

and complex issues raised in the advance notice. A member of regulated industry, Brown and Williamson Tobacco Corporation, requested a two-week extension, saying that they discovered during the preparation of their written comments that several issues were more complicated than they originally assessed. In consideration of the above, ATF finds that a reopening of the comment period is warranted.

#### *Disclosure*

Copies of this notice, Notice No. 835, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

#### *Drafting Information*

The author of this document is Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

#### List of Subjects

##### *27 CFR Part 252*

Aircraft, Alcohol and alcoholic beverages, Armed Forces, Authority delegations, (government agencies), Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign Trade Zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

##### *27 CFR Part 290*

Administrative practice and procedure, Aircraft, Authority delegations (government agencies), Claims, Cigarette papers and tubes, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Vessels, Warehouses.

#### *Authority and Issuance*

This notice is issued under the authority in 26 U.S.C. 5301, 7805, and 27 U.S.C. 205.

Signed: October 18, 1996.

John W. Magaw,

*Director.*

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## DEPARTMENT OF LABOR

### Office of the Secretary

#### 29 CFR Part 4

RIN 1215-AA78

#### Service Contract Act; Labor Standards For Federal Service Contracts

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Proposed rule; notice of publication of regulatory impact analysis; request for comments.

**SUMMARY:** By notice of proposed rulemaking published in the Federal Register on May 2, 1996 (61 FR 19770), the Department of Labor (DOL or the Department) proposed alternative approaches for procedures to establish minimum health and welfare benefits requirements in the regulations issued under the McNamara-O'Hara Service Contract Act (SCA). As was explained in the proposed rule, it was not feasible to publish a regulatory impact analysis for comment with the proposed rule due to judicially imposed time constraints.

In the meantime, the Department has developed data on the occupational mix of service contract employees in order to provide a basis for the impact analysis and to aid in the selection of the most appropriate methodology. The analysis has been completed and is now being published for comment. Comments may also be submitted on the various alternatives set forth previously for comment. Comments on this document will be reviewed together with comments submitted on the May 2, 1996 proposed rule prior to promulgation of a final rule.

**DATES:** Comments are due on or before November 25, 1996.

**ADDRESSES:** Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219-5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

**FOR FURTHER INFORMATION CONTACT:** William Gross, Director, Division of

Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219-8353. This is not a toll-free number.

#### SUPPLEMENTARY INFORMATION:

Survey of Occupational Employment Covered by the McNamara-O'Hara Service Contract Act; Health and Welfare Benefit Level Impact Analysis

#### *Survey Description and Findings*

##### *Background*

The McNamara-O'Hara Service Contract Act of 1965 (SCA) requires that contracts over \$2,500 (if the predecessor contract was not subject to a collective bargaining agreement) contain wage determinations issued by DOL that specify the minimum monetary wages and fringe benefits that must be paid to the various classes of workers who perform work on the service contract, based upon rates determined by DOL to be prevailing in the locality where the work is to be performed. However, because fringe benefit data are not generally available on an occupation-specific or locality basis, DOL has issued fringe benefit determinations for health and welfare based on nationwide data ever since SCA was enacted.

Following a challenge by the Service Employees International Union (SEIU) to the methodology utilized by DOL to determine health and welfare benefits, the DOL's Board of Service Contract Appeals remanded the matter to the Wage and Hour Division to consider alternative methodologies for implementing the statutory objectives. Accordingly, the Administrator of the Wage and Hour Division, by Notice published in the Federal Register on May 2, 1996 (61 FR 19770), proposed for public comment various alternative methodologies.

In the meantime, the Department has developed data to determine the occupational mix of service employees engaged in the performance of SCA-covered contracts. Based on data collected by the Federal Procurement Data System for Fiscal Year 1994, the Department has conducted a survey to obtain specific information on service contract employment by occupation within SIC industry classifications. The information collected provides a basis for the following estimates of the economic impact of the various proposed alternatives.

In an action filed by the SEIU in the U.S. District Court for the District of Columbia, the court has set a deadline

for publication of the final rule of December 24, 1996. *SEIU v. Reich*, CA No. 91-0605 (August 27, 1996).

**Purpose and Process**

In the Fall of 1995, the Wage and Hour Division of the Employment Standards Administration conducted a survey of occupational employment under the McNamara-O'Hara Service Contract Act (SCA). Primary objectives of the survey were to: (1) Assist in the development of a process to determine prevailing health and welfare benefit levels under the SCA; and (2) furnish data that may be useful in assessing the costs of various health and welfare benefit alternatives.

