

**Federal Register**

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Friday  
May 3, 1996

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**Part III**

**Department of Labor**

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**41 CFR Part 50–203**

**Employment and Training Administration  
20 CFR Part 601, et al.**

**Employment Standards Administration  
20 CFR Part 702**

**Office of the Secretary  
29 CFR Part 1, et al.**

**Wage and Hour Division  
29 CFR Part 504, et al.**

**Occupational Safety and Health  
Administration  
29 CFR 1978**

**Office of Federal Contract Compliance  
Programs  
41 CFR Part 60–1, et al.**

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**Establishment of the Administrative  
Review Board; Final Rule**

**DEPARTMENT OF LABOR****41 CFR Part 50-203****Employment and Training Administration****20 CFR Parts 601, 617, 626, and 658****Employment Standards Administration****20 CFR Part 702****Office of the Secretary****29 CFR Parts 1, 2, 4, 5, 6, 7, 8, 22, 24, 32, and 96****Wage and Hour Division****29 CFR Parts 504, 507, 508, and 530****Occupational Safety and Health Administration****29 CFR Part 1978****Office of Federal Contract Compliance Programs****41 CFR Parts 60-1, 60-30, 60-250, and 60-741****Establishment of the Administrative Review Board**

**AGENCY:** Employment and Training Administration, Employment Standards Administration, Office of the Secretary, Wage and Hour Division, Occupational Safety and Health Administration, Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations to provide that the functions performed by the Wage Appeals Board and the Board of Service Contract Appeals will henceforth be performed by the Administrative Review Board. This rule also amends the regulations to provide that when the Administrative Review Board is reviewing administrative decisions which were previously decided by either the Wage Appeals Board or the Board of Service Contract Appeals it will follow the rules of practice and procedure of the Board which would have decided the case prior to the promulgation of this rule. This rule also amends the regulations to provide that the functions previously performed by the Office of Administrative Appeals in advising and assisting the Secretary and other deciding officials of the Department of Labor will henceforth be performed by the Administrative Review Board, which is now designated to issue final agency decisions under a number of laws.

This rule is promulgated to consolidate within one entity the authority delegated by the Secretary to decide administrative appeals and matters under administrative review. This consolidation should result in administrative efficiencies and cost savings.

**EFFECTIVE DATE:** May 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** David A. O'Brien, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 219-4728

**SUPPLEMENTARY INFORMATION:** On April 17, 1996, the Secretary of Labor issued Secretary's Order 2-96 which establishes the Administrative Review Board and transfers to it the authorities and responsibilities previously delegated to the Wage Appeals Board and the Board of Service Contract Appeals. Both the Wage Appeals Board and the Board of Service Contract Appeals are eliminated by Secretary's Order 2-96. In addition to those responsibilities, Secretary's Order 2-96 delegates to the Administrative Review Board the Secretary of Labor's and other deciding officials' authority to issue final agency decisions of administrative appeals and of administrative review cases under certain laws, which are enumerated in the Secretary's Order. Those enumerated laws are those for which the Office of Administrative Appeals was previously assigned the responsibility of advising and assisting the Secretary of Labor and other agency officials in deciding administrative appeals and matters of administrative review. The Office of Administrative Appeals is eliminated by Secretary's Order 2-96.

The rules of practice and procedure for the conduct of an administrative appeal or matter of administrative review brought to the Administrative Review Board shall, until changed, continue to be the rules that are currently prescribed for such an administrative appeal or review.

**Executive Order 12866**

This rule is not classified as a "rule" under Executive Order 12866 on federal regulations, because it is a regulation relating to agency organization, management or personnel. See section 3(d)(3) which exempts this rule.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act (APA), the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining

to regulatory flexibility do not apply to this rule. See 5 U.S.C. 601(2).

**Paperwork Reduction Act**

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

**Publication in Final**

The Department has determined that these amendments need not be published as a proposed rule, as is generally required by the APA (5 U.S.C. 553), since this rulemaking merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of section 553(b)(A).

**Effective Date**

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and nonsubstantive, and merely reflects agency organization, practice and procedure.

**Small Business Regulatory Fairness Act of 1996**

This rule is not classified as a "rule" under Chapter 8 of the Small Business Regulatory Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

**List of Subjects****20 CFR Part 601**

Labor, Unemployment Compensation, Administrative Practice and Procedure.

**20 CFR Part 617**

Labor, Unemployment Compensation, Administrative Practice and Procedure.

**20 CFR Part 626**

Employment, Labor, Manpower training programs.

**20 CFR Part 658**

Labor, Manpower Training Programs, Administrative Practice and Procedure.

**20 CFR Part 702**

Administrative practice and procedure, Claims, Insurance, Longshoremen, Vocational rehabilitation, Workers' Compensation.

**29 CFR Part 1**

Administrative practice and procedure, Government contracts, Labor, Wages.

