

**§ 525.23**

records required by § 525.16 (a), (b), (c) and (d). The Administrator shall be permitted to participate by counsel in the proceeding upon application.

(d) In determining whether any special minimum wage rate is justified, the ALJ shall consider, to the extent evidence is available, the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured, and the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity and the conditions under which such productivity was measured. In these proceedings, the burden of proof on all matters relating to the propriety of a wage at issue shall rest with the employer.

(e) The ALJ shall issue a decision within 30 days after the termination of the hearing and shall serve the decision on the Administrator and all interested parties by Express Mail or other similar system guaranteeing one-day delivery. The decision shall contain appropriate findings and conclusions and an order. If the ALJ finds that the special minimum wage being paid or which has been paid is not justified, the order shall specify the lawful rate and the period of employment to which the rate is applicable. In the absence of evidence sufficient to support the conclusion that the proper wage should be less than the minimum wage, the ALJ shall order that the minimum wage be paid.

(f) Within 15 days after the date of the decision of the ALJ, the petitioner, the Administrator, or the employer who seeks review thereof may request review by the Secretary. No particular form of request is required, except that a request must be in writing and must attach a copy of the ALJ's decision. Requests for review shall be filed with the Secretary of Labor, 200 Constitution Ave. NW., Washington, DC 20210. Any other interested party may file a reply thereto with the Secretary and the Administrator within 5 working days of receipt of such request for review. The request for review and reply thereto shall be transmitted by the Administrator to all interested parties by

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Express Mail or other similar system guaranteeing one-day delivery.

(g) The decision of the ALJ shall be deemed to be final agency action 30 days after issuance thereof, unless within 30 days of the date of the decision the Secretary grants a request to review the decision. Where such request for review is granted, within 30 days after receipt of such request the Secretary shall review the record and shall either adopt the decision of the ALJ or issue exceptions. The decision of the ALJ, together with any exceptions issued by the Secretary, shall be deemed to be a final agency action.

(h) Within 30 days of issuance of the final action of the Secretary reviewing the decision of the ALJ or declining to grant such review, any person adversely affected or aggrieved by such action may seek judicial review pursuant to chapter 7 of title 5, United States Code. The record of the case, including the record of proceedings before the ALJ, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

**§ 525.23 Work activities centers.**

Nothing in these regulations shall be interpreted to prevent an employer from maintaining or establishing work activities centers to provide therapeutic activities for workers with disabilities as long as the employer complies with the requirement of these regulations. Work activities centers shall include centers planned and designed to provide therapeutic activities for workers with severe disabilities affecting their productive capacity. Any establishment whose workers with disabilities are employed at special minimum wages must comply with the requirements of this part, regardless of the designation of such establishment.

**§ 525.24 Advisory Committee on Special Minimum Wages.**

The Advisory Committee on Special Minimum Wages, the members of which are appointed by the Secretary, shall advise and make recommendations to the Administrator concerning the administration and enforcement of these regulations and the need for amendments thereof and shall serve