

Wage and Hour Division, Labor

§ 511.1

Tier	Municipality
3	Aguadilla.
3	Aguas Buenas.
3	Aibonito.
3	Añasco.
3	Arecibo.
3	Arroyo.
3	Barceloneta.
3	Barranquitas.
3	Bayamon.
3	Cabo Rojo.
3	Caguas.
3	Camuy.
2	Canovanas.
3	Carolina.
3	Cataño.
3	Cayey.
2	Ceiba.
3	Ciales.
3	Cidra.
3	Coamo.
2	Comerio.
3	Corozal.
3	Culebra.
2	Dorado.
3	Fajardo.
3	Florida.
3	Guanica.
3	Guyama.
2	Guayanilla.
3	Guaynabo.
3	Guarbo.
3	Hatillo.
3	Hormigueros.
3	Humacao.
3	Isabela.
3	Jayuya.
3	Jurana Diaz.
3	Juncos.
2	Lajas.
3	Lares.
3	Las Marias.
3	Las Piedras.
3	Loiza.
3	Luquillo.
1	Manati.
3	Maricao.
3	Maunabo.
3	Mayaguez.
2	Moca.
3	Morovis.
3	Naguabo.
2	Naranjito.
3	Orocovis.
3	Patillas.
3	Peñuelas.
3	Ponce.
3	Quebradillas.
3	Rincon.
3	Rio Grande.
3	Sabana Grande.
3	Salinas.
3	San German.
2	San Juan.
3	San Lorenzo.
3	San Sebastian.
3	Santa Isabel.
3	Toa Alta.
3	Toa Baja.
2	Trujillo Alto.
3	Utua.
3	Vega Alta.
3	Vega Baja.
3	Vieques.
3	Villalba.

Tier	Municipality
3	Yabucoa.
3	Yauco.

PART 511—WAGE ORDER PROCEDURE FOR AMERICAN SAMOA

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AUTHORITY: 29 U.S.C. 205, 206, 208; 5 U.S.C. 551-559.

SOURCE: 21 FR 7669, Oct. 6, 1956, unless otherwise noted.

§ 511.1 General method for issuance of wage orders.

Pursuant to authority delegated by the Secretary of Labor, the Administrator of the Wage and Hour Division publishes the orders that are required by statute to make the recommendations of industry committees effective as wage orders under section 6(a)(3) of the Fair Labor Standards Act. The wage orders issued by the Administrator must by law give effect to the recommendations of the industry committees. All wage order proceedings will be conducted in accordance with the standards provided in the Administrative Procedure Act as interpreted and applied in this part.

[55 FR 53298, Dec. 28, 1990]

§ 511.2 Initiation of proceedings; notices of hearings.

(a) Wage order proceedings are initiated by order of the Secretary, published in the FEDERAL REGISTER, giving notice of hearings by industry committees to recommend the minimum rate or rates of wages to be paid under section 6 of the Act to employees in American Samoa engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce. These orders will contain a definition of the particular industry in American Samoa, for which the committee is to make its recommendations, or these orders will direct the committee to recommend the minimum rate or rates of wages for all industry in American Samoa. All such orders will make provision for convening the committee. Any particular industry defined in such an order may be a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed.

(b) These orders will also give reasonable notice (1) of the time and place of the commencement of the hearing of such witnesses and receiving of such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the Act, (2) of the general nature of the wage order proceedings and the authority under which they are proposed, (3) of the subjects and issues involved, and (4) that the committee will take official notice of the economic report (note § 511.13) and the parties will have an opportunity at the hearing to show any contrary or additional facts.

[26 FR 6513, July 20, 1961, as amended at 55 FR 12120, Mar. 30, 1990]

§ 511.3 Composition and appointment of committees.

An industry committee will be composed of residents of American Samoa and residents of the United States outside of American Samoa. The Secretary will appoint as members of each committee an equal number of persons representing:

- (a) The public,
- (b) Employees in the industry, and
- (c) Employers in the industry.

