

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Part 1978****Rules Implementing Section 405 of the Surface Transportation Assistance Act of 1982; Interim Final Rule; Request for Comments**

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Interim rule; adoption of rules of procedure; request for comments.

SUMMARY: Section 405 of the Surface Transportation Assistance Act of 1982 (hereinafter the "STAA"), Pub. L. 97-424, 96 Stat. 2097, 2157-58, enacted January 6, 1983 (49 U.S.C. 2301 *et seq.*), provides protection to employees in the trucking industry from discrimination on account of activity related to commercial motor vehicle safety. Interpretive rules for section 405 will be proposed in Subpart A of Part 1978, which will be published at a later date. This subpart sets forth rules of practice and procedure for implementing section 405. Although this rule is procedural in nature and, thus, not subject to the notice and comment procedures of the Administrative Procedure Act, OSHA invites those concerned with this interim final rule to submit comments. A final rule will be published after the Agency receives and reviews the public's comments.

DATES: These rules are effective December 22, 1986. Comments, in duplicate, must be received on or before December 22, 1986.

ADDRESS: Send comments, in duplicate, to: Eugene A. Lopez, Office of the Solicitor, Room S-4004, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Office of Information, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3637, Washington, DC 20210, (202-523-8151).

SUPPLEMENTARY INFORMATION:**I. General Information**

Pursuant to section 405 a covered employee who believes he or she has been discriminated against because of activity related to commercial motor vehicle safety or health may file a complaint with the Secretary of Labor (Secretary) within 180 days after the alleged discrimination. The Secretary will then investigate the complaint and within sixty days after it was filed issued findings as to whether there is

reason to believe that section 405 has been violated.

If the Secretary finds that the complaint has merit he will also issue a preliminary order requiring, where appropriate, abatement of the violation, reinstatement with back pay and related compensation, the payment of compensatory damages, and the payment of the employee's expenses in bringing the complaint. Either the employee or the person named in the complaint may object to the findings, the preliminary order, or both, but the filing of an objection does not operate as a stay of a reinstatement order. If no objection is filed within thirty days, the findings and the preliminary order are final. However, if a timely objection is filed the objecting party is entitled to a hearing on the objection. Within 120 days of the conclusion of the hearing a final order will be issued. A party aggrieved by the final order may seek judicial review in a court of appeals within sixty days after the order. The Secretary may seek enforcement of preliminary and final orders in the federal district courts. The validity of a final order may not be challenged in enforcement proceedings.

Pursuant to Secretary's Order No. 9-83, 48 FR 35736 (August 5, 1983) the Assistant Secretary for Occupational Safety and Health (OSHA) has been delegated the authority of the Secretary to administer section 405, with certain exceptions, because he has the responsibility of administering section 11(c) of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 660(c). Section 11(c) is similar to section 405 in that both sections protect employees against discrimination on account of activity related to occupational safety or health. Administrative law judges of the Department of Labor conduct hearings under section 405 and the Secretary may review their decisions. The Office of the Solicitor of Labor provides legal advice to the Assistant Secretary, and represents the Assistant Secretary in administrative litigation and represents the Secretary in the Federal courts.

These rules, together with those rules set forth at 29 CFR Part 18, set forth procedures for the submission of complaints under section 405, investigations, issuance of findings and preliminary orders, objections thereto, litigation before administrative law judges, post-hearing administrative review, withdrawals and settlements, judicial review, and judicial

enforcement. The procedures are designed to achieve the just and speedy resolution of section 405 cases.

II. Regulatory Impact Analysis

In accordance with Executive Order 12291 (46 FR 13193, February 17, 1981), OSHA has carefully assessed the potential impact of these rules of procedure for section 405 cases. OSHA has concluded that this regulation is not a "major" rule under Executive Order 12291 which would necessitate further economic impact evaluation and the preparation of a regulatory analysis.

Finally, OSHA finds that the provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) do not apply because these rules, procedural in nature, are not subject to the notice and comment procedures of the Administrative Procedure Act.

III. Paperwork Reduction Act

OSHA has determined that the provisions of the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35), do not apply to these rules because they govern the conduct of administrative actions and investigations involving an agency against specific individuals or entities. 5 CFR 1320.3(c).

IV. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210. These rules are issued pursuant to section 405 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424), 49 U.S.C. 2301 *et seq.*) and Secretary of Labor's Order No. 9-83, 48 FR 35736, and No. 18-75, December 10, 1975, and with respect to the procedures dealing with the relationship between section 405 and section 11(c) procedures, pursuant to section 11(c)(2) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 660(c)(2)] and section 8(g)(2) of the OSH Act [29 U.S.C. 657(g)(2)].

