)(ii), Administrator's rulings issued under § 13.58, and decisions of Administrative Law Judges issued under § 13.55.

(2) *Limit on scope of review*. (i) The Administrative Review Board shall not have jurisdiction to pass on the validity of any provision of this part. The Administrative Review Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Administrative Review Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions*. The Administrative Review Board's decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders*. If the Board concludes a violation occurred, an order shall be issued mandating action to remedy the violation, including, but not limited to, any monetary or equitable relief described in § 13.44. Where the Administrator has sought imposition of debarment, the Administrative Review Board shall determine whether an order imposing debarment is appropriate. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

■ 34. The authority citation for part 18 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 551–553; 5 U.S.C. 571 note; E.O. 12778; 57 FR 7292.

■ 35. Revise § 18.95 to read as follows:

§ 18.95 Review of decision and review by the Secretary.

(a) *Review*. The statute or regulation that conferred hearing jurisdiction provides the procedure for review of a judge's decision. If the statute or regulation does not provide a procedure,

the judge's decision becomes the Secretary's final administrative decision, except as provided in paragraph (b) of this section.

(b) *Finality*. A decision of the Board of Alien Labor Certification Appeals (BALCA) shall constitute the Secretary's final administrative decision except in those cases over which the Secretary has, in accordance with this paragraph (b) and paragraph (c) of this section, assumed jurisdiction:

(1) In any case for which administrative review is sought or handled in accordance with 20 CFR 655.171(a) or 20 CFR 655.461, at any point from when the BALCA receives a request for review until the passage of 10 business days after the date on which BALCA has issued its decision.

(2) In any case for which a de novo hearing is sought or handled under 20 CFR 655.171(b), at any point within 15 business days after the date on which the BALCA has issued its decision.

(3) In any case for which review is sought or handled in accordance with 20 CFR 656.26 and 20 CFR 656.27, at any point from when the BALCA receives a request for review until the passage of 30 business days after the BALCA has issued its decision.

(c) *Review by the Secretary*—(1) *Transmission of information*. (i) Whenever the BALCA receives a request for review, it shall immediately transmit a copy of such request to the Deputy Secretary.

(ii) Within 3 business days of when the BALCA issues a decision, the Chair of the BALCA, or his or her designee, shall transmit to the Deputy Secretary a copy of the decision and a concise recommendation as to whether the decision involves an issue or issues of such exceptional importance that review by the Secretary is warranted.

(2) *Review*. (i) The Secretary may, at any point within the time periods provided for in paragraph (b) of this section, and in his or her sole discretion, assume jurisdiction to review the decision or determination of the Certifying Officer, the Office of Foreign Labor Certification Administrator, the National Prevailing Wage Center Director, or the BALCA, as the case may be.

(ii) When the Secretary assumes jurisdiction over a case, the Secretary shall promptly notify the BALCA. The BALCA shall promptly notify the parties to the case of such action and shall submit the Appeal File and any briefs filed to the Secretary.

(iii) In any case the Secretary decides, the Secretary's decision shall be stated in writing and transmitted to the BALCA, which shall promptly transmit

it to the parties to the case. Such decision shall constitute final action by the Department and shall serve as binding precedent on all Department employees and in all Department proceedings involving the same issue or issues.

(iv) The Solicitor of Labor, or his or her designee, shall have the responsibility for providing legal advice to the Secretary with respect to the Secretary's exercise of review under this section, except that no individual involved in the investigation or prosecution of a case shall advise the Secretary on the exercise of review with respect to such case or a case involving a common nucleus of operative fact.

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

■ 36. 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's Order No. 5–2007, 72 FR 31160 (June 5, 2007); Secretary's Order No. 01–2020.

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

§ 24.110 Decisions 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, 200 Constitution Ave. NW, Washington, DC 20210. 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, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the 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 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 by mail. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the order will order the respondent to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of employment, and compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate. At the request of the complainant, the ARB will assess against the respondent all costs and expenses (including attorney's fees) reasonably incurred.

* * * * *

■ 38. Revise § 24.112 to read as follows:

§ 24.112 Judicial Review.

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

(b) Under the Federal Water Pollution Control Act, within 120 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for

review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(c) Under the Solid Waste Disposal Act, within 90 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(d) Under the Comprehensive Environmental Response, Compensation and Liability Act, after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States district court in which the violation allegedly occurred. For purposes of judicial economy and consistency, when a final order under the Comprehensive Environmental Response, Compensation and Liability Act also is issued under any other statute listed in § 24.100(a), the adversely affected or aggrieved person may file a petition for review of the entire order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. The time for filing a petition for review of an order issued under the Comprehensive Environmental Response, Compensation and Liability Act and any other statute listed in § 24.100(a) is determined by the time period applicable under the other statute(s).