The public members shall be disinterested, and the Secretary will designate one as chairperson. For purposes of this section only, the definition of the industry shall be considered to include all such industry throughout the United States, its territories and possessions.

[55 FR 53298, Dec. 28, 1990]

§ 511.4 Compensation of committee members.

Each member of an industry committee will be allowed per diem compensation at the rate specified in Chapter 304 of the Department of Labor Supplement to the Federal Personnel Manual for each day actually spent in the work of the committee, and will, in addition, be reimbursed for necessary transportation and other expenses incident to traveling in accordance with Standard Government Travel Regulations then in effect. All travel expenses will be paid on travel vouchers certified by the Administrator or an authorized representative. Any other necessary expenses that are incidental to the work of the committee may be incurred by the committee upon approval of, and shall be paid upon, certification of the Administrator or an authorized representative.

[58 FR 34524, June 28, 1993]

§ 511.5 Vacancies and dissolution of committees.

The Secretary will appoint persons to fill any vacancies occurring in industry committees. If an industry committee is unable to arrive at a recommendation within a reasonable time, or refuses to make a recommendation, it may be dissolved by the Secretary. An industry committee shall cease to perform further functions when it has filed with the Administrator its report containing its findings of fact and recommendations with respect to the matters referred to it, and shall not again perform any functions with respect to any matter reported on, unless and until directed by the Administrator. An industry committee shall be dissolved automatically when its recommendations are no longer subject to review under section 10 of the Act.

[27 FR 10651, Nov. 1, 1962]

§ 511.6 Investigation.

The Administrator shall prepare an economic report containing such data as can be assembled pertinent to the matters to be referred to a committee. A copy of these regulations will be sent to all members of the committee following their appointment, and a copy of the economic report when completed will be furnished promptly. Before making its report the committee will decide whether it will conduct any further investigation, apart from the hearing and the review of the economic report, in connection with the matters referred to it.

[55 FR 53298, Dec. 28, 1990]

§ 511.7 Committee staff.

Each industry committee will be furnished a lawyer, to serve as committee counsel, and an economist, to serve as committee economist. Committee counsel shall advise the committee on the issues of law, including interpretations of these regulations and the legal scope of the committee's discretion, which arise during the committee proceedings. The committee counsel and economist shall be available to advise and assist the committee at all of its meetings. The Administrator shall furnish the committee with adequate stenographic, clerical, and other assistance.

§ 511.8 Prehearing statements.

(a) Every employer, employee, trade association, trade union, or group of employers, employees, associations, or unions in the industry as defined, or in such industry elsewhere in the United States, and every other person who, in the judgment of the committee has an interest sufficient to justify the participation proposed by such party, shall be considered an interested person. No member of the committee may participate as an interested person.

(b) Any interested person who wishes to participate on his or her own behalf or by counsel shall file a written prehearing statement within such period of time as may be prescribed in a notice of hearing, or other notice published in the FEDERAL REGISTER. The number of copies of such statements and the time and places for filing them

will be specified in notices of hearings. The prehearing statement shall describe the person's interest in the proceeding and shall contain:

(1) The prepared statement he or she proposes to give, if any;

(2) A statement of the individual classifications and minimum wage rates, if any, he or she proposes to support;

(3) The written data he or she proposes to introduce in evidence, including all tangible objective data to be submitted pursuant to § 511.13;

(4) The names and addresses of the witnesses he or she proposes to call and a summary of the evidence he or she proposes to develop;

(5) The name and address of the individual who will present his or her case; and

(6) A statement of the approximate length of time his or her case will take.

If the prehearing statement is in conformity with the above requirements, the person shall have the right to participate as a party. In accordance with section 6(c) of the Administrative Procedure Act, the industry committee shall, after considering the advice of committee counsel, issue subpoenas, authorized by section 9 of the Fair Labor Standards Act of 1938, to parties who make a request therefor accompanied by a clear showing of general relevance and reasonable scope of the evidence sought.

