

SUBCHAPTER P—PROTECTION OF EMPLOYEES

PART 865—PROTECTION OF EMPLOYEES

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SOURCE: 42 FR 62712, Dec. 13, 1977, unless otherwise noted. Redesignated at 44 FR 15312, Mar. 13, 1979.

§ 865.1 Scope.

This part establishes procedures regarding—

(a) The reporting of acts of discriminatory discharge or other acts of discrimination under the Act caused by any person. Forms of discrimination include, but are not limited to: Firing, suspension, transfer or demotion, denial or reduction of wages and benefits, coercion by promises of benefits or threats of reprisal, and interference with the exercise of any rights afforded under the Act;

(b) The investigation of applications for review and holding of informal conferences about the alleged discrimination; and

(c) The request for formal hearings with the Office of Hearings and Appeals.

§ 865.11 Protected activity.

(a) No person shall discharge or in any other way discriminate against or cause to be fired or discriminated against any employee or any authorized representative of employees because that employee or representative has—

(1) Filed, instituted or caused to be filed or instituted any proceedings under the Act by—

(i) Reporting alleged violations or dangers to the Secretary, the State Regulatory Authority, or the employer or his representative.

(ii) Requesting an inspection or investigation; or

(iii) Taking any other action which may result in a proceeding under the Act.

(2) Made statements, testified, or is about to do so—

(i) In any informal or formal adjudicatory proceeding;

(ii) In any informal conference proceeding;

(iii) In any rulemaking proceeding;

(iv) In any investigation, inspection or other proceeding under the Act;

(v) In any judicial proceeding under the Act.

(3) Has exercised on his own behalf or on behalf of others any right granted by the Act.

(b) Each employer conducting operations which are regulated under this Act, shall within 30 days from the effective day of these regulations, provide a copy of this part to all current employees and to all new employees at the time of their hiring.

[42 FR 62712, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978. Redesignated at 44 FR 15312, Mar. 13, 1979]

§ 865.12 Procedures for filing an application for review of discrimination.

(a) *Who may file.* Any employee, or any authorized representative of employees, who believes that he has been discriminated against by any person in violation of § 865.11(a) of this part may file an application for review. For the purpose of these regulations, an application for review means the presentation of a written report of discrimination stating the reasons why the person believes he has been discriminated against and the facts surrounding the alleged discrimination.

(b) *Where to file.* The employee or representative may file the application for review at any location of the Office and each office shall maintain a log of all filing.

(c) *Time for filing.* The employee or representative shall file an application for review within 30 days after the alleged discrimination occurs. An application is considered filed—

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(1) On the date delivered if delivered a person to the Office, or

(2) On the date mailed to the Office.

(d) *Running of the time of filing.* The time for filing begins when the employee knows or has reason to know of the alleged discriminatory activity.

§ 865.13 Investigation and conference procedures.

(a) Within 7 days after receipt of any application for review, the Office shall mail a copy of the application for review to the person alleged to have caused the discrimination, shall file the application for review with the Office of Hearings and Appeals and shall notify the employee and the alleged discriminating person that the Office will investigate the complaint. The alleged discriminating person may file a response to the application for review within 10 days after he receives the copy of the application for review. The response shall specifically admit, deny or explain each of the facts alleged in the application unless the alleged discriminating person is without knowledge in which case he shall so state.

(b) The Office shall initiate an investigation of the alleged discrimination with 30 days after receipt of the application for review. The Office shall complete the investigation with 60 days of the date of the receipt of the application for review. If circumstances surrounding the investigation prevent completion within the 60-day period, the Office shall notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.

(c) Within 7 days after completion of the investigation the Office shall invite the parties to an informal conference to discuss the findings and preliminary conclusions of the investigation. The purpose of the informal conference is to attempt to conciliate the matter. If a complaint is resolved at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the alleged discriminating person, the employee and the representative of the Office. If the Office concludes on the basis of a subsequent investigation that any party

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to the agreement has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Office shall take appropriate action to obtain compliance with the agreement.

(d) Following the investigation and any informal conference held, the Office shall complete a report of investigation which shall include a summary of the results of the conference. Copies of this report shall be available to the parties in the case.

§ 865.14 Request for hearing.

(a) If the Office determines that a violation of this part has probably occurred and was not resolved at an informal conference, the Director shall request a hearing on the employee's behalf before the Office of Hearings and Appeals within 10 days of the scheduled informal hearing. The parties shall be notified of the determination. If the Director declines to request a hearing the employee shall be notified within 10 days of the scheduled informal conference and informed of his right to request a hearing on his own behalf.

(b) The employee may request a hearing with the Office of Hearings and Appeals after 60 days have elapsed from the filing of his application.

§ 865.15 Formal adjudicatory proceedings.

(a) Formal adjudication of a complaint filed under this part shall be conducted in the Office of Hearings and Appeals under 43 CFR part 4.

(b) A hearing shall be held as promptly as possible consistent with the opportunity for discovery provided for under 43 CFR part 4.

(c) Upon a finding of violation of § 865.11 of this part, the Secretary shall order the appropriate affirmative relief including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. At the request of the employee a sum equal to the aggregate amount of all costs and expenses including attorneys'