AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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

Subpart A—Purpose and Scope

Sec.
8.1 Purpose and scope.

Subpart B—Review of Wage Determinations

8.2 Who may file petitions of review.
8.3 When to file.
8.4 Contents of petition.
8.5 Filing of wage determination record.
8.6 Disposition by the Administrative Review Board.

Subpart C—Review of Other Proceedings and Related Matters

8.7 Review of decisions in other proceedings.
8.8 Filing of administrative record.
8.9 Disposition by the Administrative Review Board.

Subpart D—General Procedural Matters

8.10 Filing and service.
8.11 Presentations of other interested persons.
8.12 Intervention; other participation.
8.13 Right to counsel.
8.14 Consolidations.
8.15 Motions; extensions of time.
8.16 Oral proceedings.
8.17 Decision of the Board.
8.18 Public information.
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

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 cities 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 determination 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 establishments contacted by the Bureau be filed with the Board or otherwise disclosed. Where the Bureau has conducted a survey, the published summary of the data may be filed.

§8.6 Disposition by the Administrative Review Board.

(a) The Board may decline review of any case whenever in its judgment review would be inappropriate because of

lack of timeliness, the nature of the relief sought, the case involves only settled issues of law, the appeal is frivolous on its face, or other reasons. A case will be reviewed upon the affirmative vote of one member.

(b) Except as provided in paragraphs (c) and (d) of this section, the Board will not review a wage determination after award, exercise of option, or extension of a contract, unless such procurement action was taken without the wage determination required pursuant to §§ 4.4 and 4.5 of part 4 of this title.

(c) A wage determination may be reviewed after award, exercise of option, or extension of a contract if it is issued after a finding by an Administrative Law Judge or the Board that a substantial variance exists between collectively bargained wage rates and/or fringe benefits otherwise required to be paid pursuant to section 4(c) of the Act and those prevailing for services of a character similar in the locality, or after a finding that such collective bargaining agreement was not reached as a result of arm's length negotiations.

(d) Where a petition for review of a wage determination is filed prior to award, exercise of option, or extension of a contract, the Board may review the wage determination after such award, exercise of option, or extension of a contract if the issue is a significant issue of general applicability. The Board's decision shall not affect the contract after such award, exercise of option, or extension.

(e) In issuing its decision the Board will act expeditiously, taking into consideration procurement deadlines. The Board shall decide the case upon the basis of all relevant matters contained in the entire record before it and shall not consider any data not submitted to the Wage-Hour Administrator with the request for reconsideration. The Board in its decision affirming, modifying, or setting aside the wage determination, shall include a statement of reasons or bases for the actions taken. In any remand of a case as provided in § 8.1(d) of this title, the Board shall include appropriate instructions.

Subpart C—Review of Other Proceedings and Related Matters

§ 8.7 Review of decisions in other proceedings.

(a) A petition for review of a decision of an Administrative Law Judge pursuant to subparts B, D or E of part 6 of this title may be filed by any aggrieved party in accordance with the provisions therein.

(b) A petition for review of a final written decision (other than a wage determination) of the Administrator or authorized representative may be filed by any aggrieved party within 60 days of the date of the decision of which review is sought. Where a case has been referred directly to the Board pursuant to § 4.11 or § 4.12 of this title, no petition for review shall be necessary; a brief in support of the aggrieved party's position shall be filed within 30 days of filing of the administrative record by the Administrator.

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

§ 8.8 Filing of administrative record.

(a) If a petition for review has been filed concerning a decision pursuant to part 6 of this title, the Chief Administrative Law Judge shall promptly forward the record of the proceeding before the Administrative Law Judge to the Board.

(b) If a petition for review has been filed concerning a final decision of the Wage-Hour Administrator or authorized representative, the Associate Solicitor for Fair Labor Standards shall promptly file with the Board a record upon which the decision was based.

§ 8.9 Disposition by the Administrative Review Board.