(c) Prehearing statements of parties shall be made available for examination at the offices where they are filed. Each person who files a prehearing statement should, if requested, make himself or herself available for conference with the committee staff to make any needed clarification of his or her prehearing statement, and arrange details of presenting his or her testimony or case.

(d) In exceptional circumstances a person who has not filed the prehearing statement required by this section and who does not appear on a witness list filed by a party may nevertheless be permitted, in the discretion of the committee, to offer testimony.

[25 FR 14024, Dec. 31, 1960, as amended at 55 FR 53298, Dec. 28, 1990]

§ 511.9 Requirements for quorum and decisions.

Two-thirds of the members of an industry committee shall constitute a quorum. Approval by a majority of all of the members of an industry committee or subcommittee shall be required for its report. Except as otherwise provided in this part, the chairperson of the industry committee or subcommittee may make other decisions for the committee or subcommittee, but each such decision shall be subject to approval of a majority of the members present if any member objects.

[55 FR 53298, Dec. 28, 1990]

§ 511.10 Subjects and issues.

(a) The declared policy of the Act with respect to industries or enterprises in American Samoa engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the object of the minimum wage rate that would apply in each such industry under paragraph (1) of section 6(a) but for section 6(a)(3) of the Act. Each industry committee shall recommend to the Administrator the highest minimum wage rates for the industry that it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of American Samoa; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a)(1), that would be applicable but for section 6(a)(3), unless there is evidence in the record that establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.

(b) Whenever the industry committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the industry than may be determined for other employees in the industry, the industry committee shall recommend such reasonable classifications within the in-

dustry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate (not in excess of that prescribed in paragraph (1) of section 6(a) of the Act) that can be determined for it under the principles set out in this section that will not substantially curtail employment in such classification and will not give a competitive advantage to any group in that industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within an industry, in making such classifications, and in determining the minimum wage rate for each classification, the committee shall consider, among other relevant factors, the following:

(1) Competitive conditions as affected by transportation, living and production costs;

(2) The wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) The wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

[55 FR 53298, Dec. 28, 1990]

§ 511.11 Pertinent data.

Among the types of data which may be considered pertinent to the subjects and issues delineated in § 511.10, are those revealing:

(a) Employment and labor conditions and trends in American Samoa, and on the mainland, particularly since the promulgation of the presently applicable wage order, including such items as present and past employment, present wage rates and fringe benefits, changes in average hourly earnings or wage structure, provisions of collective bargaining agreements, hours of work, labor turnover, absenteeism, productivity, learning periods, rejection rates, and similar factors;

(b) Market conditions and trends in American Samoa, and on the mainland, including changes in the volume and value of production, market outlets, price changes, style factors, consumer demand, competitive relationships,

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tariff rates, and similar marketing factors;

(c) Comparative production costs in American Samoa, on the mainland, and in foreign countries, together with the factors responsible for differences;

(d) Financial conditions and trends since promulgation of the present wage order as reflected in profit and loss statements and balance sheets; and

(e) Data bearing on proper definitions of classifications within an industry.

[55 FR 12120, Mar. 30, 1990]

§ 511.12 Committee and subcommittee meetings.

(a) The full committee, or a quorum thereof, will convene at the time and place appointed for an initial prehearing meeting as provided in the Secretary's order initiating the proceedings (note § 511.2). The full committee acting through a quorum will decide at that meeting whether it will preside at the reception at the hearing or will authorize a subcommittee to preside. Any resolution authorizing a subcommittee to hold the hearing shall provide a period of 30 days after:

(1) The subcommittee has filed its recommended report and

(2) A transcript of the subcommittee hearing is made available to the parties, for the parties to file exceptions to the recommended report, and the committee shall meet promptly thereafter on call of its chairperson or the Administrator to consider exceptions and prepare its final report.