Accordingly, pursuant to section 405 of the Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 49 U.S.C. 2305, sections 11(c)(2) and 8(g)(2) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 660(c)(2) and 657(g)(2), 5 U.S.C. 553, and Secretary's Order No. 9-83, 48 FR 35736, Part 1978 is added to Title 29 of the Code of Federal Regulations as set forth below. No notice or opportunity for comments need be provided because these rules are rules of practice and

procedure and, therefore, are exempt from rulemaking procedures under section 553(b)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(A). However, public comments are invited for a period of 30 days following publication of this interim rule. Comments raising significant issues will be addressed at the time of issuance of a final rule.

List of Subjects in 29 CFR Part 1978

Employer-employee relations; Administrative practice and procedure, Labor; Occupational safety and health.

Signed at Washington, DC this 19th day of November, 1986.

John A. Pendergrass,
Assistant Secretary.

PART 1978—RULES FOR IMPLEMENTING SECTION 405 OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA)

Subpart A—Interpretive Rules— [Reserved]

Subpart B—Rules of Procedure Complaints, Investigations, Findings and Preliminary Orders

Sec.

- 1978.100 Purpose and scope.
- 1978.101 Definitions.
- 1978.102 Filing of discrimination complaint.
- 1978.103 Investigation.
- 1978.104 Issuance of findings and preliminary orders.
- 1978.105 Objections to the findings and the preliminary orders.

Litigation

- 1978.106 Scope of rules; applicability of other rules; notice of hearing.
- 1978.107 Parties.
- 1978.108 Captions; titles of cases.
- 1978.109 Decisions and orders.
- 1978.110 Judicial review.
- 1978.111 Withdrawal of section 405 complaints, objections, and findings; settlement.

Miscellaneous Provisions

- 1978.112 Arbitration or other proceedings.
- 1978.113 Judicial enforcement.
- 1978.114 Statutory time periods.
- 1978.115 Special circumstances; waiver of rules.

Authority: Sec. 405 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424, 49 U.S.C. 2301 *et seq.*) and Secretary of Labor's Order No. 9-83, 48 FR 35736, and No. 18-75, December 10, 1975, and with respect to the procedures dealing with the relationship between sec. 405 and section 11(c) procedures, pursuant to sec. 11(c)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)(2)) and sec. 8(g)(2) of the OSH Act (29 U.S.C. 657(g)(2)).

Subpart A—Interpretive Rules— [Reserved]

Subpart B—Rules of Procedure Complaints, Investigations, Findings and Preliminary Orders

§ 1978.100 Purpose and scope.

(a) This subpart implements the procedural aspects of section 405 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 2305, which provides for employee protection from discrimination because the employee has engaged in protected activity pertaining to commercial motor vehicle safety and health matters.

(b) Procedures are established by this subpart pursuant to the statutory provision set forth above for the expeditious handling of complaints of discrimination made by employees, or persons acting on their behalf. These rules, together with those rules set forth at 29 CFR Part 18, set forth the procedures for submission of complaints under section 405, investigations, issuance of findings and preliminary orders, objections thereto, litigation before administrative law judges, post-hearing administrative review, withdrawals and settlements, judicial review and enforcement, and deferral to other forums.

§ 1978.101 Definitions.

(a) "Act" means the Surface Transportation Assistance Act of 1982 (STAA) (49 U.S.C. 2301 *et seq.*).

(b) "Secretary" means Secretary of Labor or persons to whom authority under the Act has been delegated.

(c) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

(d) "Employee" means (i) a driver of a commercial motor vehicle (including an independent contractor while in the course of personally operating a commercial motor vehicle); (ii) a mechanic; (iii) a freight handler; or (iv) any individual other than an employer; who is employed by a commercial motor carrier and who in the course of his employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any State, or a political subdivision of a State who is acting within the course of such employment.

(e) "OSHA" means the Occupational Safety and Health Administration.

(f) "Complainant" means the employee who filed a section 405 complaint or on whose behalf a complaint was filed.

(g) "Named person" means the person alleged to have violated section 405.

(h) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons.

§ 1978.102 Filing of discrimination complaint.

(a) *Who may file.* An employee may file, or have filed by any person on the employee's behalf, a complaint alleging a violation of section 405.

(b) *Nature of filing.* No particular form of complaint is required.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but filing with any OSHA officer or employee is sufficient. Addresses and telephone numbers for these officials are set forth in local telephone directories.

(d) *Time for filing.* (1) Section 405(c)(1) provides that an employee who believes that he has been discriminated against in violation of section 405 (a) or (b) ". . . may, within one hundred and eighty days after such alleged violation occurs," file or have filed by any person on the employee's behalf a complaint with the Secretary.