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

PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

■ 39. The authority citation for part 29 continues to read as follows:

Authority: Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301); Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

■ 40. In § 29.10, revise paragraph (c) to read as follows:

§ 29.10 Hearings for deregistration.

(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, 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 sent to the opposing party at the same time. 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.

■ 41. In § 29.13, revise paragraph (g)(4) to read as follows:

§ 29.13 Recognition of State Apprenticeship Agencies.

(g) (4) After the close of the period for filing exceptions and responses, the Administrative Review Board may issue a briefing schedule or may decide the matter on the record before it. The Administrative Review Board must decide 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.

■ 42. In § 29.14, revise paragraph (c)(3) to read as follows:

§ 29.14 Derecognition of State Apprenticeship Agencies.

(c) (3) Requests a hearing. The Administrator shall refer the matter to the Office of Administrative Law Judges. An Administrative Law Judge will convene a hearing in accordance with § 29.13(g) and submit proposed findings and a recommended decision to the

Administrative Review Board. 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.

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

■ 43. 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.

■ 44. In § 38.112, revise paragraph (b)(1)(viii) and remove paragraph (b)(3). The revision reads as follows:

§ 38.112 Initial and final decision procedures.

(b) (1) (viii) Decision and Order after review by Administrative Review Board. In any case reviewed by the Administrative Review Board under this paragraph, a decision must be issued within 180 days of the notification of such review. If the Administrative Review 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.

■ 45. In § 38.113, revise paragraph (c) to read as follows:

§ 38.113 Post-termination proceedings.

(c) A decision issued by the Administrative Review Board has become final, the Administrative Law Judge's decision and order has become the Final Agency Decision, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Agency Decision, under § 38.112(b); and

■ 46. In § 38.115, revise paragraph (c)(5) to read as follows:

§ 38.115 Post-termination proceedings.

(c) (5) The Administrative Review Board must issue a decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.

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

■ 47. 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.

■ 48. In § 96.63, revise paragraph (b)(5) to read as follows:

§ 96.63 Federal financial assistance.

(b) (5) Review by the Administrative Review Board. In any case accepted for review by the Administrative Review Board, a decision shall be issued within 180 days of such acceptance. If a decision is not so issued, the decision of the Administrative Law Judge shall become the final decision of the Secretary.

Office of Labor-Management Standards

PART 417—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

■ 49. The authority citation for part 417 is revised 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.

PART 471—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

■ 50. The authority citation for part 471 is revised to read as follows:

Authority: 40 U.S.C. 101 et seq.; Executive Order 13496, 74 FR 6107, February 4, 2009; Secretary's Order No. 7-2009, 74 FR 58834, November 13, 2009; Secretary's Order No. 01-2020.

■ 51. In § 471.13, revise paragraph (b)(4) to read as follows:

§ 471.13 Under what circumstances, and how, will enforcement proceedings under Executive Order 13496 be conducted?

(b) (4) After the expiration of time for filing exceptions, the Administrative Review Board may issue an administrative order, or may otherwise appropriately dispose of the matter. In an expedited proceeding, unless the Administrative Review Board issues an administrative order within 30 days after the expiration of time for filing exceptions, the Administrative Law

Judge's recommended decision will become the final administrative order. If the Administrative Review Board determines that the contractor has violated the Executive Order or the regulations in this part, the administrative order will order the contractor to cease and desist from the violations, require the contractor to provide appropriate remedies, or, subject to the procedures in § 471.14, impose appropriate sanctions and penalties, or any combination thereof.

Wage and Hour Division

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

■ 52. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at § 701.

■ 53. Revise § 501.45 to read as follows:

§ 501.45 Decision of the Administrative Review Board.

The ARB's decision shall be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ.

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

■ 54. 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.

■ 55. 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, in person or by mail to the last known address.

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

■ 56. 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.

■ 57. In § 1978.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1978.110 Decisions and orders of the Administrative Review Board.

(a) The Assistant Secretary or any other party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication 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 ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor.

(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 by mail. 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.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order, which will be subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020, will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position with the same compensation, terms, conditions, and privileges of the

complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees the complainant may have incurred); and payment of punitive damages up to \$250,000. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. Such order will be subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

* * * * *

■ 58. In § 1978.112, revise paragraph (a) to read as follows:

§ 1978.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation.

* * * * *

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

■ 59. The authority citation for part 1979 continues to read as follows:

Authority: 49 U.S.C. 42121; Secretary's Order No. 01–2020.

■ 60. In § 1979.110, revise paragraphs (a), (c), (d), and (e) 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 email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

* * * * *

(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 by mail to the last known address. 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, Washington, DC 20210, even if the Assistant Secretary is not a party.

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

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

■ 61. In § 1979.112, revise paragraph (a) to read as follows:

§ 1979.112 Judicial review.