**29 CFR Part 2**

Administrative practice and procedure, Government employees.

**29 CFR Part 4**

Administrative practice and procedure, Government contracts, Labor, Wages, and Reporting and recordkeeping requirements.

**29 CFR Part 5**

Administrative practice and procedure, Government contracts, Labor, Wages, Reporting and recordkeeping requirements.

**29 CFR Part 6**

Administrative practice and procedure, Government contracts, Labor, Wages.

**29 CFR Part 7**

Administrative practice and procedure, Government contracts, Labor, Wages.

**29 CFR Part 8**

Administrative practice and procedure, Government contracts, Labor, Wages.

**29 CFR Parts 22 and 24**

Labor, Whistleblowing, Administrative practice and procedure.

**29 CFR Part 32**

Grant Programs, Civil Rights, Handicapped discrimination.

**29 CFR Part 96**

Labor, Nonprofit Organizations, Administrative practice and procedure.

**29 CFR Part 504**

Aliens, Employment, Administrative practice and procedure.

**29 CFR Part 507**

Aliens, Employment, Administrative practice and procedure.

**29 CFR Part 508**

Aliens, Employment, Administrative practice and procedure.

**29 CFR Part 530**

Labor, Homeworkers, Administrative practice and procedure.

**29 CFR Part 1978**

Labor, Whistleblowing, Administrative practice and procedure.

**41 CFR Part 50-203**

Administrative practice and procedure, Government contracts,

Government procurement, Minimum wages.

**41 CFR Part 60-1**

Equal Employment Opportunity, Administrative practice and procedure, Civil Rights, Government contracts.

**41 CFR Part 60-30**

Equal Employment Opportunity, Administrative practice and procedure, Civil Rights, Government contracts.

**41 CFR Part 60-250**

Equal Employment Opportunity, Administrative Practice and Procedure, Civil Rights, Government Contracts, Individuals With Disabilities, Veterans.

**41 CFR Part 60-741**

Equal Employment Opportunity, Administrative Practice and Procedure, Civil Rights, Government Contracts, Individuals With Disabilities.

For the reasons set forth in the preamble, 20 CFR Parts 601, 617, 626, 658, and 702; and 29 CFR Parts 1, 2, 4, 5, 6, 7, 8, 22, 24, 32, 96, 504, 507, 508, 530, and 1978; and 41 CFR Parts 50-203, 60-1, 60-30, 60-250, and 60-741 are amended as follows:

**TITLE 20****PART 601—ADMINISTRATIVE PROCEDURE**

1. The authority citation for 20 CFR Part 601 continues to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. Chapter 23; 29 U.S.C. 49k; 38 U.S.C. Chapters 41 and 42; 39 U.S.C. 3202(a)(1)(E) and 3202 note; 42 U.S.C. 1302; and Secretary of Labor's Order No. 4-75, 40 FR 18515.

2. Section 601.1 is amended by adding paragraph (d) to read as follows:

**§ 601.1 General.**

\* \* \* \* \*

(d) As used throughout this Part, the terms "Secretary" or "Secretary of Labor" shall refer to the Secretary of Labor, U.S. Department of Labor, or his or her designee.

**PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974**

3. The authority citation for 20 CFR Part 617 continues to read as follows:

Authority: 19 U.S.C. 2320, Secretary's Order No. 3-81, 46 FR 31117.

4. Section 617.3 is amended by revising paragraph (ff) to read as follows:

**§ 617.3 Definitions.**

\* \* \* \* \*

(ff) *Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

\* \* \* \* \*

**PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT**

5. The authority citation for 20 CFR Part 626 continues to read as follows:

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107; 29 U.S.C. 1791(e).

6. 20 CFR 626.5 is amended, in part, by revising the definition for *Secretary* to read as follows:

**§ 626.5 Definitions.**

\* \* \* \* \*

*Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

\* \* \* \* \*

**PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE JOB SERVICE SYSTEM**

7. The authority citation for Part 658 is revised to read as follows:

Authority: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; 38 U.S.C. chapters 41 and 42; 5 U.S.C. 301 *et seq.*; sections 658.410, 658.411 and 658.413 also issued under 44 U.S.C. 3501 *et seq.*

8. Section 658.710 is amended by revising paragraph (d) to read as follows:

**§ 658.710 Decision of the Administrative Law Judge.**

\* \* \* \* \*

(d) If the case involves the decertification of an appeal to the State agency, the decision of the Administrative Law Judge shall contain a notice stating that, within 30 calendar days of the decision, the State agency or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by sending by registered mail, return receipt requested, a written appeal to the Administrative Review Board, in care of the Administrative Law Judge who made the decision.

