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an order shall be deemed issued and effective according to its terms when mailed.

(Secretary's Order No. 16–75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76–2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

§ 528.6 Review.

Any employer and, when appropriate, any apprenticeship agency or responsible school official, who expressed timely objection to the proposed action prior to issuance of an order of annulment or withdrawal may obtain review, limited to the question of whether the findings of fact support the order under the regulations in this part. Application for such review shall be in writing addressed to the Administrator and mailed within 15 days after the order is issued. The Administrator may affirm, modify, or reverse the order, or may remand it for further proceedings. The order under review shall not be stayed in effect pending such review. Any aggrieved person may obtain such review of an order entered in proceedings instituted under paragraph (c) of § 528.3.

[21 FR 5316, July 17, 1956, as amended at 22 FR 5683, July 18, 1957]

§ 528.7 Effect of order of annulment or withdrawal.

Except as otherwise expressly provided in such order, any order of annulment or withdrawal under paragraph (a) or (b) of § 528.3 shall be effective to terminate all certifications to which the regulations in this part apply in effect at the establishment where the cause for withdrawal arose or where the annulled certificate had effect. After such annulment or withdrawal, such employer shall be ineligible to obtain or exercise the privileges granted in such a certificate until he satisfies the issuing officer that he will not again give cause for annulment or withdrawal if a certificate is issued.

(Secretary's Order No. 16–75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No 76–2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

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AUTHORITY: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 6–84, 49 FR 32473, August 14, 1984; and Employment Standards Order No. 85–01, June 5, 1985.

SOURCE: 24 FR 729, Feb. 3, 1959, unless otherwise noted.

Subpart A—General

§ 530.1 Definitions.

(a) The meaning of the terms person, employ, employer, employee, goods, and production, as used in this part, is the same as in the Fair Labor Standards Act of 1938, as amended.

(b) *Administrator* as used in this part means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or an authorized representative of the Administrator.

(c) *Industrial homeworker* and *homeworker*, as used in this part, mean any employee employed or suffered or permitted to perform industrial homework for an employer.

(d) *Industrial homework*, as used in this part, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production.

(e) The women's apparel industry is defined as follows: The production of women's, misses' and juniors' dresses, washable service garments, blouses, and neckwear from woven or purchased knit fabric; women's, misses', children's and infants' underwear, nightwear, and negligees from woven fabrics; corsets and other body supporting garments from any material; other garments similar to the foregoing; and infants; and children's outerwear.

(f) The jewelry manufacturing industry is defined as follows:

(1)(i) The manufacturing, processing, or assembling, wholly or partially from any material, of jewelry, commonly or commercially so known. Jewelry as used herein includes without limitation, religious, school, college, and fraternal insignia; articles of ornament or adornment designed to be worn on apparel or carried on or about the person, including, without limitation, cigar and cigarette cases, holders, and lighters; watch cases; metal mesh bags and metal watch bracelets; and chain, mesh, and parts for use in the manufacture of any of the articles included in this definition. Jewelry as used in this part does not include pocket knives, cigar cutters, badges, emblems, military and naval insignia, belt buckles, and handbag and pocketbook frames and clasps, or commercial compacts and vanity cases, except when made from or embellished with precious metals or precious, semiprecious, synthetic or imitation stones, or the assaying, refining, and smelting of base or precious metals.

(ii) The term *parts* as used in paragraph (e)(1)(i) of this section does not include parts which are used predominantly for products other than jewelry, such as springs, blades, and nail files. The term *commercial compacts and vanity cases* as used means compacts and vanity cases which bear the trade name or mark of a cosmetic manufacturer and are made for the purpose of distributing or advertising said cosmetics.

(2) The manufacturing, cutting, polishing, encrusting, engraving, and setting of precious, semiprecious, synthetic, and imitation stones.

(3) The manufacturing, drilling, and stringing of pearls, imitation pearls, and beads designed for use in the manufacture of jewelry.

(4) The term *hand-fashioned jewelry* as used in § 530.12(b) means articles of jewelry commonly known as genuine Navajo, Pueblo, Hopi, or Zuni handmade jewelry which in all elements of design, fashioning and ornamentation are handmade by methods and with the help of only such devices as permit the maker to determine the shape and design of each individual product: *Provided*, That silver used in the making of

such jewelry shall be of at least nine hundred fineness, and that turquoise and other stones used shall be genuine stones, uncolored and untreated by artificial means: *And provided further*, That power machinery is permitted in the production of findings, in the cutting and polishing of stones, in the buffing and polishing of completed products, and in incidental functions. Equipment specifically prohibited shall include hand presses, foot presses, drop hammers, and similar equipment: *And provided further*, That solder may be of less silver content than nine hundred; *And provided further*, That findings may be mechanically made of any metal by Indians or others: *And provided further*, That turquoise and other stones may be cut and polished by Indians or others without restrictions as to methods or equipment used.

