Office of the Secretary of Labor

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. Lakens 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, 393 U.S. 994; 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. Op. 349, 434, 436 (March 9, 1973). 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 through the advisory and authoritative processes of the Solicitor of Labor, as authorized by the 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, 206 (1966), reh. den. 393 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);
§ 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 for the purpose, the Secretary of Labor is authorized and directed to administer and enforce the provisions of the McNamara-O’Hara Service Contract Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act. The Secretary is also authorized to make reasonable limitations and to make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act (except section 10), but only in special circumstances where it is determined that such action is necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purposes of the Act to protect prevailing labor standards. The authority and enforcement powers of the Secretary under the Act are coextensive with the authority and powers under the Walsh-Healey Act. Curtiss Wright Corp. v. McLucas 364 F. Supp. 750, 769 (D NJ 1973).

§ 4.103 The Act.

The McNamara-O’Hara Service Contract Act of 1965 (Pub. L. 89-286, 79 Stat. 1034, 41 U.S.C. 351 et seq.), hereinafter referred to as the Act, was approved by the President on October 22, 1965 (1 Weekly Compilation of Presidential Documents 428). It establishes standards for minimum compensation and safety and health protection of employees performing work for contractors and subcontractors on service contracts entered into with the Federal Government and the District of Columbia. It applies to contracts entered into