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was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics $3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of $3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of $3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying $3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of $3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be $3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the $3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying $3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to $2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as $1 an hour. In this example the regular or basic hourly rate would continue to be $3 an hour. See S. Rep. No. 963, p. 7.

PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS AND FEDERAL SERVICE CONTRACTS

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AUTHORITY: Secs. 4 and 5, 79 Stat. 1034, 1035 as amended by 86 Stat. 789, 790, 41 U.S.C. 353 and 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 46 Stat. 1494, as amended by 49 Stat. 1011, 78 Stat. 238, 40 U.S.C. 276a–276a–7; 76 Stat. 357–359, 40 U.S.C. 327–332; 48 Stat. 948, as amended by 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c.

SOURCE: 49 FR 10627, Mar. 21, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 6 appear at 61 FR 19984, May 3, 1996.

Subpart A—General

§ 6.1 Applicability of rules.

This part provides the rules of practice for administrative proceedings under the Service Contract Act, the Davis-Bacon Act and related statutes listed in § 5.1 of part 5 of this title which require payment of wages determined in accordance with the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act. See parts 4 and 5 of this title.

§ 6.2 Definitions.

(a) *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(b) *Associate Solicitor* means the Associate Solicitor for Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(c) *Chief Administrative Law Judge* means the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington DC 20001–8002.

(d) *Respondent* means the contractor, subcontractor, person alleged to be responsible under the contract or subcontract, and/or any firm, corporation, partnership, or association in which such person or firm is alleged to have a substantial interest (or interest, if the proceeding is under the Davis-Bacon Act) against whom the proceedings are brought.

[49 FR 10627, Mar. 21, 1984, as amended at 56 FR 54708, Oct. 22, 1991]

§ 6.3 Service; copies of documents and pleadings.

(a) *Manner of service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. When a party is represented by an attorney, the service should be upon the attorney.

(b) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service. Where service is made by mail, service shall be complete upon mailing. However, documents are not deemed filed until received by the Chief Clerk at the Office of Administrative Law Judges and where documents are filed by mail 5 days shall be added to the prescribed period.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor: The original and one copy with the Administrative Law Judge before whom the case is pending, one copy with the attorney representing the Department during the hearing, and one copy with the Associate Solicitor.

§ 6.4 Subpoenas (Service Contract Act).

All applications under the Service Contract Act for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the Administrative Law Judge. Application for subpoenas duces tecum shall specify

as exactly as possible the documents to be produced.

§6.5 Production of documents and witnesses.

The parties, who shall be deemed to be the Department of Labor and the respondent(s), may serve on any other party a request to produce documents or witnesses in the control of the party served, setting forth with particularity the documents or witnesses requested. The party served shall have 15 days to respond or object thereto unless a shorter or longer time is ordered by the Administrative Law Judge. The parties shall produce documents and witnesses to which no privilege attaches which are in the control of the party, if so ordered by the Administrative Law Judge upon motion therefor by a party. If a privilege is claimed, it must be specifically claimed in writing prior to the hearing or orally at the hearing or deposition, including the reasons therefor. In no event shall a statement taken in confidence by the Department of Labor or other Federal agency be ordered to be produced prior to the date of testimony at trial of the person whose statement is at issue unless the consent of such person has been obtained.

§6.6 Administrative Law Judge.

(a) *Equal Access to Justice Act*. Proceedings under this part are not subject to the provisions of the Equal Access to Justice Act (Pub. L. 96–481). In any hearing conducted pursuant to the provisions of this part 6, Administrative Law Judges shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

(b) *Contumacious conduct: failure or refusal of a witness to appear or answer*. Contumacious conduct at any hearing before an Administrative Law Judge shall be ground for exclusion from the hearing., In cases arising under the Service Contract Act, the failure or refusal of a witness to appear at any hearing or at a deposition when so ordered by the Administrative Law Judge, or to answer any question which has been ruled to be proper, shall be ground for the action provided in section 5 of the Act of June 30, 1936 (41 U.S.C. 39) and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

§6.7 Appearances.

(a) *Representation*. The parties may appear in person, by counsel, or otherwise.

