

positions of the parties and prepare a report, including the issues and any relevant facts known to the contracting officer. The report shall promptly be forwarded to the nearest District Office of the Wage and Hour Division or to the Administrator of the Wage and Hour Division, Employment Standards Administration, Room S-3502, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

§ 9.101 What action will the Wage and Hour Division take to try to resolve the complaint?

After obtaining the necessary information from the contracting officer regarding the alleged violations, the Wage and Hour Division investigator may contact the successor contractor and attempt, through conciliation procedures, to obtain a resolution to the matter which is satisfactory to both the complainant(s) and the successor contractor and consistent with the requirements of the Executive Order and these regulations.

§ 9.102 How are complaints resolved if conciliation is unsuccessful?

(a) Upon receipt of a contracting officer's report, the Administrator shall investigate and gather data concerning such case. Where conciliation efforts have been attempted, the Administrator need not initiate the investigation unless and until the efforts fail. The Administrator may also initiate an investigation at any time on his or her own initiative. As part of the investigation, the Administrator may inspect the records of the predecessor and successor contractors (and make copies thereof), may question the predecessor and successor contractors and any employees of these contractors, and may require the production of any documentary or other evidence deemed necessary to determine whether a violation of the Executive Order (including conduct warranting imposition of ineligibility sanctions pursuant to section 9.109 of this part) has been committed.

(b) The contractor and the predecessor contractor shall cooperate in any investigation conducted pursuant to this subpart, and shall not interfere with the investigation or intimidate, blacklist, discharge, or in any other manner discriminate against any person because such person has cooperated in an investigation or proceeding under this subpart or has attempted to exercise any rights afforded under this part.

(c) Upon completion of the investigation, the Administrator shall issue a written determination of whether a violation has occurred which

shall contain a statement of reasons for the findings and conclusions. A determination that a violation occurred shall address appropriate relief and the issue of ineligibility sanctions where appropriate. Notice of the determination shall be given by certified mail to the complainant (if any), the successor contractor and their representatives (if any).

(d) The Administrator may conduct a new investigation or issue a new determination if the Administrator concludes circumstances warrant, such as where the proceedings before an Administrative Law Judge reveal that there may have been violations with respect to other employees of the predecessor contractor, or that imposition of ineligibility sanctions is appropriate, or where the contractor has failed to comply with an order of the Secretary.

§ 9.103 How are decisions of the Administrator appealed?

(a) Except as provided in paragraph (b), the determination of the Administrator shall advise the parties (ordinarily the complaint (if any) and the successor contractor) that the notice of determination shall become the final order of the Secretary and shall not be appealable in any administrative or judicial proceeding unless, within 20 days of the date of the determination of the Administrator, the Chief Administrative Law Judge receives a request for a hearing. The request for a hearing shall be accompanied by a copy of the Administrator's determination and may be filed by U.S. mail, facsimile (FAX), telegram, hand delivery, or next-day delivery service. At the same time, a copy of any request for a hearing shall be sent to the complainant(s) or successor contractor, as appropriate; the Administrator of the Wage and Hour Division; and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210. The Administrator's failure or refusal to seek ineligibility sanctions shall not be appealable.

(b) If the Administrator concludes that no relevant facts are in dispute, the parties will be so advised and will be further advised that the determination shall become the final order of the Secretary and shall not be appealable in any administrative or judicial proceeding unless, within 20 days of the date of the determination of the Administrator, a petition for review is filed with the Board of Service Contract Appeals pursuant to section 9.107 of this part. The determination will further advise that if an aggrieved party disagrees with the factual findings or

believes there are relevant facts in dispute, the aggrieved party may advise the Administrator of the disputed facts and request a hearing by letter, which must be received within 20 days of the date of the determination. The Administrator will either refer the request for a hearing to the Chief Administrative Law Judge, or notify the aggrieved party of the Administrator's determination that there is no relevant issue of fact and that a petition for review may be filed with the Board of Service Contract Appeals within 20 days of the date of the notice, in accordance with the procedures at section 9.107 of this part.

(c) If any party desires review of the determination of the Administrator, including judicial review, a request for an administrative law judge hearing (or petition for review by the Board of Service Contract Appeals) must first be filed in accordance with paragraph (a) (or (b)) of this section. If a timely request for hearing (or petition for review) is filed, the determination of the Administrator shall be inoperative unless and until the administrative law judge or the Board of Service Contract Appeals issues an order affirming the determination.

Administrative Law Judge Procedures

§ 9.104 How may cases be settled without formal hearing?

(a) In accordance with the Executive Order's directive to favor the resolution of disputes by efficient and informal alternative dispute resolution methods, the parties are encouraged to resolve disputes in accordance with the conciliation procedures set forth in sections 9.100 and 9.101 of this subpart, or, where such efforts have failed, to utilize settlement judges to mediate settlement negotiations pursuant to 29 CFR Part 18, § 18.9. At any time after commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) A settlement judge may be appointed by the Chief Administrative Law Judge upon a request by a party or the presiding administrative law judge. The Chief Administrative Law Judge has sole discretion to decide whether to appoint a settlement judge, except that a settlement judge shall not be appointed when a party objects to referral of the matter to a settlement judge.