

pursuant to Part 580 of this chapter shall be final.

[40 FR 25792, June 18, 1975, as amended at 56 FR 8679, Feb. 28, 1991; 66 FR 63503, Dec. 7, 2001; 75 FR 28461, May 20, 2010; 81 FR 43451, July 1, 2016]

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

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AUTHORITY: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

SOURCE: 56 FR 24991, May 31, 1991, unless otherwise noted.

§ 580.1 Definitions.

As used in this part:

Act means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060 as amended; 29 U.S.C. 201 *et seq.*).

Administrative law judge means a person appointed as provided in 5 U.S.C. 3105 and subpart B of part 930 of title 5

of the CFR, and qualified to preside at hearings under 5 U.S.C. 554–557.

Administrator means the Administrator of the Wage and Hour Division, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized by the Administrator to perform any of the functions of the Administrator under this part and parts 578 and 579 of this chapter.

Chief Administrative Law Judge means the Chief Administrative Law Judge, Office of the Administrative Law Judges, U.S. Department of Labor, Washington, DC 20210.

Department means the U.S. Department of Labor.

Person includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

Secretary means the Secretary of Labor, U.S. Department of Labor, or a designated representative of the Secretary.

Solicitor of Labor means the Solicitor, U.S. Department of Labor, and includes attorneys of the Office of the Solicitor authorized by the Solicitor to perform functions of the Solicitor under this part.

[56 FR 24991, May 31, 1991, as amended at 82 FR 2230, Jan. 9, 2017]

§ 580.2 Applicability of procedures and rules.

The procedures and rules contained in this part prescribe the administrative process for assessment of civil money penalties for any violation of the child labor provisions at section 12 of the Act and any regulation thereunder as set forth in part 579 of this chapter, and for assessment of civil money penalties for any violation of the tip retention provisions of section 3(m)(2)(B) or any repeated or willful violation of the minimum wage provisions of section 6 or the overtime provisions of section 7 of the Act or the regulations thereunder set forth in 29 CFR subtitle B, chapter V. The substantive requirements for assessment of civil money penalties are set forth at 29 CFR part 579 (child labor) and part 578 (minimum wage and overtime).

[56 FR 24991, May 31, 1991, as amended at 86 FR 52987, Sept. 24, 2021]

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§ 580.3 Written notice of determination required.

Whenever the Administrator determines that there has been a violation by any person of section 12 of the Act relating to child labor or any regulation thereunder as set forth in part 579 of this chapter, or determines that there has been a violation by any person of section 3(m)(2)(B), or determines that there has been a repeated or willful violation by any person of section 6 or section 7 of the Act, and determines that imposition of a civil money penalty for such violation is appropriate, the Administrator shall issue and serve a notice of such penalty on such person in person or by certified mail. Where service by certified mail is not accepted by the party, notice shall be deemed received on the date of attempted delivery. Where service is not accepted, the Administrator may exercise discretion to serve the notice by regular mail.

[56 FR 24991, May 31, 1991, as amended at 86 FR 52987, Sept. 24, 2021]

§ 580.4 Contents of notice.

The notice required by § 580.3 of this part shall:

(a) Set forth the determination of the Administrator as to the amount of the penalty and the reason or reasons therefor;

(b) Set forth the right to take exception to the assessment of penalties and set forth the right to request a hearing on such determination;

(c) Inform any affected person or persons that in the absence of a timely exception to a determination of penalty and a request for a hearing received within 15 days of the date of receipt of the notice, the determination of the Administrator shall become final and unappealable; and

(d) Set forth the time and method for taking exception to the determination and requesting a hearing, and the procedures relating thereto, as set forth in § 580.6 of this part.

§ 580.5 Finality of notice.

If the person charged with violations does not, within 15 days after receipt of the notice, take exception to the determination that the violation or viola-

tions for which the penalty is imposed occurred, the administrative determination by the Administrator of the amount of such penalty shall be deemed final and not subject to administrative or judicial review. Upon the determination becoming final in such a manner, collection and recovery of the penalty shall be instituted pursuant to § 580.18.

[69 FR 75405, Dec. 16, 2004]

§ 580.6 Exception to determination of penalty and request for hearing.

