

States Code or any other Federal law relating to pipeline safety; or

(5) Assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety.

(c) This part shall have no application to any employee of an employer who, acting without direction from the employer (or such employer's agent), deliberately causes a violation of any requirement relating to pipeline safety under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law.

§ 1981.103 Filing of discrimination complaint.

(a) Who may file. An employee who believes that he or she has been discriminated against by an employer in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

(b) Nature of filing. No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.

(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 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>.

(d) Time for filing. Within 180 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the

date of filing; if the complaint is filed in person, by hand-delivery or other means, the complaint is filed upon receipt.

(e) Relationship to section 11(c) complaints. A complaint filed under the Pipeline Safety Act that alleges facts which would constitute a violation of section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), will be deemed to be a complaint filed under both the Pipeline Safety Act and section 11(c). Similarly, a complaint filed under section 11(c) that alleges facts that would constitute a violation of the Pipeline Safety Act will be deemed to be a complaint filed under both the Pipeline Safety Act and section 11(c). Normal procedures and timeliness requirements for investigations under the respective laws and regulations will be followed.

§ 1981.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (redacted to protect the identity of any confidential informants). The Assistant Secretary will also notify the named person of his or her rights under paragraphs (b) and (c) of this section and paragraph (e) of § 1981.110. A copy of the notice to the named person will also be provided to the Department of Transportation.

(b) A complaint of alleged violation shall be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) 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 employee engaged in a protected activity or conduct;

(ii) The named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and