(b) *Failure to appear*. In the event that a party appears at the hearing and no party appears for the opposing side, the presiding Administrative Law Judge is authorized, if such party fails to show good cause for such failure to appear, to dismiss the case or to find the facts as alleged in the complaint and to enter a default judgment containing such findings, conclusions and order as are appropriate. Only where a petition for review of such default judgment cites alleged procedural irregularities in the proceeding below and not the merits of the case shall a non-appearing party be permitted to file such a petition for review. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision.

§6.8 Transmission of record.

If a petition for review of the Administrative Law Judge's decision is filed with the Administrative Review Board, the Chief Administrative Law Judge shall promptly transmit the record of the proceeding.

If a petition for review is not filed within the time prescribed in this part, the Chief Administrative Law Judge shall so advise the Administrator.

Subpart B—Enforcement Proceedings Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)

§6.15 Complaints.

(a) Enforcement proceedings under the Service Contract Act and under the Contract Work Hours and Safety Standards Act for contracts subject to the Service Contract Act, may be instituted by the Associate Solicitor for

Fair Labor Standards or a Regional Solicitor by issuing a complaint and causing the complaint to be served upon the respondent.

(b) The complaint shall contain a clear and concise factual statement of the grounds for relief and the relief requested.

(c) The Administrative Law Judge shall notify the parties of the time and place for a hearing.

§ 6.16 Answers.

(a) Within 30 days after the service of the complaint the respondent shall file an answer with the Chief Administrative Law Judge. The answer shall be signed by the respondent or his/her attorney.

(b) The answer shall (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) state that the respondent admits all of the allegations of the complaint. The answer may contain a waiver of hearing. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) Failure to file an answer shall constitute grounds for waiver of hearing and entry of a default judgment unless respondent shows good cause for such failure to file. In preparing the decision of default judgment the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint and shall order the appropriate relief and/or sanctions.

§ 6.17 Amendments to pleadings.

At any time prior to the close of the hearing record, the complaint or answer may be amended with the permission of the Administrative Law Judge and on such terms as he/she may approve. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the data of the pleadings and which are relevant to any of the issues involved.

§ 6.18 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the processings in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and Administrative Review Board regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§6.19 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order*. Within 20 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow each party may file with the Administrative Law Judge proposed findings of fact, conclusion of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge*. (1) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in §6.20 of this title, and such decision and order shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made under §§6.16, 6.17 and 6.18 of this title. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with the regulations and rulings contained in parts 4 and 5 and other pertinent parts of this title.

(2) If the respondent is found to have violated the Service Contract Act, the Administrative Law Judge shall include in his/her decision an order as to whether the respondent is to be relieved from the ineligible list as provided in section 5(a) of the Act, and, if relief is ordered, findings of the unusual circumstance, within the meaning of section 5(a) of the Act, which are the basis therefor. If respondent is found to have violated the provisions of the Contract Work Hours and Safety Standards Act, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in §5.12(a)(1) of part 4 of this title, including findings regarding the existence of aggravated or willful violations. If wages and/or fringe benefits are found due under the Service Contract Act and/or the Contract Work Safety Standards Act and are unpaid, no relief from the ineligible list shall be ordered except on condition that such wages and/or fringe benefits are paid.

(3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

§6.20 Petition for review.

Within 40 days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Administrative Review Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board pursuant to 29 CFR part 8, with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

§6.21 Ineligible list.

(a) Upon the final decision of the Administrative Law Judge or Administrative Review Board, as appropriate, the Administrator shall within 90 days forward to the Comptroller General the name of any respondent found in violation of the Service Contract Act, including the name of any firm, corporation, partnership, or association in which the respondent has a substantial

interest, unless such decision orders relief from the ineligible list because of unusual circumstances.

(b) Upon the final decision of the Administrative Law Judge or the Administrative Review Board, as appropriate, the Administrator promptly shall forward to the Comptroller General the name of any respondent found to be in aggravated or willful violation of the Contract Work Hours and Safety Standards Act, and the name of any firm, corporation, partnership, or association in which the respondent has a substantial interest.

Subpart C—Enforcement Proceedings Under the Davis-Bacon Act and Related Prevailing Wage Statutes, the Copeland Act, and the Contract Work Hours and Safety Standards Act (Except Under Contracts Subject to the Service Contract Act)

§ 6.30 Referral to Chief Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing under § 5.11 (where the Administrator has determined that relevant facts are in dispute) or § 5.12 of part 5 of this title, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the notification letter to the respondent from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent.