(g) The knitted outerwear industry is defined as follows: The knitting from any yarn or mixture of yarns and the further manufacturing, dyeing or other finishing of knitted garments, knitted garment sections, or knitted garment accessories for use as external apparel or covering which are partially or completely manufactured in the same establishment as that where the knitting process is performed; and the manufacture of bathing suits from any purchased fabric: *Provided*, That the manufacturing, dyeing or other finishing of the following shall not be included:

(1) Knitted fabric, as distinguished from garment sections or garments, for sale as such.

(2) Fulled suitings, coatings, topcoatings, and overcoatings.

(3) Garments or garment accessories made from purchased fabric, except bathing suits.

(4) Gloves or mittens.

(5) Hosiery.

(6) Knitted garments or garment accessories for use as underwear, sleeping wear, or negligees.

(7) Fleece-lined garments made from knitted fabric containing cotton only or containing any mixture of cotton and not more than 25 percent, by weight, of wool or animal fiber other than silk.

(8) Knitted shirts of cotton or any synthetic fiber or any mixture of such fibers which have been knit on machinery of 10-cut or fine: *Provided*, That this exception shall not be construed to exclude from the knitted outerwear industry and the manufacturing, dyeing, or other finishing of knitted shirts made in the same establishment as that where the knitting process is performed, if such shirts are made wholly or in part of fibers other than those specified in this clause, or if such shirts of any fiber are knit on machinery coarser than 10-cut.

(h) The gloves and mittens industry is defined as follows: The production of gloves and mittens from any material or combination of materials, except athletic gloves and mittens.

(i) The button and buckle manufacturing industry is defined as follows: The manufacture of buttons, buckles, and slides, and the manufacture of blanks and parts for such articles from any material except metal, for use on apparel.

(j) The handkerchief manufacturing industry is defined as follows: The manufacture of men's, women's and children's handkerchiefs, plain or ornamented, from any materials.

(k) The embroideries industry is defined as follows: The production of all kinds of hand and machine-made embroideries and ornamental stitchings, including but not by way of limitation, tucking shirring, smocking, hemstitching, hand rolling, fagoting, Bonnez embroidery, appliqueing, crochet beading, hand drawing, machine drawing, rhinestone trimming, sequin trimming, spangle trimming, eyelets, passementerie, pleating, the application of rhinestones and nailheads, stamping and perforating of designs, Schifli embroidery and laces, burnt-out laces and velvets, Swiss handmachine embroidery, thread splitting, embroidery thread cutting, scallop cutting, lace cutting, lace making-up, making-up of embroidered yard goods, straight cutting of embroidery and cutting out of embroidery, embroidery trimmings, bindings (not made in textile establishments), pipings and emblems: *Provided*, That (1) the foregoing when produced or performed by a manufacturer of a garment, fabric or other article for use on such garment, fabric or other article, and (2) the manufacture of covered

buttons and buckles, shall not be included.

(l) As used throughout this part the terms ''Secretary'' or ''Secretary of Labor'' shall mean the Secretary of Labor, U.S. Department of Labor, or his or her designee.

[24 FR 729, Feb. 3, 1959, as amended at 46 FR 50349, Oct. 9, 1981; 49 FR 22036, May 24, 1984; 53 FR 45722, Nov. 10, 1988; 61 FR 19986, May 3, 1996]

§ 530.2 Restriction of homework.

Except as provided in subpart B of this part, no work in the industries defined in paragraphs (e) through (k) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homeworker or unless the homeworker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.2 of this chapter.

[53 FR 45722, Nov. 10, 1988]

§ 530.3 Application forms for individual homeworker certificates.

Certificates authorizing the employment of industrial homeworkers in the industries defined in § 530.1 may be issued on the following terms and conditions upon application therefore on forms provided by the Wage and Hour Division. Such forms shall be signed by both the homeworker and the employer.

(Approved by the Office of Management and Budget under control number 1215–0005)

[24 FR 729, Feb. 3, 1959, as amended at 49 FR 18294, Apr. 30, 1984]

§ 530.4 Terms and conditions for the issuance of individual homeworker certificates.

