

APPENDIX B TO PART 1

NORTHEAST REGION

For the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia and West Virginia:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Curtis Center, 170 South Independence Mall West, Room 850 West, Philadelphia, PA 19106 (Telephone: 215-861-5800, FAX: 215-861-5840).

SOUTHEAST REGION

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 61 Forsyth Street, SW., Room 7M40, Atlanta, GA 30303 (Telephone 404-893-4531, FAX: 404-893-4524).

MIDWEST REGION

For the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, Room 530, Chicago, IL 60604-1591 (Telephone: 312-596-7180, FAX: 312-596-7205).

SOUTHWEST REGION

For the States of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 525 South Griffin Street, Suite 800, Dallas, TX 75202-5007 (Telephone: 972-850-2600, FAX: 972-850-2601).

WESTERN REGION

For the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 71 Stevenson Street, Suite 930, San Francisco, CA 94105, (Telephone: 415-848-6600, FAX: 415-848-6655).

[70 FR 50895, Aug. 26, 2005]

PART 2—GENERAL REGULATIONS

Subpart A—General

Sec.

- 2.1 Employees attached to regional offices.
- 2.2 Employees attached to Washington office.
- 2.3 Consent of the Secretary.
- 2.6 Claims collection.
- 2.7 Rulemaking.
- 2.8 Final agency decisions.

Subpart B—Audiovisual Coverage of Administrative Hearings

- 2.10 Scope and purpose.
- 2.11 General principles.
- 2.12 Audiovisual coverage permitted.
- 2.13 Audiovisual coverage prohibited.
- 2.14 Proceedings in which the Department balances conflicting values.
- 2.15 Protection of witnesses.
- 2.16 Conduct of hearings.

Subpart C—Employees Served With Subpoenas

- 2.20 Purpose, scope and definitions.
- 2.21 Procedure in the event of a demand for production or disclosure.
- 2.22 Production or disclosure prohibited unless approved by 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.
- 2.24 Procedure in the event of an adverse ruling.
- 2.25 Subpoenas served upon employees of the Office of the Inspector General.

Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

- 2.30 Purpose.
- 2.31 Definitions.
- 2.32 Equal participation of religious organizations.
- 2.33 Responsibilities of DOL, DOL social service providers and State and local governments administering DOL support.
- 2.34 Application to State and local funds.
- 2.35 Effect of DOL support on Title VII employment nondiscrimination requirements and on other existing statutes.
- 2.36 Status of nonprofit organizations.

AUTHORITY: 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

§ 2.1

29 CFR Subtitle A (7-1-09 Edition)

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 Government Accountability Office, and to the Department of Justice for litigation.

(b) *Designation.* The Assistant Secretary for Administration and Management, 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, as amended at 72 FR 37098, July 9, 2007]

§ 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 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.

§2.13

(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 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

29 CFR Subtitle A (7-1-09 Edition)

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

Office of the Secretary of Labor

§ 2.22

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 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 em-

ployed 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

§ 2.23

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 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 US. 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

29 CFR Subtitle A (7-1-09 Edition)

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.

Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

SOURCE: 69 FR 41891, July 12, 2004, unless otherwise noted.

§ 2.30 Purpose.

The purpose of the regulations in this subpart is to ensure that DOL-supported social service programs are open to all qualified organizations, regardless of the organizations' religious character, and to establish clearly the permissible uses to which DOL support for social service programs may be put, and the conditions for receipt of such support. In addition, this proposed rule is designed to ensure that the Department's social service programs are implemented in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

§ 2.31 Definitions.

As used in the regulations in this subpart:

(a) The term *Federal financial assistance* means assistance that non-Federal entities (including State and local governments) receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, direct appropriations, or other direct or indirect assistance, but does not include a tax credit, deduction or exemption.

(b) The term *social service program* means a program that is administered or supported by the Federal Government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

- (1) Child care services and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);
- (2) Job training and related services, and employment services;
- (3) Information, referral, and counseling services;
- (4) Literacy and mentoring programs; and
- (5) Services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of domestic violence.

(c) The term *DOL* means the U.S. Department of Labor.

(d) The term *DOL-supported social service program*, *DOL social service program*, or *DOL program* means a social service program, as defined in paragraph (b) of this section, that is administered by or for DOL with DOL support. Such programs include, but are not limited to, the One Stop Career Center System, the Job Corps, and other programs supported through the Workforce Investment Act.

(e) The term *DOL social service provider* means any non-Federal organization, other than a State or local government, that seeks or receives DOL support as defined in paragraph (g) of this section, or participates in DOL programs other than as the ultimate beneficiary of such programs.

(f) The term *DOL social service intermediary provider* means any DOL social service provider that, as part of its duties, selects subgrantees to receive DOL support or subcontractors to pro-

vide DOL-supported services, or has the same duties under this part as a governmental entity.

(g) The term *DOL support* means Federal financial assistance, as well as procurement funding provided to a non-Federal organization, including a State or local government, to support the organization's administration of or participation in a DOL social service program as defined in paragraph (d) of this section.

§ 2.32 Equal participation of religious organizations.

(a) Religious organizations must be eligible, on the same basis as any other organization, to seek DOL support or participate in DOL programs for which they are otherwise eligible. DOL, DOL social service intermediary providers, as well as State and local governments administering DOL support, must not discriminate for or against an organization on the basis of the organization's religious character or affiliation, although this requirement does not preclude DOL, DOL social service providers, or State and local governments administering DOL support from accommodating religion in a manner consistent with the Establishment Clause. In addition, because this rule does not affect existing constitutional requirements, DOL, DOL social service providers (insofar as they may otherwise be subject to any constitutional requirements), and State and local governments administering DOL support must continue to comply with otherwise applicable constitutional principles, including, among others, those articulated in the Establishment, Free Speech, and Free Exercise Clauses of the First Amendment to the Constitution.

