

§ 1926.14

covered “subcontractor.” Ordinarily a contract for the supplying of construction equipment to a contractor would not, in and of itself, be considered a “subcontractor” for purposes of this part.

§ 1926.14 Federal contract for “mixed” types of performance.

(a) It is the intent of the Congress to provide safety and health protection of Federal, federally financed, or federally assisted construction. See, for example, H. Report No. 91-241, 91st Cong., first session, p. 1 (1969). Thus, it is clear that when a Federal contract calls for mixed types of performance, such as both manufacturing and construction, section 107 would apply to the construction. By its express terms, section 107 applies to a contract which is “for construction, alteration, and/or repair.” Such a contract is not required to be exclusively for such services. The application of the section is not limited to contracts which permit an overall characterization as “construction contracts.” The text of section 107 is not so limited.

(b) When the mixed types of performances include both construction and manufacturing, see also § 1926.15(b) concerning the relationship between the Walsh-Healey Public Contracts Act and section 107.

§ 1926.15 Relationship to the Service Contract Act; Walsh-Healey Public Contracts Act.

(a) A contract for “construction” is one for nonpersonal service. See, e.g., 41 CFR 1-1.208. Section 2(e) of the Service Contract Act of 1965 requires as a condition of every Federal contract (and bid specification therefor) exceeding \$2,500, the “principal purpose” of which is to furnish services to the United States through the use of “service employees,” that certain safety and health standards be met. See 29 CFR part 1925, which contains the Department rules concerning these standards. Section 7 of the Service Contract Act provides that the Act shall not apply to “any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works.” It is

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clear from the legislative history of section 107 that no gaps in coverage between the two statutes are intended.

(b) The Walsh-Healey Public Contracts Act requires that contracts entered into by any Federal agency for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000 must contain, among other provisions, a requirement that “no part of such contract will be performed nor will any of the materials, supplies, articles or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract.” The rules of the Secretary concerning these standards are published in 41 CFR part 50-204, and express the Secretary of Labor’s interpretation and application of section 1(e) of the Walsh-Healey Public Contracts Act to certain particular working conditions. None of the described working conditions are intended to deal with construction activities, although such activities may conceivably be a part of a contract which is subject to the Walsh-Healey Public Contracts Act. Nevertheless, such activities remain subject to the general statutory duty prescribed by section 1(e). Section 103(b) of the Contract Work Hours and Safety Standards Act provides, among other things, that the Act shall not apply to any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act.

§ 1926.16 Rules of construction.

(a) The prime contractor and any subcontractors may make their own arrangements with respect to obligations which might be more appropriately treated on a jobsite basis rather than individually. Thus, for example, the prime contractor and his subcontractors may wish to make an express agreement that the prime contractor or one of the subcontractors will provide all required first-aid or toilet facilities, thus relieving the subcontractors from the actual, but not