(b) The notification letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings. The notification letter and response shall be in accordance with the provisions of § 5.11 or § 5.12(b)(1) of part 5 of this title, as appropriate.

§ 6.31 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (notification letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. For proceedings pursuant to § 5.11 of part 5 of this title, such an amendment may include a statement that debarment action is warranted under § 5.12(a)(1) of part 5 of this title or under section 3(a) of the Davis-Bacon Act. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the date of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 6.32 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) That any order concerning debarment under the Davis-Bacon Act (but not under any of the other statutes

listed in §5.1 of part 5 of this title) shall constitute a recommendation to the Comptroller General;

(4) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board regarding those matters which are the subject of the agreement; and

(5) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§6.33 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order*. Within 20 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge*. (1) Within a reasonable time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in §6.34 of this title, and such decision and order shall be inoperative unless and until the Administrative Review Board either declines to review the decision or issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in part 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondent's answer (response) and §6.32 of this title. It shall be supported by reliable and probative evidence.

(2) If the respondent is found to have violated the labor standards provisions of any of the statutes listed in §5.1 of part 5 of this title other than the Davis-Bacon Act, and if debarment action was requested pursuant to the complaint (notification letter) or any amendment thereto, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in §5.12(a)(1) of this title, including any findings of aggravated or willful violations. If the respondent is found to have violated the Davis-Bacon Act, and if debarment action was requested, the Administrative Law Judge shall issue as a part of the order a recommendation as to whether respondent should be subject to the ineligible list pursuant to section 3(a) of the Act, including any findings regarding respondent's disregard of obligations to employees and subcontractors. If wages are found due and are unpaid, no relief from the ineligible list shall be ordered or recommended except on condition that such wages are paid.

(3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

§6.34 Petition for review.

Within 40 days after the date of the decision of the Administrative Law judge (or such additional time as is granted by the Administrative Review Board). any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall

transmit the petition in writing to the Administrative Review Board, pursuant to part 7 of this title, with a copy thereof to the Chief Administrative Law judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the aggravated or willful violations and/or disregard of obligations to employees and subcontractors, or lack thereof, as appropriate.

§ 6.35 Ineligible lists.

Upon the final decision of the Administrative Law Judge or Administrative Review Board, as appropriate, regarding violations of any statute listed in § 5.1 of part 5 of this title other than the Davis-Bacon Act, the Administrator promptly shall foward to the Comptroller General the name of any respondent found to have committed aggravated or willful violations of the labor standards provisions of such statute, and the name of any firm, corporation, partnership, or association in which such respondent has a substantial interest. Upon the final decision of the Administrative Law Judge or Administrative Review Board, as appropriate, regarding violations of the Davis-Bacon Act, the Administrator promptly shall forward to the Comptroller General any recommendation regarding debarment action against a respondent, and the name of any firm, corporation, partnership, or association in which such respondent has an interest.

Subpart D—Substantial Interest Proceedings

§ 6.40 Scope.

This subpart supplements the procedures contained in § 4.12 of part 4 and § 5.12(d) of part 5 of this title, and states the rules of practice applicable to hearings to determine whether persons of firms whose names appear on the ineligible list pursuant to section 5(a) of the Service Contract Act or § 5.12(a)(1) of part 5 of this title have a substantial interest in any firm, corporation, partnership, or association other than those listed on the ineligible list; and/or to determine whether persons or firms whose names appear on the ineligible list pursuant to section 3(a) of the Davis-Bacon Act have an interest in any firm, corporation, partnership, or association other than those listed on the ineligible list.

§ 6.41 Referral to Chief Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing under § 4.12 of part 4 or § 5.12 of part 5 of this title, where the Administrator has determined that relevant facts are in dispute, or on his/her own motion, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of any findings of the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the person or firm requesting the hearing, if any and upon the respondents.

(b) The findings of the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

§ 6.42 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (Administrator's findings) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administative Law Judge may, upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened a since the data

of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§6.43 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall provide:

(1) That the order shall have the same force and effect as an order made after full hearing:

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board, as appropriate, regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If a such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§6.44 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order*. Within 30 days of filing of the transcript of the testimony, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge*. Within 60 days after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision a petition for review thereof shall be filed as provided in §6.45 of this title, and such decision and order shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in parts 4 and 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondents' answer (response) and §6.43 of this title.