(a) Upon application by the homeworker and the employer on forms provided by the Wage and Hour Division, certificates may be issued to the applicant employer authorizing the employment of a particular worker in industrial homework in a particular industry, provided that the application is in proper form and sets forth facts showing that the worker:

(1)(i) Is unable to adjust to factory work because of age or physical or mental disability; or

(ii) Is unable to leave home because the worker's presence is required to care for an invalid in the home; and

(2)(i) Was engaged in industrial homework in the particular industry for which the certificate is applied, as such industry is defined in § 530.1, prior to: (*a*) April 4, 1942, in the button and buckle manufacturing industry; (*b*) November 2, 1942, in the embroideries industry; (*c*) April 1, 1941, in the gloves and mittens industry; (*d*) October 7, 1942, in the handkerchief manufacturing industry; (*e*) July 1, 1941, in the jewelry manufacturing industry; or (*f*) March 5, 1942, in the women's apparel industry, except that if this requirement shall result in unusual hardship to the individual homeworker it shall not be applied; or

(ii) Is engaged in industrial homework under the supervision of a State Vocational Rehabilitation Agency.

(b) No homeworker shall perform industrial homework for more than one employer in the same industry, but homework employment in one industry shall not be a bar to the issuance of certificates for other industries.

(Information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1215–0005)

[24 FR 729, Feb. 3, 1959, as amended at 43 FR 28470, June 30, 1978; 46 FR 50349, Oct. 9, 1981; 49 FR 44270, Nov. 5, 1984; 53 FR 45722, Nov. 10, 1988]

§ 530.5 Investigation.

An investigation may be ordered in any case to obtain additional data or facts. A medical examination of the worker or invalid may be ordered or a certification of facts concerning eligibility for the certificate by designated officers of the State or Federal Government may be required.

§ 530.6 Termination of individual homeworker certificates.

(a) A certificate shall be valid under the terms set forth in the certificate for a period to be designated by the Administrator or his authorized representative. Application for renewal of any certificate shall be filed in the

same manner as an original application under this part.

(b) No effective certificate shall expire until action on an application for renewal shall have been finally determined, provided that such application has been properly executed in accordance with the requirements, and filed not less than 15 nor more than 30 days prior to the expiration date. A final determination means either the granting of or initial denial of the application for renewal of a certificate, or withdrawal of the application. A ''properly executed'' application is one which contains the complete information required on the form.

[24 FR 729, Feb. 3, 1959, as amended at 27 FR 7020, July 25, 1962]

§ 530.7 Revocation and cancellation of individual homeworker certificates.

Any certificate may be revoked for cause at any time. Violation of any provision of the Fair Labor Standards Act shall be sufficient grounds for revocation of all certificates issued to an employer, in which event no certificates shall be issued to the offending employer for a period of up to one year. Before any certificate is cancelled, however, interested parties shall be notified in writing of the facts warranting such cancellation and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator shall afford an opportunity for a hearing to resolve the disputed matter.

[49 FR 44271, Nov. 5, 1984]

§ 530.8 Preservation of individual homeworker certificates.

A copy of all certificates provided to the employer under this part shall be maintained for a period of at least three years after the last employment under the certificate.

[49 FR 44271, Nov. 5, 1984]

§ 530.9 Records and reports.

The issuance of a certificate shall not relieve the employer of the duty of maintaining the records required in the regulations in part 516 of this chapter and failure to keep such records shall be sufficient cause for the cancellation of certificates issued to such an employer.

§ 530.10 Delegation of authority to grant, deny, or cancel an individual homeworker certificate.

The Administrator may from time to time designate and appoint members of the Administrator's staff or State Agencies as his authorized representatives with full power and authority to grant, deny, or cancel homework certificates.

[43 FR 28470, June 30, 1978]

§ 530.11 Petition for review.

Any person aggrieved by the action of an authorized representative of the Administrator in granting or denying a certificate may, within 15 days thereafter or within such additional time as the Administrator for cause shown may allow, file with the Administrator a petition for review of the action of such representative praying for such relief as is desired. Such petition for review, if duly filed, will be acted upon by the Administrator or an authorized representative of the Administrator who took no part in the proceeding being reviewed. All interested parties will be afforded an opportunity to present their views in support of or in opposition to the matters prayed for in the petition.

§ 530.12 Special provisions.

(a) *Gloves and mittens industry*. Any certificate issued to an industrial homeworker by the New York State Department of Labor under paragraph II of Home Work Order No. 4 Restricting Industrial Homework in the Glove Industry, dated June 28, 1941, will be given effect by the Administrator as a certificate permitting the employment of the homeworker under the terms of § 530.4 for the period during which such certificate shall continue in force.