The survey population consisted of almost 20,000 contracts, and includes all contracts identified as SCA-covered in the Federal Procurement Data System (FPDS) automated data base. These contracts represented \$20.5 billion in procurement actions during FY 1994. The sample, which was selected by contract value within industry group, consisted of 7,084 contracts, awarded by 129 Federal agencies, and administered by 1,039 agency contracting offices. Contracts represented by the sample included 35 percent of the number of contracts in the population, and 63 percent of population contract value.

With the assistance of designated Federal procurement agency Survey Coordinators, and procurement officers who were responsible for the contracts in the sample, 1,430 usable survey responses were received and processed. This represented a usable response rate of 20.2 percent. The usable response contained 7.2 percent of all contracts in the targeted population and 19.0 percent of population contract value.

For additional information on the survey design, survey sample and population, the sampling technique utilized, use of the sample to estimate the population, and the data collection process and response rate, see the Technical Note, following the Impact Analysis.

**Findings**

*Employment by Occupation.* Based upon the Wage and Hour Division survey of occupational employment under the SCA, there were 275,800 full-time equivalent positions (FTEs) under the FPDS universe of contracts in FY 1994. Utilizing survey data, estimated

FTEs by broad occupational group are presented in Table 1, below.

**TABLE 1.—ESTIMATE OF FULL-TIME EQUIVALENT POSITIONS BY BROAD OCCUPATIONAL GROUP**

Group title	Number	Per- cent of total
Professional, Specialty, & Technical.	36,900	13.4
Administrative Support/ Clerical.	48,300	17.5
Precision Production, Craft, & Repair.	88,200	32.0
Transportation & Material Moving.	11,200	4.1
Handlers, Cleaners, Help- ers, & Laborers.	33,200	12.0
Service Workers .....	58,000	21.0
Total, All Groups .....	275,800	100.0

By far, the occupational group with the largest numbers of FTEs was Precision Production, Craft, and Repair occupations, representing almost one-third of total employment. The Service Worker group was next in order of significance, having over one-fifth of total employment. Three broad occupational groups each accounted for close to 15 percent of the FTE total: Administrative Support and Clerical occupations, 17.5 percent; Professional, Specialty, and Technical occupations, 13.4 percent; and Handlers, Cleaners, Helpers, and Laborers, 12.0 percent. The broad group with the fewest positions was Transportation and Material Moving occupations, 4.1 percent. The most frequently listed occupations, under each broad occupational group, are listed in order of employment, in Table 2, below.

**TABLE 2.—FREQUENTLY LISTED OCCU- PATIONS WITHIN BROAD OCCUPA- TIONAL GROUPS**

Professional, Technical, & Specialty (13.4%)	Administrative Support & Clerical (17.5%)	Precision Production, Craft, Repair (32.0%)
Engineering Technician.	General Clerk	Electronic Tech, Maintenance.
Licensed Practical Nurse.	Secretary .....	Aircraft Me- chanic.

**TABLE 2.—FREQUENTLY LISTED OCCU- PATIONS WITHIN BROAD OCCUPA- TIONAL GROUPS—Continued**

Professional, Technical, & Specialty (13.4%)	Administrative Support & Clerical (17.5%)	Precision Production, Craft, Repair (32.0%)
Computer Programmer.	Key Entry Operator.	Tele- communi- cation Me- chanic.
Instructor .....	Computer Operator.	Gen Mainte- nance Worker.
Medical Lab Technician.	Word Proc- essor.	Maintenance Electrician.
Systems Ana- lyst.	Accounting Clerk.	Maintenance Carpenter.
Drafter .....	Supply Techn- ician.	Maintenance Painter.
	Switchboard Op/Recep- tionist.	Maintenance Plumber.
	.....	Heavy Equip Mechanic.
	.....	Heating, Refrig, & AC Mechn.
	.....	Welder.
	.....	Mach Mainte- nance Me- chanic.
Transporta- tion/Mate- rial Moving (4.1%)	Handlers/ Cleaners/ Helpers/ La- borers (12.0%)	Service Work- ers (21.0%)
Truck Driver	Stock Clerk ....	Nursing As- sistant.
Heavy Equipment Operator.	Laborer .....	Janitor.
Forestry Equip Oper- ator.	Laborer Ground Maintenance.	Food Service Worker.
Driver Mes- senger.	Housekeeping Aide.	Guard.
	Tree Planter	Court Security Officer.
	.....	Cook.
	.....	Dishwasher.

