

PART 1991—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE CRIMINAL ANTITRUST ANTI-RETALIATION ACT (CAARA)

Authority: [15 U.S.C. 7a-3](#); Secretary of Labor's Order 08-2020 (May 15, 2020), [85 FR 58393](#) (September 18, 2020); Secretary of Labor's Order 01-2020 (Feb. 21, 2020), [85 FR 13186-01](#) (Mar. 6, 2020).

Source: [88 FR 8763](#), Feb. 10, 2023, unless otherwise noted.

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

§ 1991.100 Purpose and scope.

(a) This part sets forth procedures for, and interpretations of section 2 of the Criminal Antitrust Anti-Retaliation Act (CAARA), [Public Law 116-257](#), 134 Stat. 1147 (December 23, 2020) (codified at [15 U.S.C. 7a-3](#)). CAARA provides for protection from retaliation because the covered individual has engaged in protected activity pertaining to any violation of, or any act or omission which the covered individual reasonably believes constitutes a violation of, section 1 or 3 of the Sherman Act; or any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of section 1 or 3 of the Sherman Act or in conjunction with an investigation by the Department of Justice of a potential violation of section 1 or 3 of the Sherman Act.

(b) This part establishes procedures under CAARA for the expeditious handling of retaliation complaints filed by covered individuals, or by persons acting on their behalf. These rules, together with those codified at [29 CFR part 18](#), set forth the procedures under CAARA for submission of complaints, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges (ALJs), post-hearing administrative review, and withdrawals and settlements. In addition, these rules provide the Secretary's interpretations of certain statutory provisions.

§ 1991.101 Definitions.

As used in this part:

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom the Assistant Secretary delegates authority under CAARA.

Antitrust laws means section 1 or 3 of the Sherman Act ([15 U.S.C. 1](#) or [3](#)).

Business days means days other than Saturdays, Sundays, and Federal holidays.

CAARA means the Criminal Antitrust Anti-Retaliation Act, [Public Law 116–257](#), 134 Stat. 1147 (December 23, 2020) (codified at [15 U.S.C. 7a–3](#)).

Complainant means the covered individual who filed a CAARA complaint or on whose behalf a complaint was filed.

Covered individual means an employee, contractor, subcontractor, or agent of an employer and includes an individual presently or formerly working for, an individual applying to work for, or an individual whose employment could be affected by, another person.

DOJ means the Antitrust Division of the United States Department of Justice.

Employer means a person, or any officer, employee, contractor, subcontractor, or agent of such person.

Federal Government means a Federal regulatory or law enforcement agency; or any Member of Congress or committee of Congress.

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

Person has the same meaning as in [15 U.S.C. 12\(a\)](#) and includes individuals as well as corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Respondent means the person named in the complaint who is alleged to have violated CAARA.

Secretary means the Secretary of Labor.

§ 1991.102 Obligations and prohibited acts.

(a) No employer may discharge, demote, suspend, threaten, harass, or in any other manner retaliate against, including, but not limited to, intimidating, restraining, coercing, blacklisting, or disciplining, a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual to engage in any of the activities specified in [paragraph \(b\)\(1\)](#) and [\(2\)](#) of this section.

(b) A covered individual is protected against retaliation (as described in [paragraph \(a\)](#) of this section) for any lawful act done by the covered individual:

(1) To provide information, or cause information to be provided to the Federal Government or a person with supervisory authority over the individual, or any other person working for the employer who has the authority to investigate, discover, or terminate misconduct, regarding:

(i) Any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

(ii) Any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws; or

(2) To cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to:

(i) Any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

(ii) Any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.

(3) The term violation with respect to the antitrust laws shall not be construed to include a civil violation of any law that is not also a criminal violation.

(4) [Paragraphs \(b\)\(1\)](#) and [\(2\)](#) of this section shall not apply to any covered individual if the covered individual:

(i) Planned and initiated a violation or attempted violation of the antitrust laws;

(ii) Planned and initiated a violation or attempted violation of another criminal law in conjunction with a violation or attempted violation of the antitrust laws; or

(iii) Planned and initiated an obstruction or attempted obstruction of an investigation by the Department of Justice of a violation of the antitrust laws.

§ 1991.103 Filing of retaliation complaint.

(a) **Who may file.** A covered individual who believes that they have been discharged or otherwise retaliated against by any employer in violation of CAARA may file, or have filed by any person on their behalf, a complaint alleging such retaliation.

(b) **Nature of filing.** No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language.

(c) **Place of filing.** The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the complainant resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following internet address: <http://www.osha.gov>. Complaints may also be filed online at <https://www.osha.gov/whistleblower/WBComplaint.html>.