(2) A major purpose of the 180-day period in this provision is to allow the Secretary to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 180 days of an alleged violation will ordinarily be considered to be untimely.

(3) However, there are circumstances which will justify tolling of the 180-day period on the basis of recognized equitable principles or because of extenuating circumstances, *e.g.*, where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; or where the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency are examples of circumstances which do not justify a tolling of the 180-day period.

International Union of Electrical Workers v. Robbins & Meyers, 429 U.S. 229 (1976). The Assistant Secretary will not ordinarily investigate complaints which are determined to be untimely.

(e) *Relationship to section 11(c) complaints.* A complaint filed by an employee within thirty days of the alleged violation or otherwise timely filed pursuant to section 11(c) of the OSH Act, which alleges discrimination relating to safety or health, shall be deemed to be a complaint filed under both section 405 and section 11(c).

Normal procedures for investigations under both sections will be followed, except as otherwise provided.

(f) Upon receipt of a valid complaint, OSHA shall notify the named person of the filing of the complaint, and of his or her rights under 29 CFR 1978.102(b).

§ 1978.103 Investigation.

(a) OSHA shall investigate and gather data concerning the case as it deems appropriate.

(b) Within twenty days of his or her receipt of the complaint the named person may submit to OSHA a written statement and any affidavits or documents explaining or defending his or her position. Within the same twenty days the named person may request a meeting with OSHA to present his or her position. The meeting will be held before the issuance of any findings or preliminary order. At the meeting the named person may be accompanied by counsel and by any persons with information relating to the complaint, who may make statements concerning the case.

§ 1978.104 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within sixty days of the filing of the complaint, written findings as to whether there is reasonable cause to believe that the named person or others have discriminated against the complainant in violation of section 405 (a) or (b). If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he shall accompany his findings with a preliminary order providing the relief prescribed in section 405(c)(2)(B). Such order will include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. At the complainant's request the order may also assess against the named party the complainant's costs and expenses (including attorney's fees) reasonably incurred in filing the complaint.

(b) The findings and the preliminary order shall be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order shall inform the parties of the right to object to the findings and/or the order and shall give the address of the Chief Administrative Law Judge. At the same time, the

Assistant Secretary shall file with the Chief Administrative Law Judge, U.S. Department of Labor, the original complaint and a copy of the findings and/or order.

(c) Upon the issuance of findings that there is reasonable cause to believe that a violation has occurred, any pending section 11(c) complaint will be suspended until the section 405 proceeding is completed. When the section 405 proceeding is completed the Assistant Secretary will determine what action, if any, is appropriate on the section 11(c) complaint. If the Assistant Secretary's findings indicate that a violation has occurred, the Assistant Secretary shall make a separate determination as to whether section 11(c) has been violated.

§ 1978.105 Objections to the findings and the preliminary order.

(a) *Basic procedures.* Within thirty days of receipt of the findings or preliminary order the named person or the complainant, or both, may file objections to the findings or preliminary order providing relief or both and request a hearing on the record. The objection and request shall be in writing and shall state whether the objection is to the findings or the preliminary order or both. Such objection shall also be considered a request for a hearing. The date of the postmark shall be considered to be the date of filing. Objections shall be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC and copies of the objections shall be mailed at the same time to the other parties of record, including the Assistant Secretary's designee who issued the findings and order.

(b) *Effective date of findings and preliminary order and failure to object.*

(1) The findings and the preliminary order shall be effective thirty days after the named person's receipt thereof, or on the compliance date set forth in the preliminary order, whichever is later, unless an objection to the findings or preliminary order has been timely filed. However, the portion of any preliminary order requiring reinstatement shall be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections thereto.

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

Litigation

§ 1978.106 Scope of rules; applicability of other rules; notice of hearing.

(a) Except as otherwise noted, hearings shall be conducted in accordance with the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges promulgated at 29 CFR Part 18, 48 FR 32538 (July 15, 1983), amended at 49 FR 2739 which are hereby incorporated by reference. Hearings shall be conducted as hearings *de novo*.

(b) Upon receipt of an objection, the Chief Administrative Law Judge shall immediately assign the case to a judge who shall, within seven days following the receipt of the objection, notify the parties, by certified mail, of the day, time, and place of hearing. The hearing shall commence within 30 days of the filing of the objection, except upon a showing of good cause or unless otherwise agreed to by the parties.

(c) If both complainant and the named person object to the findings and/or order, the objections shall be consolidated and a single hearing shall be conducted. If the objections are not received simultaneously, the hearing shall commence within 30 days of the receipt of the later objection.

