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

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SOURCE: 36 FR 10863, June 4, 1971, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 7 appear at 61 FR 19985, May 3, 1996.

Subpart A—Purpose and Scope

§ 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.

(b) The Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from final decisions under parts 1, 3, and 5 of this subtitle including decisions as to the following: (1) Wage determinations issued under the Davis-Bacon Act and its related minimum wage statutes; (2) debarment cases arising under part 5 of this subtitle; (3) controversies concerning the payment of prevailing wage rates or proper classifications which involve significant sums of money, large groups of employees, or novel or unusual situations; and (4) recommendations of a Federal agency for appropriate adjustment of liquidated damages which are assessed under the Contract Work Hours and Safety Standards Act.

(c) In exercising its discretion to hear and decide appeals, the Board shall consider, among other things, timeliness, the nature of the relief sought, matters of undue hardship or injustice, or the public interest.

(d) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor. The Board shall act as fully and finally as might the Secretary of Labor concerning such matters.

(e) The Board is an essentially appellate agency. It will not hear matters de novo except upon a showing of extraordinary circumstances. It may remand under appropriate instructions any case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.

[36 FR 10863, June 4, 1971, as amended at 61 FR 19985, May 3, 1996]

Subpart B—Review of Wage Determinations.

§ 7.2 Who may file petitions for review.

(a) Any interested person who is seeking a modification or other change in a wage determination under part 1 of this subtitle and who has requested the administrative officer authorized to make such modification or other change under part 1 and the request has been denied, after appropriate reconsideration shall have a right to petition for review of the action taken by that officer.

(b) For purpose of this section, the term *interested person* is considered to include, without limitation:

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

(2) any Federal, State, or local agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to the Davis-Bacon Act or any of its related statutes.

§ 7.3 Where to file.

The petition (original and four copies) accompanied by a statement of service shall be filed with the Administrative Review Board, U.S. Department of Labor, Washington, DC 20210. In addition, copies of the petition shall be served upon each of the following: (a) The Federal, State, or local agency, or agencies involved; (b) the officer issuing the wage determination; and (c) any other person (or the authorized representatives of such persons) known, or reasonably expected, to be interested in the subject matter of the petition.

§ 7.4 When to file.

(a) Requests for review of wage determinations must be timely made. Timeliness is dependent upon the pertinent facts and circumstances involved, including without limitation the contract schedule of the administering agency, the nature of the work involved, and its location.

(b) The Board shall under no circumstances request any administering agency to postpone any contract action because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other interested person.

§ 7.5 Contents of petitions.

(a) A petition for the review of a wage determination shall: (1) Be in writing and signed by the petitioner or his counsel (or other authorized representative); (2) be described as a petition for review by the Administrative Review Board; (3) identify clearly the wage determination, location of the project or projects in question, and the agency concerned; (4) state that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request; (5) contain a short and plain statement of the grounds for review; and (6) be accompanied by supporting data, views, or arguments.

(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.

§ 7.6 Filing of wage determination record.

(a) In representing the officer issuing the wage determination the Solicitor shall, among other things, file promptly with the Board a record supporting his findings and conclusions, after receipt of service of the petition.

(b) In representing the officer issuing the wage determination the Solicitor shall file with the Board a statement of the position of the officer issuing the wage determination concerning any findings challenged in the petition; and shall make service on the petitioner and any other interested persons.

§ 7.7 Presentations of other interested persons.

Interested persons other than the petitioner shall have a reasonable opportunity as specified by the Board in particular cases to submit to the Board written data, views, or arguments relating to the petition. Such matter (original and four copies) should be filed with the Administrative Review Board, U.S. Department of Labor, Washington, DC 20210. Copies of any such matter shall be served on the petitioner and other interested persons.

§ 7.8 Disposition by the Administrative Review Board.

(a) The Board may decline review of any case whenever in its judgement a

review would be inappropriate or because of lack of timeliness, the nature of the relief sought, or other reasons.

(b) The Board shall decide the case upon the basis of all relevant matter contained in the entire record before it. The Board shall notify interested persons participating in the proceeding of its decision.

(c) Decisions of the Board shall be by majority vote. A case will be reviewed upon the affirmative vote of one member.

Subpart C—Review of Other Proceedings and Related Matters

§ 7.9 Review of decisions in other proceedings.

(a) Any party or aggrieved person shall have a right to file a petition for review with the Board (original and four copies), within a reasonable time from any final decision in any agency action under part 1, 3, or 5 of this subtitle.

(b) The petition shall state concisely the points relied upon, and shall be accompanied by a statement setting forth supporting reasons. Further, the petition shall indicate whether or not the petitioner consents to the disposition of the questions involved by a single member.