(d) **Time for filing.** Within 180 days after an alleged violation of CAARA occurs, any person who believes that they have been retaliated against in violation of CAARA may file, or have filed by any person on their behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, electronic filing or transmittal, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a complaint to be tolled if a complainant mistakenly files a complaint with an agency other than OSHA within 180 days after an alleged adverse action.

§ 1991.104 Investigation.

(a) OSHA will notify the respondent(s) and the complainant's employer (if different) of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint. Such materials will be redacted, if necessary, consistent with the Privacy Act of 1974, [5 U.S.C. 552a](#), and other applicable confidentiality laws. OSHA will also notify the respondent of its rights under [paragraphs \(b\) and \(f\)](#) of this section and [§ 1991.110\(e\)](#). OSHA will provide an unredacted copy of these same materials to the complainant (or the complainant's legal counsel if complainant is represented by counsel) and to the DOJ.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under [paragraph \(a\)](#) of this section, the respondent may submit to OSHA a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent may request a meeting with OSHA to present its position.

(c) During the investigation, OSHA will request that each party provide the other parties to the whistleblower complaint with a copy of submissions to OSHA that are pertinent to the whistleblower complaint. Alternatively, if a party does not provide its submissions to OSHA to the other party, OSHA generally will provide them to the other party (or the party's legal counsel if the party is represented by counsel) at a time permitting the other party an

opportunity to respond. Before providing such materials to the other party, OSHA will redact them, if necessary, consistent with the Privacy Act of 1974, [5 U.S.C. 552a](#), and other applicable confidentiality laws. OSHA will also provide each party with an opportunity to respond to the other party's submissions.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with [29 CFR part 70](#).

(e)

(1) A complaint will be dismissed unless the complainant has made a *prima facie* showing that a protected activity was a contributing factor in the adverse action alleged in the complaint.

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

(i) The individual engaged in a protected activity;

(ii) The respondent knew or suspected that the individual engaged in the protected activity;

(iii) The individual suffered an adverse action; and

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

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.*, to give rise to an inference that the respondent knew or suspected that the individual engaged in protected activity and that the protected activity was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complainant shows that the adverse action took place shortly after the protected activity. If the required showing has not been made, the complainant (or the complainant's legal counsel if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a *prima facie* showing, as required by this section, further investigation of the complaint will not be conducted if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the complainant's protected activity.

(5) If the respondent fails to make a timely response or fails to satisfy its burden set forth in the prior paragraph, OSHA will proceed with the investigation. The investigation will

proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in [§ 1991.105](#), if OSHA has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the respondent has violated CAARA and that preliminary reinstatement is warranted, OSHA will contact the respondent (or the respondent's legal counsel if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The complainant will also receive a copy of the materials that must be provided to the respondent under this paragraph. Before providing such materials, OSHA will redact them, if necessary, consistent with the Privacy Act of 1974, [5 U.S.C. 552a](#), and other applicable confidentiality laws. The respondent will be given the opportunity to submit a written response, to meet with the investigator, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent must present this evidence within 10 business days of OSHA's notification pursuant to this paragraph, or as soon thereafter as OSHA and the respondent can agree, if the interests of justice so require.

§ 1991.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of the filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has retaliated against the complainant in violation of CAARA.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, the Assistant Secretary will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will include all relief necessary to make the complainant whole including, where appropriate: 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\(a\)\(2\)](#) and will be compounded daily. Where appropriate, the preliminary order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate periods.

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

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

preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding \$1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order, also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges if electronic filing is available. The findings also may specify the means, including electronic means, for serving OSHA and the Associate Solicitor for Fair Labor Standards with documents in the administrative litigation as required under this part. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

(c) The findings and any preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel), or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and/or a request for hearing has been timely filed as provided at [§ 1991.106](#). However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and the preliminary order, regardless of any objections to the findings and/or the order.

Subpart B—Litigation

§ 1991.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under CAARA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to [§ 1991.105](#). The objections and request for hearing and/or request for attorney fees must be in writing and must state whether the objections are to the findings, the preliminary order, or both, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand delivery, or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with [29 CFR part 18](#), and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. OSHA and the Associate Solicitor for Fair Labor Standards may specify the means, including electronic means, for serving them with copies of the objections.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which will not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately

upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement, which shall be granted only based on exceptional circumstances. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or the preliminary order will become the final decision of the Secretary, not subject to judicial review.

§ 1991.107 Hearings.

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

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

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

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

§ 1991.108 Role of Federal agencies.

(a)

(1) The complainant and the respondent will be parties in every proceeding and must be served with copies of all documents in the case. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as amicus curiae at any time at any stage of the proceeding. This right to participate includes, but is not limited to, the right to petition for review of a decision of an ALJ, including a decision approving or rejecting a settlement agreement between the complainant and the respondent, and the right to seek discretionary review of a decision of the Administrative Review Board (ARB) from the Secretary.