9. Section 658.711 is revised to read as follows:

**§ 658.711 Decision of the Administrative Review Board.**

(a) Upon the receipt of an appeal to the Administrative Review Board, United States Department of Labor, the Administrative Law Judge shall certify the record in the case to the Administrative Review Board, which shall make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Administrative Review Board shall be final, shall be in writing, and shall set forth the factual and legal basis for the decision. Notice of the Administrative Review Board's decision shall be published in the Federal Register, and copies shall be made available for public inspection and copying.

## PART 702—ADMINISTRATION AND PROCEDURE

10. The authority citation for 20 CFR Part 702 is revised to read as follows:

Authority: 5 U.S.C. 301, 8171 *et seq.*; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953, Comp. p. 1004, 64 Stat. 1263; 33 U.S.C. 939; 36 D.C. Code 501 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1331; Secretary's Order 1–93, 58 FR 21190.

### § 702.433 [Amended]

11. Section 702.433 is amended by substituting the words “Administrative Review Board,” for “Assistant Secretary for Employment Standards” wherever they appear in paragraphs (e) and (f).

### § 702.434 [Amended]

12. Section 702.434 is amended by substituting the words “Administrative Review Board,” for “Assistant Secretary for Employment Standards” wherever they appear in paragraphs (a), (b), or (c).

## TITLE 29

## PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

13. The authority citation for 29 CFR Part 1 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 29 U.S.C. 259; 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; and the laws listed in appendix A of this part.

### §§ 1.1, 1.6, 1.9 [Amended]

14. In 29 CFR Part 1 remove the words “Wage Appeals Board” and add, in their place, the words “Administrative Review Board” in the following places:

- (a) Section 1.1(a);
- (b) Section 1.6(e)(2);
- (c) Section 1.9 in the section heading and in the text *in two places*.

## PART 2—GENERAL REGULATIONS

15. The authority citation for 29 CFR Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 552–556; Section 2.3 also issued under 31 U.S.C. 952.

16. Subpart A of Part 2 is amended by adding § 2.8 to read as follows:

### § 2.8 Final agency decisions.

Final agency decision issued under the statutory authority of the U.S. Department of Labor may be issued by the Secretary of Labor, or by his or her designee under a written delegation of authority. The Administrative Review Board, an organizational entity within the Office of the Secretary, has been delegated authority to issue final agency decisions under the statutes, executive orders, and regulations as provided in Secretary's Order 2–96, published on May 3, 1996.

### § 2.12 [Amended]

17. In 29 CFR Part 2 remove the words “Wage Appeals Board” and add, in their place, the words “Administrative Review Board” in the following place:

- (a) Section 2.12(d).

## PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

18. The authority citation for 29 CFR Part 4 continues to read as follows:

Authority: 42 U.S.C. 351 *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

### §§ 4.1, 4.6, 4.11, 4.12, 4.55, 4.163, 4.187 [Amended]

19. In 29 CFR Part 4 remove the words “Board of Service Contract Appeals” and add, in their place, the words “Administrative Review Board” in the following places:

- (a) Section 4.1b(a), *in two places*;
  - (b) Section 4.6(d)(2);
  - (c) Section 4.11(e), *in two places*;
  - (d) Section 4.12(d)(4)(iii);
  - (e) Section 4.12(f), *in two places*;
  - (f) Section 4.55(b), *in two places*;
  - (g) Section 4.163(c), *in two places*;
- and
- (h) Section 4.187(a).

## PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

20. The authority citation for 29 CFR Part 5 continues to read as follows:

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

### §§ 5.8, 5.11, 5.12 [Amended]

21. In 29 CFR Part 5 remove the words “Wage Appeals Board” and add, in their

place, the words “Administrative Review Board” in the following places:

- (a) Section 5.8(c);
- (b) Section 5.11(c)(3);
- (c) Section 5.11(d);
- (d) Section 5.12(c);
- (e) Section 5.12(d)(2)(iv)(C); and
- (f) Section 5.12(d)(5), *in two places*.

### § 5.8 [Amended]

22. In 29 CFR Part 5 remove the words “Board of Service Contract Appeals” and add, in their place, the words “Administrative Review Board” in the following place:

- (a) Section 5.8(c).

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

23. The authority citation for 29 CFR Part 6 continues to read as follows:

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.

### §§ 6.18, 6.19, 6.20, 6.21, 6.56, 6.57 [Amended]

24. In 29 CFR Part 6 remove the words “Board of Service Contract Appeals” and add, in their place, the words “Administrative Review Board” in the following places:

- (a) Section 6.18(b)(3);
- (b) Section 6.19(b)(1);
- (c) Section 6.20, *in two places*;
- (d) Section 6.21 (a) and (b);
- (e) Section 6.56; and
- (f) Section 6.57.

### §§ 6.32, 6.33, 6.34, 6.35 [Amended]

25. In 29 CFR Part 6 remove the words “Wage Appeals Board” and add, in their place, the words “Administrative Review Board” in the following places:

- (a) Section 6.32(b)(4);
- (b) Section 6.33(b)(1);
- (c) Section 6.34, *in two places*; and
- (d) Section 6.35, *in two places*.