§6.45 Petition for review.

Within 30 days after the date of the decision of the Administrative Law Judge, any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board pursuant to 29 CFR part 8 if the proceeding was under the Service Contract Act, or to the Administrative Review Board pursuant to 29 CFR part 7 if the proceeding was under §5.12(a)(1) of part 5 of this title or under section 3(a) of the Davis-Bacon Act, with a copy thereof to the Chief Administrative Law Judge. The petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

§6.46 Ineligible list.

Upon the final decision of the Administrative Law Judge, Administrative

Review Board, as appropriate, the Administrator promptly shall forward to the Comptroller General the names of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to section 5(a) of the Service Contract Act or § 5.12(a) of part 5 of this title has a substantial interest; and/or the name of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to section 3(a) of the Davis-Bacon Act has an interest.

Subpart E—Substantial Variance and Arm's Length Proceedings

§ 6.50 Scope.

This subpart supplements the procedures contained in §§ 4.10 and 4.11 of part 4 of this title and states the rules of practice applicable to hearings under section 4(c) of the Act to determine whether the collectively bargained wages and/or fringe benefits otherwise required to be paid under that section and sections 2(a)(1) and (2) of the Act are substantially at variance with those which prevail for services of a character similar in the locality, and/or to determine whether the wages and/or fringe benefits provided in the collective bargaining agreement were reached as a result of arm's-length negotiations.

§ 6.51 Referral to Chief Administrative Law Judge.

(a) Referral pursuant to § 4.10 or § 4.11 of part 4 of this title will be by an Order of Reference from the Administrator to the Chief Administrative Law Judge, to which will be attached the material submitted by the applicant or any other material the Administrator considers relevant and, for proceedings pursuant to § 4.11 of this title, a copy of any findings of the Administrator. A copy of the Order of Reference and all attachments will be sent by mail to the following parties: The agency whose contract is involved, the parties to the collective bargaining agreement, any contractor or subcontractor performing on the contract, any contractor or subcontractor known to be desirous of bidding thereon or performing services thereunder who is known or believed to be interested in the determination of the issue, any unions or other authorized representatives of service employees employed or who may be expected to be employed by such contractor or subcontractor on the contract work, and any other affected parties known to be interested in the determination of the issue. The Order of Reference will have attached a certificate of service naming all interested parties who have been served.

(b) Accompanying the Order of Reference and attachments will be a notice advising that any interested party, including the applicant, who intends to participate in the proceeding shall submit a written response to the Chief Administrative Law Judge within 20 days of the date on which the certificate of service indicates the Order of Reference was mailed. The notice will state that such a response shall include:

(1) A statement of the interested party's case;

(2) A list of witnesses the interested party will present, a summary of the testimony each is expected to give, and copies of all exhibits proposed to be proffered;

(3) A list of persons who have knowledge of the facts for whom the interested party requests that subpoenas be issued and a brief statement of the purpose of their testimony; and

(4) A certificate of service in accordance with § 6.3 of this title on all interested parties, including the Administrator.

§ 6.52 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.

Upon receipt from the Administrator of an Order of Reference, notice to the parties, attachments and certificate of service, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall promptly notify all interested parties of the time and place of a prehearing conference and of the hearing which shall be held immediately upon the completion of prehearing conference. The date of the prehearing conference and hearing shall be not more than 60 days from the date on which the certificate of service

indicates the Order of Reference was mailed.

§6.53 Prehearing conference.

(a) At the prehearing conference the Administrative Law Judge shall attempt to determine the exact areas of agreement and disagreement raised by the Administrator's Order of Reference and replies thereto, so that the evidence and arguments presented at the hearing will be relevant, complete, and as brief and concise as possible.

(b) Any interested party desiring to file proposed findings of fact and conclusions of law shall submit them to the Administrative Law Judge at the prehearing conference.

(c) If the parties agree that no hearing is necessary to supplement the written evidence and the views and arguments that have been presented, the Administrative Law Judge shall forthwith render his/her final decision. The Administrative Law Judge with the agreement of the parties may permit submission of additional written evidence or argument, such as data accompanied by affidavits attesting to its validity or depositions, within ten days of commencement of the prehearing conference.