(d) At the time the hearing order issues, the judge may order the prosecuting party to file a prehearing statement of position, which shall briefly set forth the issues involved in the proceeding and the remedy requested. Such prehearing statement shall be filed within three days of the receipt of the hearing order and shall be served on all parties by certified mail. Thereafter, within three days of receipt of the prosecuting party's prehearing statement, the other parties to the proceeding shall file prehearing statements of position.

§ 1978.107 Parties.

(a) In any case in which only the named person objects to the findings or the preliminary order the Assistant Secretary ordinarily shall be the prosecuting party. In such a case the complainant shall also be a party and may engage in discovery, present evidence or otherwise act as a party. The named person shall be the party-respondent. If, at any time after the named person files objections, the Assistant Secretary and complainant agree, the complainant may present the case to the judge. Under such circumstances the case will be handled as if it had arisen under paragraph (b) of this section.

(b) In any case in which only the complainant objects to findings that the complaint lacks merit, to the preliminary order, or to both, the complainant shall be the prosecuting party. The Assistant Secretary may as of right intervene as a party at any time in proceedings under this paragraph. The named person shall be the party-respondent.

(c) In any case in which both the complainant and the named person object to the preliminary order the Assistant Secretary shall be the prosecuting party. The complainant and the named person shall be party-respondents. In any such case, if the named person also objected to the findings the Assistant Secretary, complainant, and named party shall each have the party status, rights, and responsibilities set forth in paragraph (a) of this section with respect to the findings.

§ 1978.108 Captions; titles of cases.

(a) Cases described in § 1978.106(a) shall be titled: *Assistant Secretary of Labor for Occupational Safety and Health, Prosecuting Party* and *(Name of Complainant), Complainant v. (Name of named person), Respondent*.

(b) Cases described in § 1978.106(b) shall be titled: *(Name of complainant), Complainant v. (Name of named person), Respondent*.

(c) Cases described in § 1978.106(c) shall be titled: *Assistant Secretary of Labor for Occupational Safety and Health, Prosecuting Party v. (Name of person), Respondent*.

* * * * *

(Name of Complainant), Complainant v. (Name of named person), Respondent.

(d) The titles listed in paragraphs (a), (b), and (c) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

§ 1978.109 Decisions and orders.

(a) *Administrative Law Judge decisions.* The administrative law judge shall issue a decision within 30 days after the close of the record. The close of the record shall occur no later than 30 days after the filing of the objection, except upon a showing of good cause or unless otherwise agreed to by the parties. For the purposes of the statute the issuance of the judge's decision shall be deemed the conclusion of the hearing. The decision shall contain appropriate findings, conclusions, and an order pertaining to the remedy which, among other things, may provide for reinstatement of a discharged employee and also may include an award of the complainant's costs and expenses (including attorney's fees) reasonably

incurred in bringing and litigating the case, if the complainant's position has prevailed. The decision shall be forwarded immediately, together with the record, to the Secretary for review by the Secretary or his or her designee. The decision shall be served upon all parties to the proceeding.

(b) The administrative law judge's decision and order concerning whether the reinstatement of a discharged employee is appropriate shall be effective immediately upon receipt of the decision by the named person. All other portions of the judge's order are stayed pending discretionary review by the Secretary.

(c) *Final order.* (1) Within 120 days after issuance of the administrative law judge's decision and order, the Secretary shall issue a final decision and order based on the record and the decision and order of the administrative law judge.

(2) The parties may file with the Secretary briefs in support of or in opposition to the administrative law judge's decision and order within thirty days of the issuance of that decision unless the Secretary, upon notice to the parties, establishes a different briefing schedule.

(3) The findings of the administrative law judge with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be considered conclusive.

(4) Where the Secretary determines that the named party has not violated the law, the final order shall deny the complaint.

(5) The final decision and order of the Secretary shall be served upon all parties to the proceeding.

§ 1978.110 Judicial review.

(a) Within 60 days after the issuance of a final order under § 1978.108, any person adversely affected or aggrieved by such 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 (49 U.S.C. 2305(d)(1)).

(b) A final order of the Secretary shall not be subject to judicial review in any criminal or other civil proceedings (49 U.S.C. 2305(d)(2)).

(c) The record of a case, including the record of proceedings before the administrative law judge, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§ 1978.111 Withdrawal of section 405 complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, an employee may withdraw his or her section 405 complaint by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary shall thereafter determine whether the withdrawal shall be approved. The Assistant Secretary shall notify the named person of the approval of any withdrawal.