*Information by Industry.* According to survey data, more than two-thirds of all the contract FTEs were located in five broad industry groups: Engineering, Accounting, Research, Management, and Related Services; Business Services; Health Services; Miscellaneous Repair Services; and Electronic & Other Electrical Equipment & Components, Except Computer Equipment. Specific industries included under each of these groups are listed in Table 3, below.

TABLE 3.—FREQUENTLY LISTED INDUSTRIES WITHIN BROAD SIC INDUSTRY GROUPS

Engineering, Accounting, Research, Management, and Related Services	Business Services	Health Services
Engineering, Architectural, & Surveying Services. Research, Development, & Testing Services/Laboratories. Management & Public Relations Services/Base Maintenance.	Computer Programming, Data Processing, & other Computer Related Services. Miscellaneous Business Services/Guard Services. Services to Dwellings & other Buildings/Cleaning & Maintenance.	Hospitals. Doctor & Dentist Offices & Clinics. Medical & Dental Laboratories.
Miscellaneous Repair Services	Electronic & other Electrical Equipment & Components, except Computer Equipment	
Miscellaneous & Electrical Repair Shops .....	Communications Equipment. Electronic Components & Accessories. Miscellaneous Electrical Equipment & Supplies..	

Also accounting for two percent or more of total FTEs were Eating and Drinking Places, Miscellaneous Services/Weather Forecasting, Transportation Equipment, Special Trade Contractors, and Forestry. Health and Welfare Benefit Level Impact Analysis Purpose and Process Utilizing the survey data described above, and other relevant information,

cost estimates have been developed for each of eight alternative methods for determining health and welfare benefit levels under the McNamara-O'Hara Service Contract Act. These alternatives were published for comment in the Federal Register on May 2, 1996 (61 FR 19769). The cost estimates provided apply to the almost 20,000 SCA-covered contracts reported to be active in FY 1994, by the Federal Procurement Data

System of the General Services Administration. Where required, the number of full-time equivalent positions (FTEs) estimated through the use of survey data, less the estimate of FTEs whose wages and benefits are determined by collective bargaining agreements (CBAs), pursuant to Section 4(c) of the SCA, were utilized in the development of alternative cost estimates. (See Table 4, below.)

TABLE 4.—ESTIMATE OF FTEs BY SCA HEALTH & WELFARE BENEFIT LEVEL

Type*	Contracts			Employment	
	Number	Percent of total	FTEs	Percent of total	Average FTEs
Insurance .....	16,129	80.7	94,048	34.1	5.8
Total Benefits .....	2,858	14.3	117,215	42.5	41.0
4(c) .....	999	5.0	64,537	23.4	64.6
All Types, Total .....	19,986	100.0	275,800	100.0	13.8

\* These levels are currently utilized for the issuance of SCA wage determinations. The "Insurance" level is based upon the cost of life, accident, and health insurance for establishments employing less than 100 workers. The "Total Benefits" level is based upon the cost of insurance, retirement and savings, sick leave, other leave, and other benefits for establishments employing 100 or more workers. Assignment of health and welfare benefit level was based upon wage determination information provided by survey respondents.

Findings

The eight alternative methods being considered to compute SCA health and welfare benefit levels are fully explained in 61 FR 19770, published May 2, 1996. Full understanding of the implications of the following impact analysis requires reference to that document. However, a statement of each alternative in summary follows:

- Alternative I:* Issue a single benefit level based upon ECI data for workers in private industry.
- Alternative II-A:* Issue a single benefit level for each of six major occupational groupings based on ECI data for all workers in each grouping in private industry.

- Alternative II-B:* Issue a single benefit rate adjusted to reflect the difference between the BLS ECI occupational universe and the actual mix of comparable occupations on SCA-covered contracts.
- Alternative II-C:* Issue two benefit levels, based on a combination of the occupational groupings: white collar and production occupations.
- Alternative III:* Issue a single benefit rate for each of four geographic regions based on ECI data for all workers in private industry.
- Alternative IV:* Issue a single fringe benefit rate (as a percent of wages) based on the relationship between the ECI all-private industry "total benefit" rate and the ECI all private industry average wage rate.

- Alternative V-A:* Issue two fringe benefit levels—"Insurance" and "Total Benefits"—(see Table 5 note), based on BLS ECI size-of-establishment data for all workers in private industry. Apply these levels based upon the nature of the contract; i.e., routine contracts receive the Insurance level and the Total Benefits level is provided for large base support contracts, solicitations based on OMB circular A-76, solicitations for highly technical services typically provided by large corporations, and other selected solicitations without regard to size of contract.
- Alternative V-B:* Issue two fringe benefit levels, using the BLS ECI all

industry Total Benefits data for (1) establishments with fewer than 100 workers and (2) establishments with 100 or more workers. Apply these levels based upon the employment size of respective contracts.