### §§ 6.8, 6.43, 6.44, 6.46 [Amended]

26. In 29 CFR Part 6 remove the words “Board of Service Contract Appeals or Wage Appeals Board” and add, in their place, the words “Administrative Review Board” in the following places:

- (a) Section 6.8;
- (b) Section 6.43(b)(3);
- (c) Section 6.44(b); and
- (d) Section 6.46.

**§ 6.45 [Amended]**

27. In 29 CFR Part 6 remove the words "Board of Service Contract Appeals" and "Wage Appeals Board" and add, in their place, the words "Administrative Review Board" in the following place:  
(a) Section 6.45.

**PART 7—PRACTICE BEFORE WAGE APPEALS BOARD**

28. The authority citation for 29 CFR Part 7 continues to read as follows:

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.

29. The part heading for 29 CFR Part 7 is revised to read as follows:

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

**§§ 7.1, 7.3, 7.5, 7.7, 7.8, 7.15, 7.16 [Amended]**

30. In 29 CFR Part 7 remove the words "Wage Appeals Board" and add, in their place, the words "Administrative Review Board" in the following places:  
(a) Section 7.1(a); and  
(b) Section 7.3;  
(c) Section 7.5(a)(2);  
(d) Section 7.7;  
(e) Section 7.8 in the section heading;  
(f) Section 7.15(a); and  
(g) Section 7.16(a).

**§ 7.16 [Amended]**

31. In 29 CFR Part 7 remove the words "Executive Secretary" and add, in their place, the words "Executive Director" in the following place:  
(a) Section 7.16(a).  
32. Section 7.1 is amended by revising paragraph (a) to read as follows:

**§ 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.  
\* \* \* \* \*

**PART 8—PRACTICE BEFORE THE BOARD OF SERVICE CONTRACT APPEALS**

33. The authority citation for 29 CFR Part 8 continues to read as follows:

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 76 Stat. 357-359, 40 U.S.C. 327-332.

34. The part heading for 29 CFR Part 8 is revised to read as follows:

**PART 8—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL SERVICE CONTRACTS**

**§§ 8.1, 8.4, 8.6, 8.9, 8.10, 8.18 [Amended]**

35. In 29 CFR Part 8 remove the words "Board of Service Contract Appeals" and add, in their place, the words "Administrative Review Board" in the following places:  
(a) Section 8.1(a);  
(b) Section 8.4(a)(2);  
(c) Section 8.6 in the section heading;  
(d) Section 8.9 in the section heading;  
(e) Section 8.10(a); and  
(f) Section 8.18.

**§ 8.10 [Amended]**

36. In 29 CFR Part 8 remove the words "Executive Secretary" and add, in their place, the words "Executive Director" in the following place:  
(a) Section 8.10(a).

**§ 8.0 [Removed]**

37. Section 8.0 is removed.  
38. Section 8.1 is amended by revising paragraph (a) to read as follows:

**§ 8.1 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.  
\* \* \* \* \*

**PART 22—PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986**

39. The authority citation for 29 CFR Part 22 continues to read as follows:  
Authority: Pub. L. 99-509, §§ 6101-6104, 100 Stat. 1874, 31 U.S.C. 3801-3812.

40. Section 22.2 is amended by revising paragraph(c) to read as follows:

**§ 22.2 Definitions.**

\* \* \* \* \*  
(c) *Authority head* means the Secretary of Labor or his or her designee.  
\* \* \* \* \*

**PART 24—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER FEDERAL EMPLOYEE PROTECTION STATUTES**

41. The authority citation for 29 CFR Part 24 is revised to read as follows:  
Authority: 42 U.S.C. 300j-9(i); 33 U.S.C. 1367; 15 U.S.C. 2622; 42 U.S.C. 6971; 42 U.S.C. 7622; 42 U.S.C. 5851; 42 U.S.C. 9610.

42. Section 24.1 is amended by revising paragraph (a) and by adding paragraph (c) to read as follows:

**§ 24.1 Purpose and scope.**

(a) This part implements the several employee protection provisions for which the Secretary of Labor has been given responsibility pursuant to the following federal statutes: Safe Drinking Water Act, 42 U.S.C. 300j-9(i); Federal Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610.  
\* \* \* \* \*

(c) Throughout this part, "Secretary" or "Secretary of Labor" shall mean the Secretary of Labor, U.S. Department of Labor, or his or her designee.

**PART 32—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—General Provisions**

43. The authority for 29 CFR Part 32 continues to read as follows:

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); secs. 119 and 122 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955; Executive Order 11914; 41 FR 17871.