(c) A copy of the presentation shall be served upon the officer who issued the decision, and upon any other party or known interested person, as the case may be. In representing the officer who issued the final decision in any agency action under parts 1, 3, or 5 of the subtitle, the Solicitor shall, among other things, file promptly with the Board a record supporting the officer's decision, including any findings upon which the decision is based, after receipt of service of the petition.

(d) In representing the officer issuing a final decision in any agency action under parts 1, 3, and 5 of this subtitle, the Solicitor shall file with the Board a statement of the position of the officer who issued the final decision at issue, concerning the decision challenged; and shall make service on the petitioner and any other interested persons.

(e) The Board shall afford any other parties or known interested persons a reasonable opportunity to respond to the petition. Copies of any such response shall be served upon the officer issuing the decision below and upon the petitioner.

(f) The Board shall pass upon the points raised in the petition upon the basis of the entire record before it, and shall notify the parties to the proceeding of its decision. In any remand of a case as provided in § 7.1(e), the Board shall include any appropriate instructions.

Subpart D—Some General Procedural Matters

§ 7.11 Right to counsel.

Each interested person or party shall have the right to appear in person or by or with counsel or other qualified representative in any proceeding before the Board.

§ 7.12 Intervention; other participation.

For good cause shown, the Board may permit any interested person or party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing (original and four copies) and shall state with precision and particularity: (a) The petitioner's relationship to the matters involved in the proceedings, and (b) the nature of the presentation which he would make. Copies of the petition shall be served to all parties or interested persons known to participate in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

§ 7.13 Consolidations.

Upon its own initiative or upon motion of any interested person or party, the Board may consolidate in any proceeding or concurrently consider two or more appeals which involve substantially the same persons or parties, or issues which are the same or closely related, if it finds that such consolidation or concurrent review will contribute to a proper dispatch of its business and to the ends of justice, and it

will not unduly delay consideration of any such appeals.

§7.14 Oral proceedings.

(a) With respect to any proceeding before it, the Board may upon its own initiative or upon request of any interested person or party direct the interested persons or parties to appear before the Board or its designee at a specified time and place in order to simplify the issues presented or to take up any other matters which may tend to expedite or facilitate the disposition of the proceeding.

(b) In its discretion, the Board, or a single presiding member, may permit oral argument in any proceeding. The Board or the presiding member, shall prescribe the time and place for argument and the time allotted for argument. A petitioner wishing to make oral argument should make the request therefor in his petition.

§7.15 Public information.

(a) Subject to the provisions of §§1.15, 5.6, and part 70 of this subtitle, all papers and documents made a part of the official record in the proceedings of the Board and decisions of the Board shall be made available for public inspection during usual business hours at the office of the Administrative Review Board, U.S. Department of Labor, Washington, DC 20210.

(b) Facsimile copies of such papers, documents and decisions shall be furnished upon request. There shall be a charge of 25 cents for each facsimile page reproduction except for copies of materials duplicated for distribution for no charge as provided in paragraph (c) of this section. Postal fees in excess of domestic first class postal rates as are necessary for transmittal of copies will be added to the per-page fee specified unless stamps or stamped envelopes are furnished with the request.

(c) No charge need to be made for furnishing:

(1) Unauthenticated copies of any rules, regulations, or decisions of general import,

(2) Copies to agencies which will aid in the administration of the Davis-Bacon and related acts,

(3) Copies to contractor associations and labor organizations for general dissemination of the information contained therein, and

(4) Only occasionally unauthenticated copies of papers and documents.

§7.16 Filing and service.

(a) *Filing*. All papers submitted to the Board under this part shall be filed with the Executive Director of the Administrative Review Board, U.S. Department of Labor, Washington, DC 20210.

(b) *Number of copies*. An original and four copies of all papers shall be submitted.

(c) *Manner of service*. Service under this part shall be by the filing party or interested person, service may be personal or may be by mail. Service by mail is complete on mailing.

(d) *Proof of service*. Papers filed with the Board shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service.

§7.17 Variations in procedures.

Upon reasonable notice to the parties or interested persons, the Board may vary the procedures specified in this part in particular cases.

§7.18 Motions; extensions of time.

(a) Except as otherwise provided in this part, any application for an order or other relief shall be made by motion for such order or relief. Except when made orally before the Board, motions shall be in writing and shall be accompanied by proof of service on all other parties or interested persons. If a motion is supported by briefs, affidavits, or other papers, they shall be served 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

Subpart A—Purpose and Scope

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Subpart B—Review of Wage Determinations

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Subpart D—General Procedural Matters

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8.19 Equal Access to Justice Act.

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 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