

**§ 2.21**

the person served with a demand is either employed by the National Office of the Labor Department, or who is a former Labor Department employee and is served with a demand in Washington, DC. In all other cases, the term *appropriate Deputy Solicitor of Labor* means the Deputy Solicitor of Labor for Regional Operations.

(2) For purposes of this subpart, the term *appropriate Office of the Solicitor* means that Office of the Associate Solicitor of Labor (in Washington, DC) serving as counsel to the program to which the demand relates, where the person served with a demand is employed by the National Office of the Labor Department, or who is a former Labor Department employee and is served with a demand in Washington, DC. In all other cases, the term *appropriate Office of the Solicitor* means that Regional Solicitor's Office or Associate Regional Solicitor's Office serving the locality in which the employee or former employee is served with a demand.

(d) This subpart is intended to provide instructions regarding the internal operations of the Department of Labor, and is not intended, and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department of Labor.

**§ 2.21 Procedure in the event of a demand for production or disclosure.**

Whenever an employee or former employee of the Department receives a demand for the production of material or the disclosure of information described in § 2.20(a), he shall immediately notify the appropriate Office of the Solicitor. The appropriate Office of the Solicitor shall be furnished by the party causing the subpoena to be issued with a written summary of the information sought and its relevance to the proceeding in connection with which it was served. The Associate Solicitor, Regional Solicitor, or Associate Regional Solicitor, whichever is appropriate, may waive the requirement that a written summary be furnished where he or she deems it to be unnecessary. The election to waive the requirement of a written summary in no way

constitutes a waiver of any other requirement set forth in this subpart.

**§ 2.22 Production or disclosure prohibited unless approved by the appropriate Deputy Solicitor of Labor.**

In terms of instructing an employee or former employee of the manner in which to respond to a demand, the Associate Solicitor, Regional Solicitor, or Associate Regional Solicitor, whichever is applicable, shall follow the instructions of the appropriate Deputy Solicitor of Labor. No employee or former employee of the Department of Labor shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without approval of the appropriate Deputy Solicitor of Labor.

**§ 2.23 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.**

If the response to the demand is required before the instructions from the appropriate Deputy Solicitor of Labor are received, a Department attorney or other government attorney designated for the purpose shall appear with the employee or former employee of the Department upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Deputy Solicitor of Labor and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

**§ 2.24 Procedure in the event of an adverse ruling.**

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 2.23 pending receipt of instructions, or if the court or other

## Office of the Secretary of Labor

## § 3.2

authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, "*United States ex rel Touhy v. Ragen*," 340 U.S. 462.

### § 2.25 Subpoenas served upon employees of the Office of the Inspector General.

Notwithstanding the requirements set forth in §§ 2.20 through 2.24, this subpart is applicable to demands served on employees or former employees of the Office of the Inspector General (OIG), except that wherever in §§ 2.21 through 2.24 there appear the phrases *appropriate Office of the Solicitor, Associate Solicitor, Regional Solicitor, or Associate Regional Solicitor, and appropriate Deputy Solicitor of Labor*, there shall be substituted in lieu thereof *the Inspector General or Deputy Inspector General*. In addition, the first sentence of § 2.22 shall not be applicable to subpoenas served upon employees or former employees of the Office of the Inspector General.

## PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Sec.

- 3.1 Purpose and scope.
- 3.2 Definitions.
- 3.3 Weekly statement with respect to payment of wages.
- 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.
- 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.
- 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.
- 3.7 Applications for the approval of the Secretary of Labor.
- 3.8 Action by the Secretary of Labor upon applications.
- 3.9 Prohibited payroll deductions.
- 3.10 Methods of payment of wages.
- 3.11 Regulations part of contract.

AUTHORITY: R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14, of 1950, 64 Stat. 1267; 5 U.S.C. 301; 40 U.S.C. 276c.

SOURCE: 29 FR 97, Jan. 4, 1964, unless otherwise noted.

### § 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

### § 3.2 Definitions.

As used in the regulations in this part:

(a) The terms *building* or *work* generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types,