44. Section 32.3 is amended by revising the term for *Secretary* to read as follows:

**§ 32.3 Definitions.**

As used in this part, the term:  
\* \* \* \* \*  
*Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.  
\* \* \* \* \*

**PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS**

45. The authority citation for 29 CFR Part 96 continues to read:

Authority: 31 U.S.C. 7500 *et seq.*; OMB Circular No. A-128; OMB Circular No. A-110; and OMB Circular No. A-133.

46. Section 96.603 is amended by revising paragraphs (b)(4) and (b)(5) to read as follows:

**§ 96.603 Grants.**

\* \* \* \* \*  
(b) \* \* \*

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final agency action by the Secretary of Labor, unless within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Administrative Review Board, United States Department of Labor, specifically identifying the procedures or finding of fact, law, or policy with which the exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary of Labor, unless the Administrative Review Board, United States Department of Labor, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Administrative Review Board, United States Department of Labor.* Any case accepted for review by the Administrative Review Board, United States Department of Labor, shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary of Labor.

**CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR**

**PART 504— ATTESTATIONS BY FACILITIES USING NONIMMIGRANT ALIENS AS REGISTERED NURSES**

47. The authority citation for 29 CFR Part 504 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m) and Pub. L. 101-238, sec. 3(c)(1), 103 Stat. 2099, 2103; and sec. 341 (a) and (b), Pub. L. 103-182, 107 Stat. 2057.

**§ 504.445 [Amended]**

48. In 29 CFR Part 504 remove the words "Office of Administrative Appeals, room S-4309" and add, in their place, the words "Administrative Review Board" in the following place:  
(a) Section 504.445(f).

**PART 507— ENFORCEMENT OF H-1B LABOR CONDITION APPLICATIONS**

49. The authority citation for 29 CFR Part 507 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.*; Pub. L. 102-232, 105 stat. 1733, 1748(8 U.S.C. 1182 note); and sec. 341 (a) and (b), Pub. L. 103-182, 107 Stat. 2057.

**§ 507.845 [Amended]**

50. In 29 CFR Part 507 remove the words "Office of Administrative Appeals, room S-4309" and add, in

their place, the words "Administrative Review Board" in the following place:

(a) Section 507.845(f).

**PART 508—ATTESTATIONS FILED BY EMPLOYERS UTILIZING F-1 STUDENTS FOR OFF-CAMPUS WORK**

**Subpart K—Enforcement of the Attestation Process for Attestations Filed by Employers Utilizing F-1 Students in Off-campus Work**

51. The authority citation for 29 CFR Part 508 continues to read as follows:

Authority: 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

**§ 508.1045 [Amended]**

52. In 29 CFR Part 508 remove the words "Office of Administrative Appeals, room S-4309" and add, in their place, the words "Administrative Review Board" in the following place:  
(a) Section 508.1045(f).

**PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES**

**Subpart A—Definitions**

53. The authority citation for 29 CFR Part 530 continues to read as follows:

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.

54. Section 530.1 is amended by adding paragraph (l) to read as follows:

**§ 530.1 Definitions.**

\* \* \* \* \*

(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.

**PART 1978—RULES FOR IMPLEMENTING 49 U.S.C. 31105, THE WHISTLEBLOWER PROVISION OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA)**

**Subpart B—Rules of Procedure**

55. The authority citation for 29 CFR Part 1978 is revised to read as follows:

Authority: 29 U.S.C. 657(g)(2); 29 U.S.C. 660(c)(2); 49 U.S.C. 31101 and 31105; Secretary of Labor's Order No. 1-90, 55 FR 9033.

56. Section 1978.109 is amended by revising paragraphs (c) (1), (2), (4) and (5) to read as follows:

**§ 1978.109 Decision and orders.**

\* \* \* \* \*

(c) *Final order.* (1) Within 120 days after issuance of the administrative law judge's decision and order, the Administrative Review Board, United States Department of Labor, shall issue a final decision and order based on the record and the decision and order of the administrative law judge.

(2) The parties may file with the Administrative Review Board, United States Department of Labor, briefs in support of or in opposition to the administrative law judge's decision and order within thirty days of the issuance of that decision unless the Administrative Review Board, United States Department of Labor, upon notice to the parties, establishes a different briefing schedule.

\* \* \* \* \*

(4) Where the Administrative Review Board, United States Department of Labor, determines that the named party has not violated the law, the final order shall deny the complaint.

(5) The final decision and order of the Administrative Review Board, United States Department of Labor, shall be served upon all parties to the proceeding.

57. Section 1978.110 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 1978.110 Judicial review.**

\* \* \* \* \*

(b) A final order of the Administrative Review Board, United States Department of Labor, shall not be subject to judicial review in any criminal or other civil proceedings (49 U.S.C. 2305(d)(2)).

(c) The record of a case, including the record of proceedings before the administrative law judge, shall be transmitted by the Administrative Review Board, United States Department of Labor, to the appropriate court pursuant to the rules of such court.