(b) *Jewelry manufacturing industry*. Nothing contained in the regulations in this part shall be construed to prohibit the employment, as homeworkers, of American Indians residing on the Navajo, Pueblo, and Hopi Indian Reservations, who are engaged in producing genuine hand-fashioned jewelry on the Indian reservations mentioned, provided the employment

of such homeworker is in conformity with the following conditions:

(1) That each employer of one or more Indian homeworkers engaged in making hand-fashioned jewelry on these Indian reservations shall submit in duplicate to the regional office of the Wage and Hour Division for the region in which the employer's place of business is located, on April 1, August 1, and December 1 of each year, the name and address of such employee engaged during the preceding 4-month period in making hand-fashioned jewelry on Indian reservations;

(2) That each employer of one or more Indian homeworkers engaged in making hand-fashioned jewelry on these Indian reservations shall file copies of the piece rates in duplicate with the regional office of the Wage and Hour Division for the region in which the employer's place of business is located on April 1, August 1, and December 1 of each year, and

(3) That each employer of one or more Indian homeworkers engaged in making hand-fashioned jewelry on these Indian reservations shall keep, maintain, and have available for inspection by the Administrator or the Administrator's authorized representative at any time, records and reports showing with respect to each of the homeworkers engaged in making hand-fashioned jewelry on these Indian reservations, the following information:

(i) Name of the homeworker.

(ii) Address of the homeworker.

(iii) Date of birth of the homeworker, if under 19 years of age.

(iv) Description of work performed.

(v) Amount of cash wage payments made to the homeworker for each pay period.

(vi) Date of such payment.

(vii) Schedule of piece rates paid.

These records shall be kept by each employer for each of the employer's homeworkers engaged in making hand-fashioned jewelry on Indian reservations, as provided in this section, in lieu of the records required under §§ 516.2 and 516.31 of this chapter: *Provided, however,* That nothing in this section shall relieve an employer from maintaining all other records required by part 516 of this chapter.

[24 FR 729, Feb. 3, 1959, as amended at 43 FR 28470, June 30, 1978]

Subpart B—Homeworker Employer Certificates

SOURCE: 53 FR 45722, Nov. 10, 1988, unless otherwise noted.

§ 530.101 General.

(a) Except as provided in subpart C, a certificate may be issued to an employer authorizing the employment of homeworkers in

(1) The knitted outerwear, gloves and mittens, and embroideries industries as defined in paragraphs (g), (h), and (k), respectively, at § 530.1, effective January 9, 1989;

(2) In the button and buckle and handkerchief manufacturing industries as defined in paragraphs (i) and (j), respectively, of § 530.1, effective July 9, 1989; and

(3) In the jewelry industry as defined in paragraph (f) of § 530.1, effective July 9, 1989, but only where the employer's homeworkers are engaged exclusively in the stringing of beads and other jewelry and the carding and packaging of jewelry. The terms ''carding and packaging of jewelry'' include the attaching of jewelry to cards, boxing and wrapping, and the use of common household glues available to the general public, but do not include potentially hazardous operations such as the use of industrial glues, epoxies, soldering irons, or heating elements.

(b) This certificate may be issued irrespective of whether individual homeworkers meet the conditions set forth in paragraph (a) of § 530.4 of Subpart A. Unless suspended or revoked, such certificates are valid for two-year periods. Applications for renewals must be submitted no later than thirty (30) days prior to the expiration date of the current certificate. Except as provided in subpart A, in the absence of a certificate, the employment of homeworkers in these industries is prohibited, and an employer violating this prohibition is subject to all the sanctions provided in the Fair Labor Standards Act and in this part, including an

injunction restraining the employment of homeworkers.

(c) Certificates authorizing such employment may be issued on the following terms and conditions upon written application to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

§ 530.102 Requests for employer certificates.

The initial request for certification or renewal application shall be signed by the employer and shall contain the name of the firm, its mailing address, the physical location of the firm's principal place of business and a description of the business operations and items produced. In addition, the initial or renewal application shall contain the names, addresses, and languages (if other than English) spoken by the homeworkers that are currently employed (if any) or expected to be employed. The employer shall also provide the Administrator, within thirty (30) days, a notice of each change of address of the principal place of business. The notification shall be in writing and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

§ 530.103 Employer assurances.

In order to be granted a certificate authorizing the employment of industrial homeworkers, the employer must provide written assurances concerning the employment of homeworkers subject to section 11(d) of the Fair Labor Standards Act to the effect that:

(a) All homeworkers shall be paid in accordance with the monetary provisions of the Act.

