

(c) The findings and the 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 request for a hearing has been timely filed as provided at § 1978.106. However, the portion of any 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 findings and/or order.

### Subpart B—Litigation

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

(a) Any party who desires review, including judicial review, of the findings and preliminary order 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 § 1978.105. The objections and request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections will be filed with the Chief Administrative Law Judge, U.S. Department of Labor (800 K Street, NW., Washington, DC 20001), and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor for Occupational Safety and Health.

(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 preliminary order of reinstatement. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and preliminary order will become the final decision of the Secretary, not subject to judicial review.

#### § 1978.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure and the rules of evidence for administrative hearings before the Office of Administrative Law Judges, codified at part 18 of title 29 of the Code of Federal Regulations.

(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, by certified mail, 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* and on the record.

(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.

#### § 1978.108 Role of Federal agencies.

(a) (1) The complainant and the respondent will be parties in every proceeding. In any case in which the respondent objects to the findings or the preliminary order the Assistant Secretary ordinarily will be the prosecuting party. In any other cases, at the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or participate as *amicus curiae* 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.

(2) If the Assistant Secretary assumes the role of prosecuting party in accordance with paragraph (a)(1) of