58. Section 1978.111 is amended by revising paragraphs (c) and (d) (2) and (3) to read as follows:

**§ 1978.111 Withdrawal of section 405 complaints, objections, and findings; settlement**

\* \* \* \* \*

(c) At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion

of the findings or preliminary order with respect to which the objection was withdrawn.

\* \* \* \* \*

(d) \* \* \*

(2) *Adjudicatory settlement.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board, United States Department of Labor, or the ALJ. A copy of the settlement shall be filed with the ALJ or the Administrative Review Board, United States Department of Labor as the case may be.

(3) If, under paragraph (d) (1) or (2) of this section the named person makes an offer to settle the case which the Assistant Secretary, when acting as the prosecuting party, deems to be a fair and equitable settlement of all matters at issue and the complainant refuses to accept the offer, the Assistant Secretary may decline to assume the role of prosecuting party as set forth in § 1978.107(a). In such circumstances, the Assistant Secretary shall immediately notify the complainant that his review of the settlement offer may cause the Assistant Secretary to decline the role of prosecuting party. After the Assistant Secretary has reviewed the offer and when he or she has decided to decline the role of prosecuting party, the Assistant Secretary shall immediately notify all parties of his or her decision in writing and, if the case is before the administrative law judge, or the Administrative Review Board, United States Department of Labor on review, a copy of the notice shall be sent to the appropriate official. Upon receipt of the Assistant Secretary's notice, the parties shall assume the roles set forth in § 1978.107(b).

#### TITLE 41

### PART 50-203—RULES OF PRACTICE

#### Subpart A—Proceedings Under Section 5 of the Walsh-Healey Public Contracts Act

59. The authority for 41 CFR Part 50-203 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38.

60. § 50-203.1 is amended by revising paragraph (b) to read as follows:

#### § 50-203.1 Reports of breach or violation.

\* \* \* \* \*

(b) A report of breach or violation may be reported to the nearest office of the Wage and Hour Division, Employment

Standards Administration or with the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210.

\* \* \* \* \*

#### § 50-203.1 [Amended]

61. In § 50-203.1(d) remove the words "a Regional Director of the Wage and Hour Public Contracts Divisions" and add, in their place, "the Wage and Hour Division".

#### § 50-203.2 [Amended]

62. In § 50-203.2 remove the word "Deputy".

#### §§ 50-203.3; 50-203.8 [Amended]

63. In 41 CFR Part 50-203 remove the words "the Examiner" and add, in their place, the words "the administrative law judge" in the following places:

- (a) Section 50-203.3(a); and
- (b) Section 50-203.8(j).

#### § 50-203.6 [Amended]

64. Section 50-203.6(b) is amended by removing the following language from its first sentence: "(or the Administrator holding the hearing as provided in § 50-203(m))".

#### § 50-203.11 [Amended]

65. In § 50-203.11(a) remove the words "Administrator of Workplace Standards" and add, in their place, the words "Administrative Review Board".

66. In § 50-203.11 remove the word "Administrator" and add, in its place, the words "Administrative Review Board" in the following places:

- (a) Section 50-203.11(d), *in three places*; and
- (b) Section 50-203.11(e).

67. Section 50-203.11 is amended by revising paragraph (f), and by removing paragraphs (g) and (h) to read as follows:

#### § 50-203.11 Review.

\* \* \* \* \*

(f) If the respondent is found to have violated the Act, the Administrative Review Board shall determine whether respondent shall be relieved from the application of the ineligible list provisions of section 3 of the Walsh-Healey Public Contracts Act (sec. 4, 49 Stat. 2039; 41 U.S.C. 37).

#### §§ 50-203.2-50.203.11 [Amended]

68. In 41 CFR Part 50-203 remove the words "Trial Examiner" and add, in their place, the words "administrative law judge" in the following places:

- (a) Section 50-203.2, *in two places*;
- (b) Section 50-203.3(d);
- (c) Section 50-203.3(e);
- (d) Section 50-203.4(a);
- (e) Section 50-203.4(b);

(f) Section 50-203.5, *in four places*;

(g) Section 50-203.6(a);

(h) Section 50-203.6(b);

(i) Section 50-203.6(c);

(j) Section 50-203.7(a);

(k) Section 50-203.7(b);

(l) Section 50-203.8(b);

(m) Section 50-203.8(d);

(n) Section 50-203.8(e), *in two places*;

(o) Section 50-203.8(h);

(p) Section 50-203.8(j);

(q) Section 50-203.8(k), *in two places*;

(r) Section 50-203.8(l), *in two places*;

(s) Section 50-203.9(a), *in two places*;

(t) Section 50-203.10, *in the heading*;

(u) Section 50-203.10(a), *in three places*;

(v) Section 50-203.10(b), *in two places*;

(w) Section 50-203.11(a), *in two places*;