(b) A committee may adjourn its meeting or hearing, or both, from time to time, and meet again, at hearing or otherwise, pursuant to the terms of adjournment, or on call of its chairperson or the Administrator.

[55 FR 53299, Dec. 28, 1990]

§ 511.13 Evidence.

In accordance with the notice of hearing, the committee and any authorized subcommittee will take official notice of the facts stated in the economic report to the extent they are not refuted by evidence received at the hearing. Other pertinent evidence available to the Department of Labor may be presented at the hearing. The committee itself may call witnesses

not otherwise scheduled to testify. Oral or documentary evidence may be received, but the committee shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every interested person who has met the requirements for participation as a party shall have the right to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination of witnesses called by others as may be required for a full and true disclosure of the facts. Testimony on behalf of an employer or group of employers as to inability to pay the minimum wage rate specified in paragraph (1) of section 6(a) of the Act, or as to inability to adjust to a higher minimum wage rate than prescribed by any applicable wage order of the Secretary, shall be supported by tangible objective data filed as part of the prehearing statement under § 511.8. Financial or other data shall include data for the most recent year or fraction thereof for which data are available. Financial statements filed in accordance with this provision, except those relating to a period of less than a full fiscal year or a fiscal year ending less than 90 days prior to the filing of the prehearing statement, shall be certified by an independent public accountant or shall be sworn to conform to and be consistent with the corresponding income tax returns covering the same years. Evidence of witnesses not present at the hearing may be submitted only by affidavits received with, or as a part of, a prehearing statement that meets the requirements of § 511.8 and satisfactorily explains why each affiant cannot be present. Such affidavits will be received in evidence to the same extent that testimony from affiants would have been admitted had they been present. The committee will give such weight to these statements as it considers appropriate, and the fact that such affiants have not been subject to cross-examination may be considered, along with other relevant facts, in assessing the weight to be given such evidence.

[55 FR 53299, Dec. 28, 1990]

§ 511.14 Procedure for receiving evidence.

(a) All testimony shall be given under oath or affirmation. Any party shall have the right to appear in person, by counsel, or by other specified representative. Misconduct at any hearing shall be grounds for summary exclusion from the hearing. The committee shall limit the testimony of any witness where appropriate to prevent the hearing from becoming unduly prolonged. The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the committee, be ground for striking all testimony given by the witness on related matters.

(b) Unless otherwise directed by the committee, witnesses shall be called in the following order: The committee economist qualified to testify concerning the content and preparation of the economic report, other witnesses called by the Department of Labor, witnesses called by the parties, other witnesses. Unless otherwise directed by the committee, all witnesses other than those called by the parties shall be examined in the following order: By committee counsel, by committee economist, by committee members, by the parties or their representatives. Witnesses called by the parties shall be examined first by the party calling them or by the party's specified representative, and then in the order herein indicated for all other witnesses. Redirect examination may be permitted at the discretion of the committee. Rebuttal evidence may be offered in the order and manner in this section provided for other evidence. To the extent not specified in this section, the order for calling and examining witnesses shall be specified by the chairperson of the committee or subcommittee.

[21 FR 7669, Oct. 6, 1956, as amended at 55 FR 53299, Dec. 28, 1990]

§ 511.15 Submittals prior to reports.

As soon as the receipt of evidence is concluded, a committee or subcommittee presiding at a hearing shall receive any proposed findings of fact and recommendations together with the reasons therefor submitted by any party. These submittals shall be oral unless

otherwise directed by the committee or subcommittee. If, in the discretion of the committee or subcommittee such proposals should be in writing, it may grant such additional time as it deems essential.

§ 511.16 Reports.