(a) Any person desiring to take exception to the determination of penalty, or to seek judicial review, shall request an administrative hearing pursuant to this part. The exception shall be in writing to the official who issued the determination at the Wage and Hour Division address appearing on the determination notice, and must be received no later than 15 days after the date of receipt of the notice referred to in § 580.3. No additional time shall be added where service of the determination of penalties or of the exception thereto is made by mail. 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 a decision affirming the determination.

(b) No particular form is prescribed for any exception to determination of penalty and 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(s) stated in the notice of determination giving rise to such request;

(4) State the specific reason(s) why the person requesting the hearing believes such determination is in error;

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

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

[56 FR 24991, May 31, 1991, as amended at 60 FR 17222, Apr. 5, 1995; 69 FR 75405, Dec. 16, 2004]

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RULES OF PRACTICE

§ 580.7 General.

(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) 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) shall apply except as follows: Notwithstanding the provisions of subpart B, including the hearsay rule (§18.802), testimony of current or former Department of Labor employees concerning information obtained in the course of investigations and conclusions thereon, as well as any documents contained in Department of Labor files (other than the investigation file concerning the violation(s) as to which the penalty in litigation has been assessed), shall be admissible in proceedings under this subpart. Nothing in this paragraph is intended to limit the admissibility of any evidence which is otherwise admissible under 29 CFR part 18, subpart B.

§ 580.8 Service and computation of time.

(a) Service of documents under this subpart shall be made to the individual, an officer of a corporation, or attorney of record in accordance with 29 CFR part 18.

(b) Two (2) copies of all pleadings and other documents required for any administrative proceeding provided by this subpart shall be served on the attorneys for the Department of Labor. 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.

(c) Time will be computed in accordance with part 18.

[56 FR 24991, May 31, 1991, as amended at 86 FR 1787, an. 11, 2021]

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§ 580.9 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 §580.6 of this subpart.

REFERRAL FOR HEARING

§ 580.10 Referral to Administrative Law Judge.

(a) Upon receipt of a timely exception to a determination of penalties and request for a hearing filed pursuant to and in accordance with §580.6 of this subpart, the Administrator, 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, refer the matter to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. A copy of the notice of administrative determination and of the request for hearing shall be attached to the Order of Reference 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 this subpart and 29 CFR part 18.

(b) A copy of the Order of Reference and attachments thereto, together with a copy of this part, shall be served by counsel for the Administrator upon the person requesting the hearing, in the manner provided in §580.8 of this subpart.

§ 580.11 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.

Upon receipt from the Administrator of an Order of Reference, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall notify all interested parties of the time and place of a prehearing conference and of the hearing.

§ 580.12 Decision and Order of Administrative Law Judge.

(a) The Administrative Law Judge shall render a decision on the issues referred by the Administrator.

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(b) The decision of the Administrative Law Judge shall be limited to a determination of whether the respondent has committed a violation of section 12, a violation of section 3(m)(2)(B), or a repeated or willful violation of section 6 or section 7 of the Act, and the appropriateness of the penalty assessed by the Administrator. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge 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.

(d) The Administrative Law Judge shall serve copies of the decision on each of the parties.

(e) The decision of the Administrative Law Judge shall constitute the final order of the Secretary unless, pursuant to § 580.13 of this part, there is an appeal to the Secretary.

[56 FR 24991, May 31, 1991, as amended at 86 FR 52987, Sept. 24, 2021]

§ 580.13 Procedures for appeals to the Administrative Review Board.

(a) Any party desiring review of a decision of the Administrative Law Judge, including judicial review, must file a petition for review with the Department's Administrative Review Board (Board). To be effective, such petition must be received by the Board within 30 days of the date of the decision of the Administrative Law Judge. Copies of the appeal shall be served on all parties and on the Chief Administrative Law Judge. If such a petition for review is timely filed, the decision of the Administrative Law Judge shall be inoperative unless and until the Board dismisses the appeal or issues a decision affirming the decision of the Administrative Law Judge.

(b) All documents submitted to the Board shall be filed with the Administrative Review Board in accordance with 29 CFR part 26.

(c) Documents are not deemed filed with the Board until actually received by the Board, either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time was made by mail.

(d) A copy of each document filed with the Board shall be served upon all other parties involved in the proceeding in accordance with 29 CFR part 26. Service by mail is deemed effected at the time of mailing to the last known address of the party.