§6.54 Hearing.

(a) Except as provided in §6.53(c) of this title, the hearing shall commence immediately upon the close of the prehearing conference. All matters remaining in controversy, including the presentation of additional evidence, shall be considered at the hearing. There shall be a minimum of formality in the proceeding consistent with orderly procedure.

(b) To expedite the proceeding the Administrative Law Judge shall, after consultation with the parties, set reasonable guidelines and limitations for the presentations to be made at the hearing. The Administrative Law Judge may limit cross-examination and may question witnesses.

(c) Under no circumstances shall source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of establishments contacted by the Bureau be submitted into evidence or otherwise disclosed. Where the Bureau has conducted a survey, the published summary of the data may be submitted into evidence.

(d) Affidavits or depositions may be admitted at the discretion of the Administrative Law Judge. The Administrative Law Judge may also require that unduly repetitious testimony be submitted as affidavits. Such affidavits shall be submitted within three days of the conclusions of the hearing.

(e) Counsel for the Administrator shall participate in the proceeding to the degree he/she deems appropriate.

(f) An expedited transcript shall be made of the hearing and of the prehearing conference.

§6.55 Closing of record.

The Administrative Law Judge shall close the record promptly and not later than 10 days after the date of commencement of the prehearing conference. Post-hearing briefs may be permitted, but the filing of briefs shall not delay issuance of the decision of the Administrative Law Judge pursuant to §6.56 of this title.

§6.56 Decision of the Administrative Law Judge.

Within 15 days of receipt of the transcript, the Administrative Law Judge shall render his/her decision containing findings of fact and conclusions of law. The decision of the Administrative Law Judge shall be based upon consideration of the whole record, and shall be in accordance with the regulations and rulings contained in part 4 and other pertinent parts of this title. If any party desires review of the decision, a petition for review thereof shall be filed as provided in §6.57 of this title, and such decision and order shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision. If a petition has not been filed within 10 days of issuance of the Administrative Law Judge's decision, the Administrator shall promptly issue any wage determination which may be required as a result of the decision.

§6.57 Petition for review.

Within 10 days after the date of the decision of the Administrative Law Judge, any interested party who participated in the proceedings before the

Administrative Law Judge and desires review of the decision shall file a petition for review by the Administrative Review Board pursuant to 29 CFR part 8. The petition shall refer to the specific findings of fact, conclusions of law, or order excepted to and the specific pages of transcript relevant to the petition for review.

PART 7—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

Subpart A—Purpose and Scope

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7.1 Purpose and scope.

Subpart B—Review of Wage Determinations

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AUTHORITY: Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301, 3 CFR, 1949–1953 Comp., p. 1007; sec. 2, 48 Stat. 948 as amended; 40 U.S.C. 276c; secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331; 65 Stat. 290; 36 FR 306, 8755.

SOURCE: 36 FR 10863, June 4, 1971, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 7 appear at 61 FR 19985, May 3, 1996.

Subpart A—Purpose and Scope

§ 7.1 Purpose and scope.

(a) This part contains the rules of practice of the Administrative Review Board when it is exercising its jurisdiction described in paragraph (b) of this section.

(b) The Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from final decisions under parts 1, 3, and 5 of this subtitle including decisions as to the following: (1) Wage determinations issued under the Davis-Bacon Act and its related minimum wage statutes; (2) debarment cases arising under part 5 of this subtitle; (3) controversies concerning the payment of prevailing wage rates or proper classifications which involve significant sums of money, large groups of employees, or novel or unusual situations; and (4) recommendations of a Federal agency for appropriate adjustment of liquidated damages which are assessed under the Contract Work Hours and Safety Standards Act.

(c) In exercising its discretion to hear and decide appeals, the Board shall consider, among other things, timeliness, the nature of the relief sought, matters of undue hardship or injustice, or the public interest.

(d) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor. The Board shall act as fully and finally as might the Secretary of Labor concerning such matters.

(e) The Board is an essentially appellate agency. It will not hear matters de novo except upon a showing of extraordinary circumstances. It may remand under appropriate instructions any case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.

[36 FR 10863, June 4, 1971, as amended at 61 FR 19985, May 3, 1996]