(b) All homeworkers shall be employed in compliance with the child labor provisions contained in section 12 of the Act and regulations and orders issued pursuant to section 12. All homeworkers will be instructed not to permit minors to work in violation of such provisions.

(c) Records of hours worked and wages paid shall be maintained in accordance with section 11 of the Act and part 516 of this chapter.

(d) All homeworkers shall complete homeworker handbooks in accordance with § 516.31 of part 516.

(e) All homeworkers will be instructed to accurately record all hours worked, piece work information, and business-related expenses in the handbooks.

(f) All records shall be made available for inspection and transcription by the Administrator or a duly authorized and designated representative, or transcription by the employer upon written request.

(g) Piece rates paid to homeworkers shall be established using stop watch time studies or other work measurement methods.

(h) All homeworkers shall be encouraged to cooperate with the Department in any investigation that may be made.

(i) With respect to jewelry manufacturing, no operations other than the stringing of beads and other jewelry and the carding and packaging of jewelry will be performed by homeworkers.

§ 530.104 Bonding or security payments.

(a) Where in the Administrator's judgment there is not sufficient reason to believe that the Act will be complied with or that money will be available if violations of the Act occur, the Administrator may condition issuance or renewal of a certificate to an employer upon the furnishing of a bond with a surety or sureties satisfactory to the Administrator.

(b) The Administrator shall condition issuance or reinstatement of a certificate to any employer whose application for a certificate had previously been denied, or whose certificate had been revoked, upon the furnishing of a bond.

(c) Any bond required by the Administrator under paragraph (a) or (b) of this section shall be in an amount determined by the Administrator, up to $2500 for each homeworker to be employed by such employer under the certificate. In lieu of a bond, the employer may furnish a cash payment of equal amount, to be held in a special deposit account by the Administrator for the period during which the certificate is in effect. Such bond, or cash payment,

shall be subject to payment or forfeiture, in whole or in part, upon a final determination that the employer has failed to pay minimum wages or overtime compensation to homeworkers in accordance with the Act. Any sums thus paid or forfeited to the Administrator shall be disbursed to affected homeworkers in accordance with section 16(c) of the Act.

(d) At the Administrator's discretion, the obligation of a bond may be relieved, and any cash payment held as security in lieu thereof may be refunded (together with any interest accrued thereon), upon a subsequent determination that the employer is in compliance with the Act and that sufficient funds will be available to meet back wage payment obligations in the event of violations of the Act.

§ 530.105 Investigations.

Any employer in a restricted industry who requests certification to employ homeworkers will be investigated promptly after the issuance of the certificate by the Wage and Hour Division. Where such an employer is found to be in violation of the FLSA, and the violations are corrected and future compliance is promised, the firm will be reinvestigated to assure that full FLSA compliance has, in fact, been achieved.

Subpart C—Denial/Revocation of Homeworker Employer Certificates

SOURCE: 53 FR 45723, Nov. 10, 1988, unless otherwise noted.

§ 530.201 Conflict with State law.

No certificate will be issued pursuant to § 530.101 of subpart B above authorizing the employment of homeworkers in an industry in a State where the Governor (or authorized representative) has advised the Administrator of the Wage and Hour Division in writing that the employment of homeworkers in such industry, as defined in paragraphs (f) through (k) of § 530.1, is illegal by virtue of a State labor standards or health and safety law.

§ 530.202 Piece rates—work measurement.

(a) No certificate will be issued pursuant to § 530.101 of subpart B to an employer who pays homeworkers based on piece rates unless the employer establishes the piece rates for the different types of items produced using stop watch time studies or other work measurement methods. Documentation of the work measurements used to establish the piece rates, and the circumstances under which such measurements were conducted shall be retained for three years and made available on request to the Wage and Hour Division.

(b) The fact that an employer bases piece rates on work measurements which indicate that the homeworkers would receive at least the minimum wage at such piece rate(s) does not relieve the employer from the Act's requirement that *each* homeworker actually receive not less than the minimum wage for all hours worked.

§ 530.203 Outstanding violations and open investigations.

A homework certificate will not be issued or renewed by the Administrator if, within the previous three years, the Administrator has found and notified the applicant of a monetary violation of the Fair Labor Standards Act in an amount certain, or the Administrator has assessed a civil money penalty pursuant to subpart D of these regulations or part 579 of this chapter (child labor), and such amounts are unpaid, or if the applicant is the subject of a revocation proceeding at the time of the application for renewal, or the applicant is the subject of an open investigation.

§ 530.204 Discretionary denial or revocation.

