

of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge.

(5) Inform the parties that, under § 655.1255, the Administrator shall notify the Attorney General and ETA of the occurrence of a violation by the employer.

EFFECTIVE DATE NOTE: At 75 FR 10406, Mar. 5, 2010, § 655.1215 was revised, effective Apr. 5, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 655.1215 How are the Administrator's investigation findings issued?

(a) The Administrator's determination, issued under § 655.1205(d), shall be served on the complainant, the facility, and other interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail. Where the complainant has requested confidentiality, the Administrator shall serve the determination in a manner which will not breach that confidentiality.

(b) The Administrator's written determination required by § 655.1205(c) shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefore; prescribe any remedies or penalties including the amount of any unpaid wages due, the actions required for compliance with the facility Attestation, and the amount of any civil money penalty assessment and the reason or reasons therefore.

(2) Inform the interested parties that they may request a hearing under § 655.1220.

(3) Inform the interested parties that if a request for a hearing is not received by the Chief Administrative Law Judge within 15 days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge.

(5) Inform the parties that, under § 655.1255, the Administrator shall notify the Department of Homeland Security and ETA of the occurrence of a violation by the employer.

§ 655.1220 Who can appeal the Administrator's findings and what is the process?

(a) Any interested party desiring review of a determination issued under § 655.1205(d), including judicial review, must make a request for an adminis-

trative hearing in writing to the Chief Administrative Law Judge at the address stated in the notice of determination. If such a request for an administrative hearing is timely filed, the Administrator's determination shall be inoperative unless and until the case is dismissed or the Administrative Law Judge issues an order affirming the decision.

(b) An interested party may request a hearing in the following circumstances:

(1) Where the Administrator determines that there is no basis for a finding of violation, the complainant or other interested party may request a hearing. In such a proceeding, the party requesting the hearing shall be the prosecuting party and the facility shall be the respondent; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) Where the Administrator determines that there is a basis for a finding of violation, the facility or other interested party may request a hearing. In such a proceeding, the Administrator shall be the prosecuting party and the facility shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing must be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 10 days after the date of the determination. An interested party which fails to meet this

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10-day deadline for requesting a hearing may thereafter participate in the proceedings only by consent of the administrative law judge, either through intervention as a party under 29 CFR 18.10 (b) through (d) or through participation as an *amicus curiae* under 29 CFR 18.12.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is filed by mail, it should be certified mail. If the request is filed by facsimile transmission, the original of the request, signed by the requestor or authorized representative, must be filed within 10 days of the date of the Administrator's notice of determination.

(f) Copies of the request for a hearing must be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

§ 655.1225 What are the rules of practice before an ALJ?

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) do not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

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§ 655.1230 What time limits are imposed in ALJ proceedings?

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy must be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or Federally-observed holiday, in which case the time period includes the next business day.

§ 655.1235 What are the ALJ proceedings?

(a) Upon receipt of a timely request for a hearing filed in accordance with § 655.1220, the Chief Administrative Law Judge shall appoint an administrative law judge to hear the case.

(b) Within seven (7) days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time, and place of the hearing. All parties shall be given at least five (5) days notice of such hearing.

(c) The date of the hearing shall be not more than 60 days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons and by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a pre-hearing brief or other written statement of fact