(2) Parties must send copies of documents to OSHA and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, only upon request of OSHA, or when OSHA is participating in the proceeding, or when service on OSHA and the Associate Solicitor is otherwise required by these rules. Except as otherwise provided in rules of practice and/or procedure before the OALJ or the ARB, OSHA and the Associate Solicitor for Fair Labor Standards may specify the means, including electronic means, for serving them with documents under this section.

(b) The DOJ, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at the DOJ's discretion. At the request of the DOJ, copies of all documents in a case must be sent to the DOJ, whether or not it is participating in the proceeding.

§ 1991.109 Decisions and orders of the administrative law judge.

(a) The decision of the ALJ will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in [paragraph \(d\)](#) of this section, as appropriate. A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.

(c) Neither OSHA's determination to dismiss a complaint without completing an investigation pursuant to [§ 1991.104\(e\)](#) nor OSHA's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)

(1) If the ALJ concludes that the respondent has violated the law, the ALJ will issue an order providing all relief necessary to make the complainant whole, including, where appropriate: 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\(a\)\(2\)](#) 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 periods.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ALJ determines that a complaint was frivolous or was brought in bad faith, the ALJ may award to the respondent a reasonable attorney fee, not exceeding \$1,000.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. OSHA and the Associate Solicitor for Fair Labor Standards may specify the means, including electronic means, for service of decisions on them under this section. Any ALJ's decision

requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 30 days after the date of the decision unless a timely petition for review has been filed with the ARB. The decision of the ALJ will become the final order of the Secretary unless a petition for review is timely filed with the ARB and the ARB accepts the petition for review.

§ 1991.110 Decisions and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, 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, which has been delegated the authority to act for the Secretary and issue decisions under this part subject to the Secretary's discretionary review. 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 30 days of the date of the decision of the ALJ. All petitions and documents submitted to the ARB must be filed in accordance with [29 CFR part 26](#). The date of the postmark, facsimile transmittal, or electronic transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery, or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. The petition for review also must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. OSHA and the Associate Solicitor for Fair Labor Standards may specify the means, including electronic means, for service of petitions for review on them under this section.

(b) If a timely petition for review is filed pursuant to [paragraph \(a\)](#) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that any order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If a timely petition for review is not filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If a timely petition for review is not filed, the resulting final order is not subject to judicial review.

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 30 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 30 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law

Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party. OSHA and the Associate Solicitor for Fair Labor Standards may specify the means, including electronic means, for service of ARB decisions on them under this section.

(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. The order will require, where appropriate: 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\(a\)\(2\)](#) 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 periods. Such order is subject to discretionary review by the Secretary (as provided in Secretary's Order 01–2020 or any successor to that order).

(e) If the ARB determines that the respondent has not violated the law, an order will be issued 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 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 or any successor to that order).

Subpart C—Miscellaneous Provisions

§ 1991.111 Withdrawal of complaints, findings, objections, and petitions for review; settlement.

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw the complaint by notifying OSHA, orally or in writing, of the withdrawal. OSHA then will confirm in writing the complainant's desire to withdraw and determine whether to approve the withdrawal. OSHA will notify the parties (or each party's legal counsel if the party is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with [paragraph \(d\)](#) of this section. A complainant may not withdraw the complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

(b) The Assistant Secretary may withdraw the findings and/or preliminary order at any time before the expiration of the 30-day objection period described in [§ 1991.106](#), provided that no objection has been filed yet, and substitute new findings and/or a new preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If the case is on review with the ARB, a party may withdraw a petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with [paragraph \(d\)](#) of this section.

(d)

(1) ***Investigative settlements.*** At any time after the filing of a complaint, but before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if OSHA, the complainant, and the respondent agree to a settlement. OSHA's approval of a settlement reached by the respondent and the complainant demonstrates OSHA's consent and achieves the consent of all three parties.

(2) ***Adjudicatory settlements.*** At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. If the Secretary has accepted the case for discretionary review, or directed that the case be referred for discretionary review, the settlement must be approved by the Secretary. A copy of the settlement will be filed with the ALJ or the ARB, as appropriate.

(e) Any settlement approved by OSHA, the ALJ, the ARB or the Secretary will constitute the final order of the Secretary and may be enforced in United States district court pursuant to [§ 1991.113](#).

§ 1991.112 Judicial review.

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

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

(c) If a timely petition for review is filed, the record of the case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to

the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

§ 1991.113 Judicial enforcement.

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

§ 1991.114 District court jurisdiction of retaliation complaints.

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

(b) A proceeding under [paragraph \(a\)](#) of this section shall be governed by the same legal burdens of proof specified in [§ 1991.109](#).

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

§ 1991.115 Special circumstances; waiver of rules.

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