Where the Administrator finds that the employment of homeworkers under a certificate is likely to result in violations of the Fair Labor Standards Act, the regulations issued thereunder, or the assurances required by this part, the Administrator may deny or revoke the certificate.

§ 530.205 Mandatory denial or revocation.

The Administrator shall deny or revoke a certificate in accordance with

the following standards and for the period specified in the standards:

(a) *Serious wage violations.* Upon a finding by the Administrator of a serious wage violation, a certificate shall be denied (including refusal to renew) or revoked for one year. A serious wage violation is defined as minimum wage or overtime pay violations of the Act totalling $10,000 or more with respect to homeworkers; or minimum wage violations where 10 percent or more of a certificate holder's homeworkers (but in all cases at least two homeworkers) failed to receive at least 80 percent of the minimum wage for all hours worked for 6 or more weeks in any 3 month period; or minimum wage or overtime pay violations affecting more than half of the homeworkers of the certificate holder for 6 or more weeks in any 3 month period. All other wage violations are deemed non-serious wage violations for purposes of this section.

(b) *Repeated wage violations.* For repeated wage violations found by the Administrator, a certificate shall be denied or revoked for one to three years, depending on the seriousness and frequency of the violations.

(c) *Child labor violations.* Upon a finding by the Administrator of a violation of the child labor provisions of section 12 of the Fair Labor Standards Act and the regulations at part 570 of this title, a certificate shall be denied or revoked for one year. Upon a second finding by the Administrator of such a violation, the certificate shall be denied or revoked for three years.

(d) *Failure to pay back wages or civil money penalties judged owing.* Upon the failure of a certificate holder to pay within 60 days back wages or civil money penalties finally judged by a court, administrative law judge or other appropriate authority, as the case may be, to be owed by the certificate holder, or agreed to be paid by the certificate holder, or within such longer period as may be specified in the final order or agreement, a certificate shall be denied or revoked for up to one year or for such period as such obligation shall remain unpaid if longer than one year.

(e) *Failure to cooperate in an investigation.* Where the Administrator finds obstruction of or other failure to cooperate in a Wage and Hour investigation by a certificate holder which impedes the investigation, the certificate shall be denied or revoked for a period of one to three years, depending on the circumstances. For purposes of this regulation, cooperation includes providing records upon request to Wage and Hour compliance officers, identifying homeworkers of the certificate holder, and encouraging homeworkers to make themselves available in connection with an investigation.

(f) *Serious recordkeeping violations.* Upon a finding by the Administrator that a certificate holder has engaged in a serious recordkeeping violation, the certificate may be revoked for up to one year. Upon a second finding by the Administrator of a serious recordkeeping violation, a certificate shall be denied or revoked for one to three years. A serious recordkeeping violation is defined as one where, either through errors in or omissions of required information, the name and current address of homeworkers and the data which is necessary for the accurate determination of hours worked by or wages paid to homeworkers or data necessary for the computation of wages owed to homeworkers is unavailable with respect to 10 percent or more of the homeworkers.

(g) *Deliberate misstatement in an application for a certificate or in other documents.* Upon a finding by the Administrator of a deliberate misstatement of a material fact in an application for a certificate, in payroll records, or in any other information submitted to the Wage and Hour Division or maintained by the employer pursuant to these regulations, the certificate shall be denied or revoked for one to three years.

(h) *Discrimination against a homeworker.* Upon a finding by the Administrator that a certificate holder has discharged or otherwise discriminated against a homeworker with respect to the homeworker's compensation or terms, conditions, or privileges of employment because the homeworker engaged in protected activity, the certificate shall be denied or revoked for three years. Protected activity is defined as: (1) Any complaint

of a violation of the Act to the employer, the Department or other appropriate authority, or (2) any action which furthers the enforcement of or compliance with the Act, such as giving information to a Wage and Hour compliance officer.

§ 530.206 Special circumstances.

At the discretion of the Administrator, a certificate need not be denied or revoked pursuant to §§ 530.204 or 530.205 of this subpart if the Administrator finds all of the following:

(a) The certificate holder, despite the exercise of due care, did not know and did not have reason to know of the violations;

(b) All back wages and civil money penalties found by the Administrator to be owing by the certificate holder have been paid; and

(c) The certificate holder has taken appropriate steps to prevent recurrence of the violations.

Subpart D—Civil Money Penalties

SOURCE: 53 FR 45724, Nov. 10, 1988, unless otherwise noted.

§ 530.301 General.