[69 FR 75405, Dec. 16, 2004, as amended at 86 FR 1787, Jan. 11, 2021]

§ 580.14 [Reserved]

§ 580.15 Responsibility of the Office of Administrative Law Judges for the administrative record.

Upon receipt of a petition seeking review of the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall promptly forward a copy of the complete hearing record to the Secretary.

§ 580.16 Decision of the Administrative Review Board.

The Board's decision shall be served upon all parties and the Chief Administrative Law Judge.

[86 FR 1787, Jan. 11, 2021]

§ 580.17 Retention of official record.

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 580.18 Collection and recovery of penalty.

(a) When the determination of the amount of any civil money penalty provided for in this part becomes final under § 580.5 in accordance with the administrative assessment thereof, or pursuant to the decision and order of an Administrative Law Judge in an administrative proceeding as provided in § 580.12, or the decision of the Board pursuant to § 580.16, the amount of the penalty as thus determined is immediately due and payable to the U.S. Department of Labor. The person assessed such penalty shall remit promptly the

amount thereof, as finally determined, to the Secretary. Payment shall be made by certified check or money order made payable and delivered or mailed according to the instructions provided by the Department; through the electronic pay portal located at *www.pay.gov* or any successor system; or by any additional payment method deemed acceptable by the Department.

(b) Pursuant to section 16(e) of the Act, the amount of the penalty, finally determined as provided in §580.5, §580.12 or §580.16, may be:

(1) Deducted from any sums owing by the United States to the person charged. To effect this, any agency having sums owing from the United States to such person shall, on the request of the Secretary, withhold the specific amount of the penalty from the sums owed to the person so charged and remit the amount to the Secretary to satisfy the amount of the penalty assessed;

(2) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor. When the person against whom a final determination assessing a civil money penalty has been made does not voluntarily remit the amount of such penalty to the Secretary within a reasonable time after notification to do so, the Solicitor of Labor may institute such an action to recover the amount of the penalty; or

(3) Ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2), to be paid to the Secretary. Any such unlawful act or practice may be enjoined by the United States district courts under section 17 upon court action, filed by the Secretary; and failure of the person so enjoined to comply with the court order may subject such person to contempt proceedings. A willful violation of sections 6, 7, or 12 of the Act may subject the offender to the penalties provided in section 16(a) of the Act, enforced by the Department of Justice in criminal proceedings in the United States courts. In any of the foregoing civil or criminal proceedings, the court may order the payment to the Sec-

retary of the civil penalty finally assessed by the Secretary.

[56 FR 24991, May 31, 1991, as amended at 69 FR 75406, Dec. 16, 2004; 84 FR 59931, Nov. 7, 2019; 86 FR 52987, Sept. 24, 2021]

PART 697—INDUSTRIES IN AMERICAN SAMOA

Sec.

697.1 Wage rates and industry definitions.

697.2 Industry wage rates and effective dates.

697.3 Notices.

697.4 Effective dates.

AUTHORITY: 29 U.S.C. 205, 206, 208.

§ 697.1 Industry definitions.

(a) *Government employees.* This industry includes all activities of employees of the Government of American Samoa. This industry does not include any employees of the United States or its agencies.

(b) *Fish canning and processing.* This industry shall include the canning, freezing, preserving, and other processing of any kind of fish, shellfish, and other aquatic forms of animal life, the manufacture of any by-product thereof, and the manufacture of cans and related activities.

(c) *Petroleum marketing.* This industry shall include the wholesale marketing and distribution of gasoline, kerosene, lubricating oils, diesel and marine fuels, and other petroleum products, bunkering operations in connection therewith, and repair and maintenance of petroleum storage facilities.

(d) *Shipping and transportation.* This industry shall include the transportation of passengers and cargo by water or by air, and all activities in connection therewith, including storage and lighterage operations: *Provided, however,* that this industry shall not include the operation of tourist bureaus and of travel and ticket agencies. *Provided, further,* that this industry shall not include bunkering of petroleum products or activities engaged in by seamen on American vessels which are documented or numbered under the laws of the United States, which operate exclusively between points in the Samoan Islands, and which are not in excess of 350 tons net capacity. Within