

days before commencement of a contract in the case of a negotiated procurement, exercise of a contract option or extension. This limitation is necessary in order to ensure competitive equality and an orderly procurement process.

(2) The Administrator shall, upon receipt of a request for reconsideration, review the data sources relied upon as a basis for the wage determination, the evidence furnished by the party requesting review or reconsideration, and, if necessary to resolve the matter, any additional information found to be relevant to determining prevailing wage rates and fringe benefits in a particular locality. The Administrator, pursuant to a review of available information, may issue a new wage determination, may cause the wage determination to be revised, or may affirm the wage determination issued, and will notify the requesting party in writing of the action taken. The Administrator will render a decision within 30 days of receipt of the request or will notify the requesting party in writing within 30 days of receipt that additional time is necessary.

(b) *Review by the Administrative Review Board.* Any decision of the Administrator under paragraph (a) of this section may be appealed to the Administrative Review Board within 20 days of issuance of the Administrator's decision. Any such appeal shall be in accordance with the provisions of part 8 of this title.

[48 FR 49762, Oct. 27, 1983. Redesignated at 61 FR 68664, Dec. 30, 1996]

Subpart C—Application of the McNamara-O'Hara Service Contract Act

INTRODUCTORY

§4.101 Official rulings and interpretations in this subpart.

(a) The purpose of this subpart is to provide, pursuant to the authority cited in §4.102, official rulings and interpretations with respect to the application of the McNamara-O'Hara Service Contract Act for the guidance of the agencies of the United States and the District of Columbia which may enter into and administer contracts

subject to its provisions, the persons desiring to enter into such contracts with these agencies, and the contractors, subcontractors, and employees who perform work under such contracts.

(b) These rulings and interpretations are intended to indicate the construction of the law and regulations which the Department of Labor believes to be correct and which will be followed in the administration of the Act unless and until directed otherwise by Act of Congress or by authoritative ruling of the courts, or if it is concluded upon reexamination of an interpretation that it is incorrect. See for example, *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); *Roland Co. v. Walling*, 326 U.S. 657 (1946); *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 507-509 (1943); *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 128 (1940); *United States v. Western Pacific Railroad Co.*, 352 U.S. 59 (1956). The Department of Labor (and not the contracting agencies) has the primary and final authority and responsibility for administering and interpreting the Act, including making determinations of coverage. See *Woodside Village v. Secretary of Labor*, 611 F. 2d 312 (9th Cir. 1980); *Nello L. Teer Co. v. United States*, 348 F.2d 533, 539-540 (Ct. Cl. 1965), cert. denied, 383 U.S. 934; *North Georgia Building & Construction Trades Council v. U.S. Department of Transportation*, 399 F. Supp. 58, 63 (N.D. Ga. 1975) (Davis-Bacon Act); *Curtiss-Wright Corp. v. McLucas*, 364 F. Supp. 750, 769-72 (D.N.J. 1973); and 43 Atty. Gen. Ops. _____ (March 9, 1979); 53 Comp. Gen. 647, 649-51 (1974); 57 Comp. Gen. 501, 506 (1978).

(c) Court decisions arising under the Act (as well as under related remedial labor standards laws such as the Walsh-Healey Public Contracts Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Fair Labor Standards Act) which support policies and interpretations contained in this part are cited where it is believed that they may be helpful. On matters which have not been authoritatively determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the

law in order to carry out their responsibilities of administration and enforcement (*Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). In order that these positions may be made known to persons who may be affected by them, official interpretations and rulings are issued by the Administrator with the advice of the Solicitor of Labor, as authorized by the Secretary (Secretary's Order No. 16-75, Nov. 21, 1975, 40 FR 55913; Employment Standards Order No. 2-76, Feb. 23, 1976, 41 FR 9016). These interpretations are a proper exercise of the Secretary's authority. *Idaho Sheet Metal Works v. Wirtz*, 383 U.S. 190, 208 (1966), reh. den. 383 U.S. 963 (1966). References to pertinent legislative history, decisions of the Comptroller General and of the Attorney General, and Administrative Law Judges' decisions are also made in this part where it appears they will contribute to a better understanding of the stated interpretations and policies.

(d) The interpretations of the law contained in this part are official interpretations which may be relied upon. The Supreme Court has recognized that such interpretations of the Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance" (*Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). Interpretations of the agency charged with administering an Act are generally afforded deference by the courts. (*Griggs v. Duke Power Co.*, 401 U.S. 424, 433-34 (1971); *Udall v. Tallman*, 380 U.S. 1 (1965).) Some of the interpretations in this part relating to the application of the Act are interpretations of provisions which appeared in the original Act before its amendments in 1972 and 1976. Accordingly, the Department of Labor considers these interpretations to be correct, since there were no amendments of the statutory provisions which they interpret. (*United States v. Davison Fuel & Dock Co.*, 371 F.2d 705, 711-12 (C.A. 4, 1967).)

(e) The interpretations contained herein shall be in effect until they are modified, rescinded, or withdrawn. This

part supersedes and replaces certain interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as part 4 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Act as amended are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part, to the extent they are inconsistent with the rules herein stated, are superseded, rescinded, and withdrawn.

(f) Principles governing the application of the Act as set forth in this subpart are clarified or amplified in particular instances by illustrations and examples based on specific fact situations. Since such illustrations and examples cannot and are not intended to be exhaustive, or to provide guidance on every problem which may arise under the Act, no inference should be drawn from the fact that a subject or illustration is omitted.

(g) It should not be assumed that the lack of discussion of a particular subject in this subpart indicates the adoption of any particular position by the Department of Labor with respect to such matter or to constitute an interpretation, practice, or enforcement policy. If doubt arises or a question exists, inquiries with respect to matters other than safety and health standards should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, or to any regional office of the Wage and Hour Division. Safety and health inquiries should be addressed to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210, or to any OSHA regional office. A full description of the facts and any relevant documents should be submitted if an official ruling is desired.

§ 4.102 Administration of the Act.

As provided by section 4 of the Act and under provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 38, 39), which are made expressly applicable