A system of civil money penalties is established to provide a remedy for any violation of the FLSA related to homework (except child labor violations, which are subject to civil money penalties pursuant to part 579 of this chapter), or for any violation of the homeworker regulations or employers' assurances pursuant to this part, which are not so serious as to warrant denial or revocation of a certificate. Accordingly, no civil money penalty will be assessed for conduct which serves as the basis of proposed denial or revocation of a certificate. (See subpart C of this part.) Civil money penalties will be assessed only against employers who are operating under a certificate or who are seeking certification.

§ 530.302 Amounts of civil money penalties.

(a) A civil money penalty, not to exceed $500 per affected homeworker for any one violation, may be assessed for any violation of the Act or of this part or of the assurances given in connection with the issuance of a certificate.

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	$10–100	$100–200	$200–500
Monetary violations	10–100	100–200	.....
Employment of homeworkers without a certificate	.....	100–200	200–500
Other violations of statutes, regulations or employer assurances	10–100	100–200	200–500

§ 530.303 Considerations in determining amounts.

(a) In determining the amount of a penalty within any range, the Administrator shall take into account the presence or absence of circumstances such as the following:

(1) Good faith attempts to comply with the Act or regulations;

(2) Extent to which the violation is under the employer's control;

(3) Non-culpable ignorance of the requirements of the Act or regulations;

(4) False documents or representations; and

(5) Exercise of due care.

(b) An employer's financial inability to meet obligations under the Act shall not constitute a mitigating or extenuating circumstance.

(c) No civil money penalty shall be assessed against an employer, who applies for a certificate, solely for employing homeworkers, provided the employer is not currently under investigation by the Wage and Hour Division.

§ 530.304 Procedures for assessment.

Assessment of penalties pursuant to this section, including administrative proceedings, shall be in accordance with the procedures set out in subpart E of this part.

Subpart E—Administrative Procedures

SOURCE: 53 FR 45725, Nov. 10, 1988, unless otherwise noted.

§ 530.401 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process which will be applied with respect to a determination to deny (including refusal to renew) or revoke a certificate and to a determination to assess civil money penalties. Special rules and procedures for the emergency revocation of certificates are prescribed in § 530.412 of this subpart.

§ 530.402 Notice of determination.

Whenever the Administrator determines to deny or revoke a certificate or determines to assess a civil money penalty, the person affected by such determination shall be notified of the determination in writing, by certified mail to the last known address. The notice required shall:

(a) Set forth the determination of the Administrator, including the specific statutory or regulatory provision or assurance violated, the reasons for denying or revoking a certificate, or the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 530.403 of this subpart.

(d) Inform any affected person or persons that in lieu of formal proceedings there is available an alternative summary proceeding under § 530.412 of this subpart.

(e) Inform any affected persons that in the absence of a timely request for a hearing the determination of the Administrator shall become final and unappealable.

§ 530.403 Request for hearing.

(a) Except in the case of an emergency revocation under § 530.411 of this subpart, a request for an administrative hearing on a determination referred to in § 530.402 of this subpart shall be made in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210, and must be received no later than thirty (30) days after issuance of the notice referred to in § 530.402 of this subpart.

(b) No particular form is prescribed for any request for a hearing permitted by this part. However, any such request shall be typewritten or legibly written; specify the issue or issues stated in the notice of determination giving rise to such request; state the specific reason or reasons why the person requesting the hearing believes such determination is in error; be signed by the person making the request or by an authorized representative of such person; and include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) In the case of an emergency revocation, a request for an administrative hearing shall be made in writing to the Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street, NW., suite 700, Washington, DC 20036, and must be received no later than 20 days after the issuance of the notice referred to in § 530.402 of this subpart.

§ 530.404 Referral to Administrative Law Judge.

Upon receipt of a timely request for a hearing, the request and a copy of the notice of administrative determination complained of, shall, by Order of Reference, be referred to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceedings, subject to any amendment that may be permitted under 29 CFR part 18.

§ 530.405 General.

Except as specifically provided in these regulations, the ''Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges'' established by the

Secretary at 29 CFR part 18 shall apply to administrative proceedings described in this subpart.

§ 530.406 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, after completion of the hearing and closing of the record, a decision on the issues referred by the Administrator.

(b) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. If the Administrative Law Judge finds that the Administrator has established by a preponderance of the evidence the factual basis for the determination to deny or revoke a certificate or to assess a civil money penalty, that determination shall be affirmed. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator. The reason or reasons for such order shall be stated in the decision.

(c) The decision shall be served on all parties and the Secretary in person or by certified mail. The decision when served by the Administrative Law Judge shall constitute the final order of the Department of Labor unless the Secretary, as provided for in § 530.407 of this subpart, determines to review the decision.