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

* * * * *

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

■ 62. 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's Order No. 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 63. In § 1980.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1980.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication 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 ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(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 by mail. 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.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing all relief necessary to make the complainant whole, including reinstatement with the same seniority status that the complainant would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

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

■ 64. In § 1980.112, revise paragraph (a) to read as follows:

§ 1980.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

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

■ 65. The authority citation for part 1981 continues to read as follows:

Authority: 49 U.S.C. 60129; Secretary's Order No. 01–2020.

■ 66. In § 1981.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1981.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the Administrative Law Judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board ("the Board"). The decision of the Administrative Law Judge will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within 10 business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or email communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety

and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

* * * * *

(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 by mail to the last known address. 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, Washington, DC 20210, even if the Assistant Secretary is not a party.

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

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

■ 67. In § 1981.112, revise paragraph (a) to read as follows:

§ 1981.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of

Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Secretary is not subject to judicial review in any criminal or other civil proceeding.

* * * * *

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

■ 68. 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's Order 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 69. In § 1982.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1982.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint under NTSSA was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication 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 ARB. Copies of the petition for review must be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards.

* * * * *

(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 by mail. 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.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will include, where appropriate, affirmative action to abate the violation; reinstatement with the same seniority status that the employee would have had but for the retaliation; any back pay with interest; and payment of compensatory damages, including compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney fees. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit documentation to the Social Security Administration or the Railroad Retirement Board, as appropriate, allocating any back pay award to the appropriate months or calendar quarters. The order may also require the respondent to pay punitive damages up to \$250,000. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020.

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

■ 70. In § 1982.112, revise paragraph (a) to read as follows:

§ 1982.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

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

■ 71. 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.

■ 72. In § 1983.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1983.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent 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 ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication 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 ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(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 by mail. 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.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative

action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020.

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

■ 73. In § 1983.112, revise paragraph (a) to read as follows:

§ 1983.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

PART 1984—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 1558 OF THE AFFORDABLE CARE ACT

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

Authority: 29 U.S.C. 218C; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01-2020.

■ 75. In § 1984.110, revise paragraphs (a), (c), (d), and (e) as follows:

§ 1984.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought

in bad faith who seeks an award of attorney fees, must file a written petition for review with the Administrative Review Board (ARB). The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication 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 ARB. Copies of the petition for review must be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(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 by mail. 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.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to the complainant's former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate

documentation to the Social Security Administration allocating any back pay award to the appropriate period. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020.

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

■ 76. In § 1984.112, revise paragraph (a) to read as follows:

§ 1984.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

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

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

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

■ 78. In § 1985.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1985.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic

communication 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 ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(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 by mail. 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.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01-2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought

in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding \$1,000. An order under this section is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 79. In § 1985.112, revise paragraph (a) to read as follows:

§ 1985.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

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

■ 80. 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 No. 01–2020.

■ 81. In § 1986.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1986.110 Decisions and orders of the Administrative Review Board.

(a) The Assistant Secretary or any other party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication 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 ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Occupational

Safety and Health, U.S. Department of Labor.

* * * * *

(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 by mail. 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.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, with the same compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (back pay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees the complainant may have incurred); and payment of punitive damages up to \$250,000. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

(e) If the ARB concludes that the respondent has not violated the law, the ARB will issue an order denying the complaint. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

■ 82. In § 1986.112, revise paragraph (a) to read as follows:

§ 1986.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the court of appeals of the United States for the circuit in which the violation allegedly occurred or the

circuit in which the complainant resided on the date of the violation.

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

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

Authority: 21 U.S.C. 399d; Secretary's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 84. In § 1987.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1987.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication 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 ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(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 by mail. 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.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

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

■ 85. In § 1987.112, revise paragraph (a) to read as follows:

§ 1987.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

* * * * *

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

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

Authority: 49 U.S.C. 30171; Secretary's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020.

■ 87. In § 1988.110, revise paragraphs (a), (c), (d), and (e) to read as follows:

§ 1988.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication 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 ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(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 by mail. 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.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue an order providing relief to the complainant. The order will require, where appropriate, affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of

compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters. Such order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020.

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

■ 88. In § 1988.112, revise paragraph (a) to read as follows:

§ 1988.112 Judicial review.

(a) Within 60 days after the issuance of a final order (including a decision issued by the Secretary upon his or her discretionary review) for which judicial review is available, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

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Title 41: Public Contracts and Property Management

Office of Federal Contract Compliance Programs

PART 50–203—RULES OF PRACTICE

■ 89. The authority citation for part 50–203 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38, unless otherwise noted.

■ 90. In § 50–203.21, revise paragraph (d) to read as follows:

§ 50–203.21 Decisions.