(b) A religious organization that is a DOL social service provider retains its independence from Federal, State, and local governments and must be permitted to continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, subject to the provisions of § 2.33 of this subpart. Among other things, such a religious organization must be permitted to:

§ 2.33

(1) Use its facilities to provide DOL-supported social services without removing or altering religious art, icons, scriptures, or other religious symbols from those facilities; and

(2) Retain its authority over its internal governance, including retaining religious terms in its name, selecting its board members on a religious basis, and including religious references in its mission statements and other governing documents.

(c) A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government administering DOL support, or a DOL social service intermediary provider must not require only religious organizations to provide assurances that they will not use direct DOL support for inherently religious activities. Any such requirements must apply equally to both religious and other organizations. All organizations, including religious ones, that are DOL social service providers must carry out DOL-supported activities in accordance with all applicable legal and programmatic requirements, including those prohibiting the use of direct DOL support for inherently religious activities. A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program must not disqualify organizations from receiving DOL support or participating in DOL programs on the grounds that such organizations are motivated or influenced by religious faith to provide social services, have a religious character or affiliation, or lack a religious component.

§ 2.33 Responsibilities of DOL, DOL social service providers and State and local governments administering DOL support.

(a) DOL, DOL social service intermediary providers, DOL social service providers in their use of direct DOL support, and State and local governments administering DOL support must not, when providing social services, discriminate for or against a cur-

29 CFR Subtitle A (7-1-09 Edition)

rent or prospective program beneficiary on the basis of religion or religious belief. This requirement does not preclude DOL, DOL social service intermediary providers, or State or local governments administering DOL support from accommodating religion in a manner consistent with the Establishment Clause of the First Amendment to the Constitution.

(b)(1) DOL, DOL social service providers, and State and local governments administering DOL support must ensure that they do not use direct DOL support for inherently religious activities such as worship, religious instruction, or proselytization. DOL social service providers must be permitted to offer inherently religious activities so long as they offer those activities separately in time or location from social services receiving direct DOL support, and participation in the inherently religious activities is voluntary for the beneficiaries of social service programs receiving direct DOL support. For example, participation in an inherently religious activity must not be a condition for participating in a directly-supported social service program.

(2) This regulation is not intended to and does not restrict the exercise of rights or duties guaranteed by the Constitution. For example, program officials must not impermissibly restrict the ability of program beneficiaries or DOL social service providers to freely express their views and to exercise their right to religious freedom. Additionally, subject to reasonable and permissible time, place and manner restrictions, residential facilities that receive DOL support must permit residents to engage in voluntary religious activities, including holding religious services, at these facilities.

(3) Notwithstanding the requirements of paragraph (b)(1), and to the extent otherwise permitted by Federal law (including constitutional requirements), direct DOL support may be used to support inherently religious activities, and such activities need not be provided separately in time or location from other DOL-supported activities, under the following circumstances:

(i) Where DOL support is provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers through social service programs;

(ii) Where DOL support is provided to social service programs in prisons, detention facilities, or community correction centers, in which social service organizations assist chaplains in carrying out their duties; or

(iii) Where DOL-supported social service programs involve such a degree of government control over the program environment that religious exercise would be significantly burdened absent affirmative steps by DOL or its social service providers.

(c) To the extent otherwise permitted by Federal law, the restrictions set forth in this section regarding the use of direct DOL support do not apply to social service programs where DOL support is provided to a religious or other non-governmental organization indirectly within the meaning of the Establishment Clause of the First Amendment to the Constitution. Religious or other non-governmental organizations will be considered to have received support indirectly, for example, if as a result of a program beneficiary's genuine and independent choice the beneficiary redeems a voucher, coupon, or certificate that allows the beneficiary to choose the service provider, or some other mechanism is provided to ensure that beneficiaries have a genuine and independent choice among providers or program options. All organizations must, however, satisfy all applicable legal and programmatic requirements.

§ 2.34 Application to State and local funds.

If a State or local government voluntarily contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, then the provisions of this subpart apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal assistance. State funds that are contributed pursuant to the

requirements of a matching or grant agreement are considered to be commingled funds.

§ 2.35 Effect of DOL support on Title VII employment nondiscrimination requirements and on other existing statutes.

A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in § 702(a) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-1, is not forfeited when the organization receives direct or indirect DOL support. Some DOL programs, however, were established through Federal statutes containing independent statutory provisions requiring that recipients refrain from discriminating on the basis of religion. Accordingly, to determine the scope of any applicable requirements, recipients and potential recipients should consult with the appropriate DOL program official or with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N4123, Washington, DC 20210, (202) 693-6500. Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

§ 2.36 Status of nonprofit organizations.

(a) In general, DOL does not require that an organization, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code in order to be eligible for Federal financial assistance under DOL social service programs. Many such programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for such support. Individual solicitations that require organizations to have nonprofit status must specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation for a program that requires an organization to maintain tax-exempt status must expressly state the statutory authority for requiring such status. For assistance with questions about a particular solicitation, applicants should contact the DOL program office that issued the solicitation.

Pt. 3

29 CFR Subtitle A (7-1-09 Edition)

(b) Unless otherwise provided by statute, in DOL programs in which an applicant must show that it is a nonprofit organization, the applicant must be permitted to do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as tax exempt under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State Secretary of State certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (b)(3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or national parent organization that the applicant is a local nonprofit affiliate of the organization.

**PART 3—CONTRACTORS AND SUB-
CONTRACTORS ON PUBLIC
BUILDING OR PUBLIC WORK FI-
NANCED 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. 3145; Secretary's Order 01-2008; and Employment Standards Order No. 2001-01.

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,