§ 530.407 Procedures for initiating and undertaking review.

Any party desiring review of the decision of the Administrative Law Judge may petition the Secretary to review the decision. To be effective, such petition must be received by the Secretary within 30 days of the date of the decision of the Administrative Law Judge. Copies of the petition shall be served on all parties and on the Chief Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 30 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition has been received, the decision of the Administrative Law Judge shall be deemed the final agency action.

§ 530.408 Notice of the Secretary to review decision.

Whenever the Secretary determines to review the decision and order of an Administrative Law Judge, the Secretary shall notify each party of the issue or issues raised; the form in which submission shall be made (*i.e.*, briefs, oral argument, etc.); and, the time within which such presentation shall be submitted.

§ 530.409 Final decision of the Secretary.

The Secretary's final decision shall be served upon all parties and the Administrative Law Judge, in person or by certified mail.

§ 530.410 Special procedures.

In a revocation proceeding pursuant to § 530.205(d) of subpart C of this part arising as a result of a certificate holder's failure to pay back wages or civil money penalties judged owing, the Administrator may file a motion for expedited decision, attaching to the notice, by affidavit or other means, evidence that a final order has been entered or agreement signed requiring respondent to pay back wages or civil money penalties and that the back wages or civil money penalties have not been paid. The respondent in the proceeding shall have 20 days in which to file a countering affidavit or other evidence. If no evidence countering the material assertions of the Administrator has been submitted within 20 days, the Administrative Law Judge shall, within 30 days thereafter, affirm the revocation or denial of the certificate. If the respondent does timely file such evidence, the Administrative Law Judge shall schedule a hearing pursuant to § 530.411(c) of this subpart and the case shall be subject to the expeditious procedures following therein.

§ 530.411 Emergency certificate revocation procedures.

(a) When the Administrator determines that immediate revocation of a homework certificate is necessary to safeguard the payment of minimum wages to homeworkers, a notice of proposed emergency revocation of a certificate shall be sent to the certificate

holder pursuant to § 530.402 of this subpart setting forth reasons requiring emergency revocation of the certificate.

(b) If no request for a hearing pursuant to § 530.403 of this subpart is received within 20 days of the date of receipt of the notice by the certificate holder, the proposed revocation of the certificate shall become final.

(c) The Office of Administrative Law Judges shall notify the parties at their last known address, of the date, time and place for the hearing, which shall be no more than 60 days from the date of receipt of the request for the hearing. All parties shall be given at least 5 days notice of such hearing. No requests for postponement shall be granted except for compelling reasons.

(d) The Administrative Law Judge shall issue a decision pursuant to § 530.406 of this subpart within 30 days after the termination of a proceeding at which evidence was submitted. The decision shall be served on all parties and the Secretary by certified mail and shall constitute the final order of the Department of Labor unless the Secretary determines to review the decision.

(e) Any party desiring review of the decision of the Administrative Law Judge may petition the Secretary to review the decision of the Administrative Law Judge. To be effective, such petition must be received by the Secretary within 30 days of the date of the decision of the Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 15 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition is filed, the decision of the Administrative Law Judge shall be deemed the final agency action.

(f) The Secretary's decision shall be issued within 60 days of the notice by the Secretary accepting the submission, and shall be served upon all parties and the Administrative Law Judge, in person or by certified mail.

§ 530.412 Alternative summary proceedings.

In lieu of an administrative hearing before an Administrative Law Judge under the above procedures, an applicant or certificate holder who does not dispute the factual findings of the Administrator may, within 30 days of the date of issuance of the notice of denial, revocation, or assessment (or within 20 days in the case of a notice of emergency revocation) petition the Administrator instead to reconsider the denial or revocation of the certificate or the assessment of civil money penalties. An applicant or certificate holder electing this informal procedure may appear before the Administrator in person, make a written submission to the Administrator, or both. Such reconsideration by the Administrator shall be available only upon waiver by the applicant or certificate holder of the formal hearing procedures provided by the above regulations.

§ 530.413 Certification of the record.

Upon receipt of a complaint seeking review of a final decision issued pursuant to this part filed in a United States District Court, after the administrative remedies have been exhausted, the Chief Administrative Law Judge shall promptly index, certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

§ 530.414 Equal Access to Justice Act.

Proceedings under this part are not subject to the provisions of the Equal Access to Justice Act. In any hearing conducted pursuant to these regulations, Administrative Law Judges shall have no power or authority to award attorney fees or other litigation expenses pursuant to the Equal Access to Justice Act.

PART 531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

Subpart A—Preliminary Matters

Sec.
531.1 Definitions.