(x) Section 50-203.11(d), *in two places*; and

#### § 50-203.11 [Amended]

68a. In 41 CFR Part 50-203 remove the words "Trial Examiner's" and add, in their place, the words "administrative law judge's" in the following places:

- (a) Section 50-203.11(b);
- (b) Section 50-203.11(e);

#### § 50-203.8 [Amended]

69. In 41 CFR Part 50-203 remove the words "Trial Examiners" and add, in their place, the words "administrative law judges" in the following places:

- (a) Section 50-203.8(b);
- (b) Section 50-203.8(c);

70. In 41 CFR Part 50-203 remove the word "examiners" and add, in its place, the words "administrative law judges" in the following places:

- (a) Section 50-203.8(b);
- (b) Section 50-203.8(c);

71. Section 50-203.8 is amended by revising the first sentence of paragraph (a) to read as follows:

#### § 50-203.8 Hearing.

(a) The hearing for the purpose of taking evidence upon a formal complaint shall be conducted by an administrative law judge. \* \* \*

#### § 50-203.8 [Amended]

72. Section 50-203.8 is amended by removing paragraph (m).

#### § 50-203.10 [Amended]

73. In § 50-203.10(a) remove the words "Secretary of Labor" and add, in their place, "Administrative Review Board".

#### § 50-203.11 [Amended]

74. In § 50-203.11(a) remove the words "Administrator of Workplace Standards" and add, in their place, "Administrative Review Board".

75. Section 50–203.12 is revised to read as follows:

**§ 50–203.12 Effective date.**

The amendments to Subpart A shall become effective upon publication in the Federal Register May 3, 1996; Provided, however, That in any case where a hearing has begun or has been completed prior to said publication, the proceeding shall be conducted pursuant to the rules of practice in effect at the time the proceeding was initiated unless the parties stipulate in writing or orally for the record that the proceeding be conducted in accordance with §§ 50–203.1 to 50–203.12.

**§§ 50–203.17, 50–203.18, 50–203.20 [Amended]**

76. In Part 50–203 remove the words “Presiding Officer” and add, in their place, the words “administrative law judge” in the following places:

- (a) Section 50–203.17(d);
- (b) Section 50–203.18(a);
- (c) Section 50–203.18(c), *in two places*;
- (d) Section 50–203.18(d); and
- (e) Section 50–203.20, *in two places*;

**§§ 50–203.18, 50–203.21 [Amended]**

77. In Part 50–203 remove the word “Secretary” and add, in its place, the words “Administrative Review Board” in the following places:

- (a) Section 50–203.18(d), *in two places*;
- (b) Section 50–203.21(b) introductory text; and
- (c) Section 50–203.21(d);

78. Section 50–203.17 is amended by revising paragraph (a) to read as follows:

**§ 50–203.17 Hearings.**

(a) Hearings held for the purpose of receiving evidence with regard to prevailing minimum wages in the various industries shall be conducted by an administrative law judge.

\* \* \* \* \*

**§ 50–203.19 [Amended]**

79. In § 50–203.19 remove the words “Secretary or the Hearing Examiner” and add, in their place, “administrative law judge”.

80. Section 50–203.21 is amended by revising paragraph (a) to read as follows:

**§ 50–203.21 Decisions.**

(a) Within 30 days after the close of the hearing, each interested person at the hearing may file with the administrative law judge an original and four copies of a statement containing proposed findings of fact and conclusions of law, together with reasons for such proposals. The administrative law judge shall,

immediately following the termination of the thirty-day period provided for the filing of proposed findings and conclusions, certify the complete record to the Administrative Review Board.

\* \* \* \* \*

**§ 50–203.23 [Removed]**

81. Section 50–203.23 is removed.

**PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS**

82. The authority citation for 41 CFR Part 60–1 continues to read as follows:

Authority: Sec 201, E.O. 11246 (30 FR 12319), as amended by E.O. 12086.

83. Part 60–1.3 of Subpart A is amended by revising the definition for “Secretary” to read as follows:

**§ 60–1.3 Definitions.**

\* \* \* \* \*

*Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

\* \* \* \* \*

84. Part 60–1.26 of Subpart B is amended by revising paragraph (d) to read as follows:

**§ 60–1.26 Enforcement proceedings.**

\* \* \* \* \*

(d) *Decision following administrative proceeding.* If it is determined after a hearing (or after the contractor waives a hearing) that the contractor is violating the order or the regulations issued thereunder, the Administrative Review Board, United States Department of Labor, (in accordance with 41 CFR 60–30.30) shall issue an Administrative order enjoining the violations and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative order shall result in the imposition of the sanctions contained in section 209 (a)(5) or (a)(6) of the Executive Order.

\* \* \* \* \*

**PART 60–30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246**

85. The authority citation for 41 CFR Part 60–30 is revised to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319, 32 FR 14303, as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 4212, as amended.

