

§ 502.35

§ 502.35 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 501.33.

§ 502.36 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and these regulations shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

IN THE MATTER OF ____, RESPONDENT.

(b) For the purposes of such administrative proceedings the Administrator, WHD shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

REFERRAL FOR HEARING

§ 502.37 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 501.33, the Administrator, WHD, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall, by *Order of Reference*, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under these regulations or 29 CFR part 18.

(b) A copy of the *Order of Reference*, together with a copy of these regulations, shall be served by counsel for the Administrator, WHD upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

29 CFR Ch. V (7-1-12 Edition)

§ 502.38 Notice of docketing.

Upon receipt of an *Order of Reference*, the Chief Administrative Law Judge shall appoint an ALJ to hear the case. The ALJ shall promptly notify all interested parties of the docketing of the matter and shall set the time and place of the hearing. The date of the hearing shall be not more than 60 days from the date on which the *Order of Reference* was filed.

§ 502.39 Service upon attorneys for the Department of Labor—number of copies.

Two copies of all pleadings and other documents required for any administrative proceeding provided herein shall be served on the attorneys for the DOL. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

PROCEDURES BEFORE ADMINISTRATIVE
LAW JUDGE

§ 502.40 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the ALJ, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

Wage and Hour Division, Labor

§ 502.44

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the ALJ; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the ALJ; or

(2) Inform the ALJ that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the ALJ, within 30 days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

POST-HEARING PROCEDURES

§ 502.41 Decision and order of Administrative Law Judge.

(a) The ALJ shall prepare, within 60 days after completion of the hearing and closing of the record, a decision on the issues referred by the Administrator, WHD.

(b) The decision of the ALJ shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator, WHD. The reason or reasons for such order shall be stated in the decision.

(c) The decision shall be served on all parties and the Administrative Review Board (ARB) in person or by certified mail.

(d) The decision concerning civil money penalties and/or back wages when served by the ALJ shall constitute the final agency order unless the ARB, as provided for in § 501.42, determines to review the decision.

REVIEW OF ADMINISTRATIVE LAW JUDGE'S DECISION

§ 502.42 Procedures for initiating and undertaking review.

(a) A respondent, the WHD, or any other party wishing review, including judicial review, of the decision of an ALJ shall, within 30 days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition shall be served on all parties and on the ALJ. If the ARB does not issue a notice accepting a petition for review of the decision concerning civil money penalties and/or back wages within 30 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition has been received, the decision of the ALJ shall be deemed the final agency action. If the ARB does not issue a notice accepting a petition for review of the decision concerning the debarment recommendation within 30 days after the receipt of a timely filing of the petition, or if no petition has been received by the ARB within 30 days of the date of the decision, the decision of the ALJ shall be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ shall be inoperative unless and until the ARB issues an order affirming the decision.

(b) Whenever the ARB, either on the ARB's own motion or by acceptance of a party's petition, determines to review the decision of an ALJ, a notice of the same shall be served upon the ALJ and upon all parties to the proceeding in person or by certified mail.

§ 502.43 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the ARB's Notice pursuant to § 501.42 of these regulations, the Office of ALJ shall promptly forward a copy of the complete hearing record to the ARB.

§ 502.44 Additional information, if required.

Where the ARB has determined to review such decision and order, the ARB shall notify each party of:

(a) The issue or issues raised;

(b) The form in which submissions shall be made (i.e., briefs, oral argument, etc.); and