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**VOLUME II—CENTRAL**

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**VOLUME III—WEST**

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Arizona North Dakota  
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On or about January 1 of each year, an annual edition will be issued that includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed providing any modifications or supersedeas wage determinations issued. Each volume's annual and weekly editions will be provided in loose-leaf format.

[50 FR 49823, Dec. 4, 1985]

**PART 2—GENERAL REGULATIONS**

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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.

**Subpart A—General**

SOURCE: 32 FR 11035, July 28, 1967, unless otherwise noted.

**§2.1 Employees attached to regional offices.**

No person who has been an employee of the Department and attached to a Regional office of any bureau, board, division, or other agency thereof, shall be permitted to practice, appear, or act as attorney, agent, or representative before the Department or any branch or agent thereof in connection with any case or administrative proceeding which was pending before such Regional office during the time of his employment with the Department, unless he shall first obtain the written consent thereto of the Secretary of Labor or his duly authorized representative.

**§2.2 Employees attached to Washington office.**

No person who has been an employee of the Department and attached to the Washington office of any bureau, board, division, or other agency thereof, shall be permitted to practice, appear, or act as attorney, agent, or representative before the Department or any branch or agent thereof, in connection with any case or administrative proceeding pending before such bureau, board, division, or other agency during the time of his employment with the Department, unless he shall first obtain the written consent thereto of the Secretary of Labor or his duly authorized representative.

**§ 2.3 Consent of the Secretary.**

The consent of the Secretary or his duly authorized representative may be obtained as follows:

The applicant shall file an application in the form of an affidavit. Such application, directed to the Secretary should:

- (a) State the former connection of the applicant with the Department;
- (b) Identify the matter in which the applicant desires to appear, and
- (c) Contain a statement to the effect that the applicant gave no personal consideration to such matter while he was an employee of the Department.

The application will be denied if the statements contained therein are disproved by an examination of the files, records, and circumstances pertaining to the matter, or if, in the opinion of the Secretary or his duly authorized representative, the public interest so requires. If the Secretary or his duly authorized representative is satisfied that the applicant gave no personal consideration to the matter in question while employed by the Department, and if he is satisfied that it is lawful and consistent with the public interest to do so, he may grant his consent, in writing, to the request of the applicant, subject to such conditions, if any, as he deems necessary and desirable. Any function of the Secretary under this section may be performed by the Under Secretary of Labor.

**§ 2.6 Claims collection.**

(a) *Authority of Department; incorporation by reference.* The regulations in this section are issued under section 3 of the Federal Claims Collection Act of 1966, 31 U.S.C. 952. They incorporate herein and supplement as necessary for Department operation all provisions of the Joint Regulations of the Attorney General and the Comptroller General set forth in 4 CFR, chap. II, which prescribe standards for administrative collection of civil claims by the Government for money or property, for the compromise, termination, or suspension of collection action, with respect to claims not exceeding \$20,000, exclusive of interest, and for the referral of civil claims by the Government to the

General Accounting Office, and to the Department of Justice for litigation.

(b) *Designation.* The Assistant Secretary for Administration, and such heads of the Administrations and Offices of the Department of Labor as he may designate for such purpose, is authorized to perform all of the duties and exercise all of the authority of the Secretary under the Federal Claims Collection Act of 1966, the aforementioned Joint Regulations of the Attorney General and the Comptroller General, and the regulations in this section.

(Sec. 3, 80 Stat. 309; 31 U.S.C. 952)

[34 FR 9122, June 10, 1969]

**§ 2.7 Rulemaking.**

It is the policy of the Secretary of Labor, that in applying the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the exemption therein for matters relating to public property, loans, grants, benefits or contracts shall not be relied upon as a reason for not complying with the notice and public participation requirements thereof except for all information-gathering procedures adopted by the Bureau of Labor Statistics.

[46 FR 35, Jan. 2, 1981]

**§ 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.

[61 FR 19984, May 3, 1996]

**Subpart B—Audiovisual Coverage of Administrative Hearings**

SOURCE: 38 FR 5631, Mar. 2, 1973, unless otherwise noted.

## § 2.10

## 29 CFR Subtitle A (7-1-04 Edition)

### § 2.10 Scope and purpose.

This subpart defines the scope of audiovisual coverage of departmental administrative hearings. It describes the types of proceedings where such coverage is encouraged, defines areas where such coverage is prohibited (as in certain enforcement proceedings or where witnesses object) and areas where a decision concerning coverage is made after weighing the values involved in permitting coverage against the reasons for not permitting it.

### § 2.11 General principles.

The following general principles will be observed in granting or denying requests for permission to cover hearings audiovisually:

(a) Notice and comment and on-the-record rule making proceedings may involve administrative hearings. If such administrative hearings are held, we encourage their audiovisual coverage.

(b) Audiovisual coverage shall be excluded in adjudicatory proceedings involving the rights or status of individuals (including those of small corporations likely to be indistinguishable in the public mind from one or a few individuals) in which an individual's past culpable conduct or other aspect of personal life is a primary subject of adjudication, and where the person in question objects to coverage.