86. Section 60–30.27 is revised to read as follows:

**§ 60–30.27 Recommended decision.**

Within a reasonable time after the filing of briefs, the Administrative Law Judge shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record for recommended decision, to the Administrative Review Board, United States Department of Labor, for a final Administrative order. The recommended findings, conclusions, and decision shall be served on all parties and amici to the proceeding.

87. Section 60–30.28 is revised to read as follows:

**§ 60–30.28 Exceptions to recommended decisions.**

Within 14 days after receipt of the recommended findings, conclusions, and decision, any party may submit exceptions to said recommendation. These exceptions may be responded to by other parties within 14 days of their receipt by said parties. All exceptions and responses shall be filed with the Administrative Review Board, United States Department of Labor. Service of such briefs or exceptions and responses shall be made simultaneously on all parties to the proceeding. Requests to the Administrative Review Board, United States Department of Labor, for additional time in which to file exceptions and responses shall be in writing and copies shall be served simultaneously on other parties. Requests for extensions must be received no later than 3 days before the exceptions are due.

88. Section 60–30.29 is revised to read as follows:

**§ 60–30.29 Record.**

After expiration of the time for filing briefs and exceptions, the Administrative Review Board, United States Department of Labor, shall make a final decision, which shall be the final Administrative order, on the basis of the record. The record shall consist of the record for recommended decision, the rulings and recommended decision of the Administrative Law Judge and the exceptions and briefs filed subsequent to the Administrative Law Judge’s decision.

89. Section 60–30.30 is revised to read as follows:

**§ 60–30.30 Final Administrative Order.**

After expiration of the time for filing, the Administrative Review Board, United States Department of Labor, shall make a final Administrative order which shall be served on all parties. If the Administrative Review Board, United States Department of Labor,



concludes that the defendant has violated the Executive Order, the equal opportunity clause, or the regulations, an Administrative order shall be issued enjoining the violations, and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative order shall result in the immediate cancellation, termination and suspension of the respondent's contracts and/or debarment of the respondent from further contracts.

90. Section 60-30.35 is revised to read as follows:

**§ 60-30.35 Recommended decision after hearing.**

Within 15 days after the hearing is concluded, the Administrative Law Judge shall recommend findings, conclusions, and a decision. The Administrative Law Judge may permit the parties to file written post-hearing briefs within this time period, but the Administrative Law Judge's recommendations shall not be delayed pending receipt of such briefs. These recommendations shall be certified, together with the record, to the Administrative Review Board, United States Department of Labor, for a final Administrative order. The recommended decision shall be served on all parties and amici to the proceeding.

91. Section 60-30.36 is revised to read as follows:

**§ 60-30.36 Exceptions to recommendations.**

Within 10 days after receipt of the recommended findings, conclusions and decision, any party may submit exceptions to said recommendations. Exceptions may be responded to by other parties within 7 days after receipt by said parties of the exceptions. All exceptions and responses shall be filed with the Administrative Review Board, United States Department of Labor. Briefs or exceptions and responses shall be served simultaneously on all parties to the proceeding.

92. Section 60-30.37 is revised to read as follows:

**§ 60-30.37 Final Administrative order.**

After expiration of the time for filing exceptions, the Administrative Review Board, United States Department of Labor, shall issue a final Administrative order which shall be served on all parties. Unless the Administrative Review Board, United States Department of Labor, issues a final Administrative order within 30 days after the expiration of the time for filing exceptions, the Administrative Law Judge's recommended decision shall become a final Administrative order which shall become effective on the 31st day after expiration of the time for filing exceptions. Except as to specific time periods required in this subsection, 41 CFR 60-30.30 shall be applicable to this subsection.

**PART 60-250—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA**

93. The authority citation for 41 CFR Part 60-250 continues to read as follows:

Authority: 38 U.S.C. 4211 and 4212; 29 U.S.C. 793; Executive Order 11758 (39 FR 2075, January 15, 1974; 3 CFR 1971-1975 Comp. p. 841).

**§ 60-250.29 [Amended]**

94. Part 60-250 in Subpart B is amended by removing paragraph (b)(3) in § 60-250.29.

**PART 60-741—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS**

95. The authority citation for 41 CFR Part 60-741 continues to read as follows:

Authority: Sec. 503, Pub. L. 93-1112, 87 Stat. 393 (20 U.S.C. 793), as amended by sec. 111, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706) and E.O. 11758.

**§ 60-741.29 [Amended]**

96. Part 60-741 in Subpart B is amended by removing paragraph (b)(3) in § 60-741.29.

Signed at Washington, D.C. this 17th day of April 1996.

Robert B. Reich,  
*Secretary of Labor.*

[FR Doc. 96-9910 Filed 5-2-96; 8:45 am]

BILLING CODE 4510-23-P