

and filed with the motion. Any party or interested person, as the case may be, may respond to the motion within such time as may be provided by the Board.

(b) Requests for extensions of time in any proceeding as to the filing of papers or oral presentations shall be in the form of a motion under paragraph (a) of this section.

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

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AUTHORITY: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 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.

SOURCE: 49 FR 10637, Mar. 21, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 8 appear at 61 FR 19985, May 3, 1996.

## **Subpart A—Purpose and Scope**

### **§ 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.

(b) The Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from final decisions of the Administrator of the Wage and Hour Division or authorized representative, and from decisions of Administrative Law Judges under subparts B, D, and E of part 6 of this title, arising under the Service Contract Act and the Contract Work Hours and Safety Standards Act where the contract is also subject to the Service Contract Act. The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations which has been duly promulgated through notice and comment by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions. The jurisdiction of the Board includes:

(1) Wage determinations issued under the Service Contract Act;

(2) Substantial variance proceedings or arm's-length negotiations proceedings pursuant to section 4(c) of the Service Contract Act;

(3) Debarment or other enforcement proceedings;

(4) Proceedings to determine substantial interest of debarred persons or firms;

(5) Decisions of the Wage-Hour Administrator or authorized representative regarding recommendations of a Federal agency for adjustment or waiver of liquidated damages assessed under the Contract Work Hours and Safety Standards Act;

(6) Other final actions of the Wage-Hour Administrator or authorized representative (e.g., additional classification actions and rulings with respect to application of the Act(s), or the regulations, or of wage determinations issued thereunder).

(7) Other matters specifically referred to the Board by the Secretary of Labor.

(c) In considering the matters within the scope of its jurisdiction the Board

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shall act as the authorized representative of the Secretary of Labor and shall act as fully and finally as might the Secretary of Labor concerning such matters.

(d) The Board is an appellate body and shall decide cases properly brought before it on the basis of all relevant matter contained in the entire record before it. Decisions by the Board shall be based upon the preponderance of the evidence before it. It may remand with appropriate instructions any case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence. However, unless the petition for review cites alleged procedural irregularities in the proceeding below and not the merits of a case, the Board shall not consider a petition for review filed by any party against whom default judgment has been entered pursuant to the provisions of part 6 of this title.

[49 FR 10637, Mar. 21, 1984, as amended at 61 FR 19985, May 3, 1996]

### Subpart B—Review of Wage Determinations

#### § 8.2 Who may file petitions of review.

(a) Any interested party who is seeking a modification of other change in a wage determination under the Service Contract Act and who has requested the Wage-Hour Administrator or authorized representative to make such modification or other change under § 4.55 of part 4 of this title, and the request has been denied, shall have a right to petition of review of the action taken by that officer.

(b) For purposes of this subpart, the term *interested party* shall mean:

(1) Any employee or any labor organization which represents an employee who is likely to be employed or to seek employment under a contract containing a particular wage determination, or any contractor or an association representing a contractor who is likely to seek a contract or to work under a contract containing a particular wage determination;

(2) The Federal agency(s) which will administer a proposed contract containing a particular wage determina-

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tion issued pursuant to the Service Contract Act; and

(3) Any other party whom the Board finds to have a sufficient interest in the wage determination.

#### § 8.3 When to file.

(a) Requests for review of wage determinations must be filed within 20 days of issuance of the Wage-Hour Administrator's decision denying a request to make a change in the wage determination.

(b) The Board shall under no circumstances request any administering agency to postpone any contract action because of the filing of a petition.

#### § 8.4 Contents of petition.

(a) A petition for review of a wage determination shall:

(1) Be in writing and signed by the petitioner or his/her counsel (or other authorized representative);

(2) Be addressed to the Administrative Review Board;

(3) Identify clearly the wage determination, location where the contract will be performed, if known, and the agency concerned;

(4) State that the petitioner has requested reconsideration of the wage determination in question pursuant to 29 CFR 4.55 and describe briefly the action taken in response to the request;

(5) Contain a short and plain statement of the grounds for review;

(6) Be accompanied by supporting data, views, or arguments; and

(7) Contain a statement that all data or other evidence submitted have previously been submitted to the Administrator.

(b) A petition shall indicate whether or not the petitioner consents to the disposition of the questions involved by a single member of the Board.

#### § 8.5 Filing of wage determination record.

The Associate Solicitor for Fair Labor Standards shall, promptly after service of the petition, file with the Board the record upon which the wage determination was based. Under no circumstances shall source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of