(c) Certain proceedings involve balancing of conflicting values in order to determine whether audiovisual coverage should be allowed. Where audiovisual coverage is restricted, the reasons for the restriction shall be stated in the record.

### § 2.12 Audiovisual coverage permitted.

The following are the types of hearings where the Department encourages audiovisual coverage:

(a) All hearings involving notice and comment and on-the-record rule making proceedings. The Administrative Procedure Act provides for notice of proposed rule making with provision for participation by interested parties through submission of written data, views, or arguments, with or without opportunity for oral presentation (5 U.S.C. 553). (In many cases the Department follows the above procedure in

matters exempted from these requirements of 5 U.S.C. 553.) On-the-record rule making proceedings under 5 U.S.C. 556 and 557 are also hearings where audiovisual coverage of hearings is encouraged. Examples of hearings encompassed by this paragraph are:

(1) Hearings to establish or amend safety or health standards under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

(2) Hearings to determine the adequacy of State laws under the Occupational Safety and Health Act of 1970.

(b) Hearings to collect or review wage data upon which to base minimum wage rates determined under various laws, such as the Davis-Bacon Act (40 U.S.C. 276a) and related statutes and the Service Contract Act of 1965 (41 U.S.C. 353, as amended by Pub. L. 92-473 approved October 9, 1972).

(c) Hearings under section 4(c) of the Service Contract Act of 1965 (41 U.S.C. 353, subsection (c) added by Pub. L. 92-473 approved October 9, 1972) to determine if negotiated rates are substantially at variance with those which prevail in the locality for services of a character similar.

(d) Hearings before the Administrative Review Board (parts 1, 3, 5, and 7 of this chapter).

(e) Hearings held at the request of a Federal agency to resolve disputes under the Davis-Bacon and related Acts, involving prevailing wage rates or proper classification which involve significant sums of money, large groups of employees or novel or unusual situations.

(f) Hearings of special industry committees held pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. 201 *et seq.*) for the purpose of recommending minimum wage rates to be paid in Puerto Rico, the Virgin Islands, and American Samoa.

(g) Hearings pursuant to section 13(a) of the Welfare and Pension Plans Disclosure Act (29 U.S.C. 308d) to determine whether a bond in excess of \$500,000 may be prescribed.

(h) Hearings where the Department is requesting information needed for its administrative use in determining what our position should be (e.g., our

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hearings on the 4-day, 40-hour work-week).

[38 FR 5631, Mar. 2, 1973, as amended at 61 FR 19984, May 3, 1996]

### § 2.13 Audiovisual coverage prohibited.

The Department shall not permit audiovisual coverage of the following types of hearings if any party objects:

(a) Hearings to determine whether applications for individual variances should be issued under the Occupational Safety and Health Act of 1970.

(b) Hearings (both formal and informal) involving alleged violations of various laws such as the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*) and related Acts, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), the Walsh Healey Act (41 U.S.C. 35 *et seq.*), under section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941 *et seq.*), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*), and any informal hearings or conferences under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) which are not within the jurisdiction of the Occupational Safety and Health Commission.

(c) Adversary hearings under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 *et seq.*) and related Acts, which determine an employee's right to compensation.

(d) Hearings which determine an employee's right to compensation under the Federal Employees' Compensation Act (5 U.S.C. 8101 *et seq.*).

### § 2.14 Proceedings in which the Department balances conflicting values.

In proceedings not covered by §§ 2.12 and 2.13, the Department should determine whether the public's right to know outbalances the individual's right to privacy. When audiovisual coverage is restricted or excluded, the record shall state fully the reasons for such restriction or exclusion. For example, there would be included in this category hearings before the Board of Contract Appeals involving appeals from contracting officer decisions involving claims for extra costs for extra

work, extra costs for delay in completion caused by the Government or for changes in the work, conformity hearings arising under State unemployment insurance laws, etc.

### § 2.15 Protection of witnesses.

A witness has the right, prior to or during his testimony, to exclude audiovisual coverage of his testimony in any hearing being covered audiovisually.

### § 2.16 Conduct of hearings.

The presiding officer at each hearing which is audiovisually covered is authorized to take any steps he deems necessary to preserve the dignity of the hearing or prevent its disruption by persons setting up or using equipment needed for its audiovisual coverage.

## Subpart C—Employees Served With Subpoenas

AUTHORITY: 5 U.S.C. 301 and Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263.

SOURCE: 46 FR 49543, Oct. 6, 1981, unless otherwise noted.

### § 2.20 Purpose, scope and definitions.

(a) This subpart sets forth the procedures to be followed whenever a subpoena, order, or other demand (hereinafter referred to as a *demand*) of a court or other authority, in connection with a proceeding to which the U.S. Department of Labor is not a party, is issued for the production or disclosure of (1) any material contained in the files of the Department, (2) any information relating to material contained in the files of the Department, or (3) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status.

(b) For purposes of this subpart, the term *employee of the Department* includes all officers and employees of the United States Department of Labor appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Labor.

(c)(1) For purposes of this subpart, the term *appropriate Deputy Solicitor of Labor* means the Deputy Solicitor of Labor for National Operations when

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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

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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

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- 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.
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- 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.
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- 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,