* * * * *

(d) Thereafter, the Administrative Review Board may issue a decision ruling upon each exception filed and including any appropriate wage determination. Any such decision shall be published in the **Federal Register**

after it becomes the final action of the Department.

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

■ 91. 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.

■ 92. Revise § 60–30.29 to read as follows:

§ 60–30.29 Record.

After expiration of the time for filing briefs and exceptions, the Administrative Review Board, United States Department of Labor, shall make a decision, which shall be the Administrative order, on the basis of the record. The record shall consist of the record for recommended decision, the rulings and recommended decision of the Administrative Law Judge and the exceptions and briefs filed subsequent to the Administrative Law Judge's decision.

■ 93. Revise § 60–30.30 to read as follows:

§ 60–30.30 Administrative Order.

After expiration of the time for filing, the Administrative Review Board, United States Department of Labor, shall make a decision which shall be served on all parties. If the Administrative Review Board, United States Department of Labor, concludes that the defendant has violated the Executive Order, the equal opportunity clause, or the regulations, an Administrative Order shall be issued enjoining the violations, and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative Order shall result in the immediate cancellation, termination, and suspension of the respondent's contracts and/or debarment of the respondent from further contracts.

■ 94. Revise § 60–30.37 to read as follows:

§ 60–30.37 Final Administrative Order.

After expiration of the time for filing exceptions, the Administrative Review Board, United States Department of Labor, shall issue an Administrative Order which shall be served on all parties. Unless the Administrative Review Board, United States Department of Labor, issues an Administrative Order within 30 days

after the expiration of the time for filing exceptions, the Administrative Law Judge's recommended decision shall become a final Administrative Order which shall become effective on the 31st day after expiration of the time for filing exceptions. Except as to specific time periods required in this subsection, 41 CFR 60–30.30 shall be applicable to this section.

[FR Doc. 2020–04018 Filed 3–5–20; 8:45 am]

BILLING CODE 4510–HL–P

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 10955]

RIN 1400–AE00

Public Access to Information

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) proposes to revise its regulations of May 6, 2016, governing the availability to the public of information that is under the control of the Department. There have been changes in the law governing disclosure of such information, including the Freedom of Information Act Improvement Act of 2016. This proposed rule reflects changes in the FOIA and consequent changes in the Department's procedures since the last revision of the Department's regulations on public access to information.

DATES: The Department of State will accept comments on this proposed rule until May 5, 2020.

ADDRESSES: You may submit comments by any of the following methods, and you must include the Regulatory Information Number (RIN) in the subject line of your message.

- *Mail (paper, disk, or CD-ROM submissions):* Director, Office of Information Programs and Services, Room B–266, U.S. Department of State, 2201 C Street NW, Washington, DC 20520.

- *Fax:* (202) 485–1669.

- Persons with access to the internet may view this rule and submit comments by going to www.regulations.gov and searching for docket number DOS–2019–0042.

Inspection of public comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business or financial information that is included in a comment. The Department

of State will post all comments received before the close of the comment period at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, Office of the Legal Adviser, kottmyeram@state.gov, 202–647–2318.

SUPPLEMENTARY INFORMATION: This proposed rule implements the Freedom of Information Act (FOIA) Improvement Act of 2016, Public Law 114–185, and updates the Department's FOIA regulations at 22 CFR part 171. The following is a summary of the substantive changes.

The proposed rule, in § 171.4, provides updated procedures and addresses for submitting FOIA requests to the Department, including procedures for requesting information about the requester and requests for visa information.

Subpart B of the proposed rule (§ 171.10 through § 171.17) contains the rules governing the processing of a FOIA request. Proposed § 171.11 covers the Department's initial processing of a request; it clarifies the information that is to be provided as part of a request, the Department's process for responding to requests, and consultation and referral with respect to requests. Proposed § 171.12 covers the timing of responses to a request, including multi-track processing, expedited processing, and "unusual circumstances" (as defined in the FOIA) that might affect the Department's ability to respond. Proposed § 171.13 covers responses to requests, including the procedures upon denial of a request. The proposed updates add a provision for consultation with the Department of Justice's Office of Information Policy with respect to invocation of a FOIA exclusion. Proposed § 171.14 modifies the Department's process with respect to reviews of business information, including procedures for the business owner of the information to object to the release of the information.

Proposed § 171.15 revises the timeline for submission of appeals to 90 days and provides for information to be given to requesters about dispute resolution services at various stages of the processing of a request, in accordance with the FOIA Improvement Act of 2016. Proposed § 171.16 provides updates on the fees to be charged for FOIA requests, including how fees are calculated. This proposed section provides an updated explanation of the term, "representative of the news media."

Subpart C contains the rule's Privacy Act provisions. There are minor changes throughout this subpart.