

Pt. 6

presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying \$3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of \$3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be \$3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the \$3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying \$3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to \$2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as \$1 an hour. In this example the regular or basic hourly rate would continue to be \$3 an hour. See S. Rep. No. 963, p. 7.

PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS AND FEDERAL SERVICE CONTRACTS

Subpart A—General

- Sec.
- 6.1 Applicability of rules.
- 6.2 Definitions.
- 6.3 Service; copies of documents and pleadings.
- 6.4 Subpoenas (Service Contract Act).
- 6.5 Production of documents and witnesses.
- 6.6 Administrative Law Judge.
- 6.7 Appearances.

29 CFR Subtitle A (7–1–16 Edition)

- 6.8 Transmission of record.

Subpart B—Enforcement Proceedings Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)

- 6.15 Complaints.
- 6.16 Answers.
- 6.17 Amendments to pleadings.
- 6.18 Consent findings and order.
- 6.19 Decision of the Administrative Law Judge.
- 6.20 Petition for review.
- 6.21 Ineligible list.

Subpart C—Enforcement Proceedings Under the Davis-Bacon Act and Related Prevailing Wage Statutes, the Copeland Act, and the Contract Work Hours and Safety Standards Act (Except Under Contracts Subject to the Service Contract Act)

- 6.30 Referral to Chief Administrative Law Judge.
- 6.31 Amendments to pleadings.
- 6.32 Consent findings and order.
- 6.33 Decision of the Administrative Law Judge.
- 6.34 Petition for review.
- 6.35 Ineligible lists.

Subpart D—Substantial Interest Proceedings

- 6.40 Scope.
- 6.41 Referral to Chief Administrative Law Judge.
- 6.42 Amendments to pleadings.
- 6.43 Consent findings and order.
- 6.44 Decision of the Administrative Law Judge.
- 6.45 Petition for review.
- 6.46 Ineligible list.

Subpart E—Substantial Variance and Arm's-Length Proceedings

- 6.50 Scope.
- 6.51 Referral to Chief Administrative Law Judge.
- 6.52 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.
- 6.53 Prehearing conference.
- 6.54 Hearing.
- 6.55 Closing of record.
- 6.56 Decision of the Administrative Law Judge.
- 6.57 Petition for review.

AUTHORITY: Secs. 4 and 5, 79 Stat. 1034, 1035 as amended by 86 Stat. 789, 790, 41 U.S.C. 353 and 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 46 Stat.

1494, as amended by 49 Stat. 1011, 78 Stat. 238, 40 U.S.C. 276a-276a-7; 76 Stat. 357-359, 40 U.S.C. 327-332; 48 Stat. 948, as amended by 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c.

SOURCE: 49 FR 10627, Mar. 21, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 6 appear at 61 FR 19984, May 3, 1996.

Subpart A—General

§ 6.1 Applicability of rules.

This part provides the rules of practice for administrative proceedings under the Service Contract Act, the Davis-Bacon Act and related statutes listed in § 5.1 of part 5 of this title which require payment of wages determined in accordance with the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act. See parts 4 and 5 of this title.

§ 6.2 Definitions.

(a) *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(b) *Associate Solicitor* means the Associate Solicitor for Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(c) *Chief Administrative Law Judge* means the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington DC 20001-8002.

(d) *Respondent* means the contractor, subcontractor, person alleged to be responsible under the contract or subcontract, and/or any firm, corporation, partnership, or association in which such person or firm is alleged to have a substantial interest (or interest, if the proceeding is under the Davis-Bacon Act) against whom the proceedings are brought.

[49 FR 10627, Mar. 21, 1984, as amended at 56 FR 54708, Oct. 22, 1991]

§ 6.3 Service; copies of documents and pleadings.

(a) *Manner of service.* Service upon any party shall be made by the party filing the pleading or document by de-

livering a copy or mailing a copy to the last known address. When a party is represented by an attorney, the service should be upon the attorney.

(b) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service. Where service is made by mail, service shall be complete upon mailing. However, documents are not deemed filed until received by the Chief Clerk at the Office of Administrative Law Judges and where documents are filed by mail 5 days shall be added to the prescribed period.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor: The original and one copy with the Administrative Law Judge before whom the case is pending, one copy with the attorney representing the Department during the hearing, and one copy with the Associate Solicitor.

§ 6.4 Subpoenas (Service Contract Act).

All applications under the Service Contract Act for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the Administrative Law Judge. Application for subpoenas duces tecum shall specify as exactly as possible the documents to be produced.

§ 6.5 Production of documents and witnesses.

The parties, who shall be deemed to be the Department of Labor and the respondent(s), may serve on any other party a request to produce documents or witnesses in the control of the party served, setting forth with particularity the documents or witnesses requested. The party served shall have 15 days to respond or object thereto unless a shorter or longer time is ordered by the Administrative Law Judge. The parties shall produce documents and witnesses to which no privilege attaches which are in the control of the party, if so ordered by the Administrative Law Judge upon motion therefor by a party. If a