(a) The Board may decline review of any case whenever in its judgment review would be inappropriate because of lack of timeliness, the nature of the relief sought, the case involves only settled issues of law, the appeal is frivolous on its face, or other reasons. A

case will be reviewed upon the affirmative vote of one member.

(b) In issuing its decision the Board will take into consideration procurement deadlines where appropriate. The Board shall pass upon the points raised in the petition upon the basis of the entire record before it. The Board may affirm, modify or set aside, in whole or in part, the decision under review and shall issue a decision including a statement of reasons or bases for the actions taken. The Board shall modify or set aside findings of fact only when it determines that those findings are not supported by a preponderance of the evidence. In any remand of a case as provided in §8.1(e) of this title, the Board shall include any appropriate instructions.

Subpart D—General Procedural Matters

§8.10 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 personal or by mail. Service by mail is complete on mailing. For purposes of this part, filing is accomplished upon the day of service, by mail or otherwise.

(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.

(e) *Service upon the Department of Labor and other interested parties*. A copy of all documents filed with the Board shall be served upon the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210; the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210; the Federal contracting agency involved; and all other interested parties.

§8.11 Presentations of other interested persons.

(a) Where a petition has been filed for review of a wage determination or other final decision of the Administrator or authorized representative, the Board shall notify the parties known or believed to be interested in the case. The Associate Solicitor and any other parties interested in presenting their views shall file a statement within 30 days of the filing of the petition (or such other time as is specified by the Board, with consideration of procurement deadlines, as appropriate).

(b) Where a petition has been filed for review of a decision issued pursuant to subparts B, D or E of part 6 of this title, any other parties to the proceeding interested in presenting their views shall file a statement within 30 days of the filing of the petition (or such other time as is specified by the Board, with consideration of procurement deadlines, as appropriate).

§8.12 Intervention; other participation.

For good cause shown, the Board may permit any interested 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 the peititioner would make.

§8.13 Right to counsel.

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

§8.14 Consolidations.

Upon its own initative or upon motion of any interested party, the Board may consolidate any proceeding or concurrently consider two or more appeals which involve substantially the same

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.

§ 8.15 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. Except when made orally before the Board, motions shall be in writing and shall be accompanied by proof of service on all other parties. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may respond to the motion within such time as may be provided by the Board.

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

§ 8.16 Oral proceedings.

(a) With respect to any proceedings before it, the Board may upon its own initative or upon request of any interested party direct the interested parties to appear before the Board or its designee at a specified time and place in order to simplify the issues persented 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 allocated for argument. A petitioner wishing to make oral argument should make the request therefore in the petition.

§ 8.17 Decision of the Board.

(a) Unless the petitioner consents to disposition by a single member, decisions of the Board shall be by majority vote.

(b) Where petitioner consents to disposition by a single member, other interested parties shall have an opportunity to oppose such disposition, and such opposition shall be taken into consideration by the Board in determining whether the decision shall be by a single member or majority vote.

§ 8.18 Public information.

Subject to the provisions of part 70 of this title, 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.

§ 8.19 Equal Access to Justice Act.

Proceedings under the Service Contract Act and the Contract Work Hours and Safety Standards Act are not subject to the Equal Access to Justice Act (Pub. L. 96–481). Accordingly, in any proceeding conducted pursuant to the provisions of this part 8, the Board shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act.

PART 11—DEPARTMENT OF LABOR NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE PROCEDURES

Subpart A—General Provisions

Sec.
11.1 Purpose and scope.
11.2 Applicability.
11.3 Responsible agency officials.

Subpart B—Administrative Procedures

11.10 Identification of agency actions.
11.11 Development of environmental analyses and documents.
11.12 Content and format of environmental documents.
11.13 Public participation.
11.14 Legislation.

AUTHORITY: NEPA, (42 U.S.C. 4321 *et seq.*), Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977) and Council on Environmental Quality Regulations (National Environmental Policy Act, Implementation of Procedural Provisions) 40 CFR parts 1500–1508 (43 FR 55978).

SOURCE: 45 FR 51188, Aug. 1, 1980, unless otherwise noted.