(b) The Assistant Secretary may withdraw his findings or a preliminary order at any time before the expiration of the 30-day objection period, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order shall begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Secretary. The judge or the Secretary, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

(d) At any time after the filing of a section 405 complaint by an employee and before the findings and/or order become final, the case may be settled if the Assistant Secretary, the complainant, and the named person agree to a settlement. If such settlement is reached after objections have been filed pursuant to § 1978.104, notice of settlement shall be filed with the administrative law judge or the Secretary, as the case may be. However, if the named person makes an offer to settle the case which the Assistant Secretary, when acting as the prosecuting party, deems to be a fair and equitable settlement of all matters at issue and the complainant refuses to accept the offer, the Assistant Secretary may decline to assume the role of prosecuting party as set forth in § 1978.106(a). In such circumstances, the Assistant Secretary shall immediately notify the complainant that his review of the settlement offer may cause the Assistant Secretary to decline the role of prosecuting party. After the Assistant Secretary has reviewed the offer and when he or she has decided to decline the role of prosecuting party, the Assistant Secretary shall immediately notify all parties of his decision in writing and, if the case is before the administrative law judge, or the

Secretary on review, a copy of the notice shall be sent to the appropriate official. Upon receipt of the Assistant Secretary's notice, the parties shall assume the roles set forth in § 1978.106(b).

Miscellaneous Provisions

§ 1978.112 Arbitration or other proceedings.

(a) *General.* (1) An employee who files a complaint under section 405 of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Secretary's jurisdiction to entertain section 405 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Secretary may proceed with the investigation and the issuance of findings and orders regardless of the pendency of other proceedings. *MacDonald v. City of West Branch, Michigan*, _____ U.S. _____, 104 S. Ct. 1799 (1984). See *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974).

(2) However, the Secretary also recognizes the national policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. See, e.g., *Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728, (1981); *Boys Markets, Inc. v. Retail Clerks*, 398 U.S. 235 (1970); *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965); *Carey v. Westinghouse Corp.*, 375 U.S. 261 (1964). By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 405 complaints.

(3) Where complainant is in fact pursuing remedies other than those provided by section 405, the Secretary may, in his or her discretion, postpone a determination of the section 405 complaint and defer to the results of such proceedings. See *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156 (1962).

(b) *Postponement of determination.* When a complaint is under investigation pursuant to § 1978.102, postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under section 405 and those proceedings are not likely to violate rights guaranteed by section 405. The factual issues in such proceedings must be substantially the same as those raised by a section 405 complaint, and the

forum hearing the matter must have the power to determine the ultimate issue of discrimination. See *Rios v. Reynolds Metals, Co.*, 467 F.2d 54 (5th Cir., 1972); *Spielberg Manufacturing Co.*, 112 NLRB 1080 (1955).

(c) *Deferral to outcome of other proceedings.* A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-by-case basis, after careful scrutiny of all available information. Before the Secretary defers to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. See *Spielberg Manufacturing Company*, 112 NLRB 1080, 1082 (1955). In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the section 405 complaint.

§ 1978.113 Judicial enforcement.

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

§ 1978.114 Statutory time periods.

The time requirements imposed on the Secretary by these regulations are directory in nature. While every effort will be made to meet these requirements, there may be instances when it is not possible to meet these requirements. Failure to meet these requirements does not invalidate any action by the Assistant Secretary or Secretary under section 405.

§ 1978.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the judge or the Secretary on review may, upon application, after 3 days notice to all parties and intervenors, waive any rule or issue such orders as justice or the administration of section 405 requires.

[FR Doc. 86-26350 Filed 11-20-86; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 204, 223, and 252

Federal Acquisition Regulation Supplement Concerning Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities

AGENCY: Department of Defense (DOD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council has approved temporary revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) which address requirements specified within DoDI 5220.30, entitled "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities," dated 26 September 1984. The DFARS revisions prescribe a contract clause for uniform use in all contracts involving arms, ammunition and explosives, which clause incorporates DoD Instruction 5220.30 by reference. Unless sooner rescinded or extended the DFARS revisions expire 30 September 1987, which period will allow sufficient time for conversion of the physical security standards within DoDI 5220.30 to an appropriate military specification or military standard.

DATES: *Effective date:* The interim rule is effective October 31, 1986, and expires on September 30, 1987, unless sooner rescinded.

Comments: Interested parties are invited to submit written comments on or before January 20, 1987, to the Executive Secretary, DAR Council, at the address below. Comments received will be considered in revising the interim rule which will be implemented by Departmental guidance. Please cite DAR Case 85-102 in all correspondence related to this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, Attn: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Recent investigation by the DOD Inspector General has revealed a lack of uniform compliance by DOD contracting