Promptly after receipt of submissions under § 511.15, the committee or subcommittee will resolve the issues before it and prepare a report containing its findings of fact and recommendations. The report shall contain the committee's or the subcommittee's findings and conclusions as well as the reasons or basis therefor upon all the material issues of fact, law, or discretion presented on the record. When a committee, acting through a quorum, has presided at the reception of evidence, this report shall be its final report on the matters referred to it. Where, however, a subcommittee has presided at the reception of evidence, this report shall be an initial report, and the committee shall meet thereafter to review the report and rule on exceptions in its final report. Where the committee presides at the reception of evidence and proceeds to final decision, every party shall be regarded as having objected to any wage rate or classification at variance with any the party proposed in the party's prehearing statements unless the party accepted such a rate or classification in any submittal made pursuant to § 511.15. A copy of the report shall be signed by each member of the committee who approves it, either at a meeting of the committee or by circulation of one or more copies among the members of the committee. At any time within 3 days after the committee report is signed by those who approve it, members dissenting therefrom may collectively or individually submit signed reports stating the reasons for their dissent.

[55 FR 53299, Dec. 28, 1990]

§ 511.17 Records.

Each industry committee shall keep a journal recording the time and place of all its meetings, the members present, the votes, and other formal

proceedings, including the appointment of subcommittees. Subcommittees shall keep a similar journal. No report of committee or subcommittee discussions need be included. All hearings shall be recorded. The record of any hearing before any subcommittee shall be transcribed. All hearings before a committee shall also be transcribed in whole or in part whenever the Administrator so directs upon his or her own motion or upon the motion of any party or any person compelled to submit data or evidence and upon the payment of costs prescribed by the Administrator. Promptly after completion of the committee's final report, the committee chairperson shall certify the report and transmit it to the Administrator. As soon as practicable thereafter, the committee staff shall transmit to the Administrator:

(a) All committee and subcommittee journals;

(b) All applications for leave to participate as parties together with the record of action thereon; and,

(c) The record, including any transcript of the testimony and exhibits, together with all papers and requests filed in the proceedings.

These documents shall be available for inspections and copying by interested persons at the Office of the Administrator during usual business hours.

[55 FR 53300, Dec. 28, 1990]

§ 511.18 Publication and effective date of wage order.

Promptly after receipt of the committee report the Administrator shall publish the committee recommendations in the FEDERAL REGISTER and shall provide by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publication.

§ 511.19 Petitions.

Any interested person may at any time file a petition with the Administrator for an amendment to the regulations contained in this part or for an amendment to a wage order applicable to that person. In view of the statutory requirement that the minimum requirement of wages established by order under section 6 of the Act be reviewed by an

industry committee at least biennially, substantial cause must be shown in support of any petition for an amendment of a wage order out of regular course. Any interested person may also file a petition at any time with the Administrator for a public hearing under section 13(e) of the Act to determine whether economic conditions warrant rules or regulations providing reasonable limitations or allowing reasonable variations, tolerances, or exemptions to or from any or all of the provisions of section 7 of the Act with respect to employees in American Samoa for whom the Secretary of Labor has established minimum wage rates under section 6(a)(3) of the Act and the regulations contained in this part. Whenever it appears to the Secretary of Labor, by reason of such a petition or otherwise, to be probable that such a hearing is likely to reveal that economic conditions warrant such action, notice of such hearing specifying the procedure to be followed will be published in the FEDERAL REGISTER.

[55 FR 53300, Dec. 28, 1990]

PART 515—UTILIZATION OF STATE AGENCIES FOR INVESTIGATIONS AND INSPECTIONS

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AUTHORITY: Sec. 4, 49 Stat. 2038, sec. 11(b), 52 Stat. 1066; 29 U.S.C. 211(b), 41 U.S.C. 38.

SOURCE: 13 FR 2161, 2163, Apr. 22, 1948, unless otherwise noted.

§ 515.1 Definitions.

As used in this part:

(a) *Acts*. The term *Acts* means the Fair Labor Standards Act of 1938 (Act of June 25, 1938; Chapter 676, 52 Stat. 1060, 29 U.S.C. 201) and the Public Contracts Act (Act of June 30, 1936; 49 Stat. 2036; 41 U.S.C. 35-45).

(b) *Administrator*. The term *Administrator* means the Administrator of the