These alternatives appear to offer a narrow range of annual health and welfare benefit costs for FTEs whose rates are not determined by collective bargaining agreement (CBA). The range computed is from \$3,551.45 for

Alternative V-A to \$4,100.63 for Alternative II-A. This range of \$549.18 is just 14.1 percent of the average cost of all eight alternatives, \$3,908.74. (See Table 5, below.) Similarly, the total non-CBA estimated cost for all SCA-covered contracts included in the FPDS data base ranges from about \$750 million (V-A) to \$866 million (II-A). As discussed in the Technical Note below, the FPDS system contains the best available data for determining the SCA-covered

universe. However, the data in the system understates the size of the SCA-covered universe. This is due to such factors as exclusion of most contracts under \$25,000, exclusion of contracts of the U.S. Postal Service and the Air Force/Army Exchange System, and possible under-reporting of SCA-covered contracts in the FPDS system, as well as possible errors in determinations as to whether contracts are covered by SCA.

TABLE 5.—ESTIMATION OF ANNUAL COSTS PER FTE OF EIGHT ALTERNATIVE SCA HEALTH & WELFARE METHODS

Alternative	Rank*	Cost Per FTE—1995 data
I. Single Benefit/ECI/Private Industry .....	4	\$3,931.20
II-A. Single Benefit/Six Occupational Groups .....	8	4,100.63
II-B. Single Benefit/ Adjusted to Employment Composition .....	7	4,097.60
II-C. White Collar & Production Workers .....	6	4,095.98
III. Single Rate/Four BLS Regions .....	2	3,676.73
IV. Single Benefit Rate As A Percent of Wages .....	3	3,872.67
V-A. Insurance & Total Benefits Rates/Based upon Size of Establishment/Applied by Nature of Contract .....	1	3,551.45
V-B. Total Benefits Rates/Based upon Size of Establishment/Applied by Employment Size of Contract .....	5	3,943.67

\* Rank, 1 to 8, is from least to most costly. Alternative V-A is the current methodology. Current costs per FTE (\$3,787.05) are based upon the use of Alternative V-A and 1994 ECI data. Note that cost differences between Alternatives II-A, II-B, and II-C, are due to rounding.

Based upon the use of survey data, Alternatives I, IV, and V-B, the first two utilizing single benefit ECI data, approximate the average alternative cost per FTE of about \$3,909. Alternatives II-A, II-B, and II-C, each of which is controlled by occupational criteria, appear to be higher cost options, at about \$4,100. Alternatives V-A and III, determined by size-of-establishment and regional data, are relatively lower cost options, each falling below \$3,700. Note that the relative costs by alternative may change over time as FTE distribution by industry and occupation changes. For example, if the distribution of FTEs by occupation were to change significantly, one would expect corresponding changes in Alternative-II costs.

As noted in the notice of proposed rule making, 61 FR 19770, each alternative offers certain advantages and disadvantages. The cost estimates provided in Table 5 furnish additional information for use in considering how each alternative meets relevant evaluation criteria, such as statistical accuracy, enforceability, administrative feasibility for contractors and contracting agencies, and conformance with statutory requirements and intent.

The notice of proposed rulemaking (60 FR 19770), fully discusses the advantages and disadvantages which the Department of Labor currently perceives in the various alternatives. Comments were solicited on a number of issues to assist in preparing a final regulatory impact analysis and in making a

determination of the alternatives which should be selected, including in particular information regarding administrative and/or recordkeeping burdens; economic and budgetary impact from the point of view of service contractors, service employees and Federal procurement agencies; transitional difficulties if the rule departs from the current methodology; the nature of SCA-covered contracts and the fringe benefit practices typical of service contractors; and the effects on contracting activity and employment.

Without input from the commenters the Department was unable to include in this analysis a discussion of the administrative costs to contractors and to the Government of the various alternatives. Presumably, all alternatives except Alternative V-A would involve the burden of changing fringe benefit programs because of increased or decreased fringe benefit levels. Several alternatives (II-A and -C, IV, and to lesser extent III) may require that employers either provide different fringe benefits to different employees in their work force or make up the difference in cash. Because of this issue, the Department also requested comments on the administrative feasibility and recordkeeping burden of the average cost approach, which would allow employers to average fringe benefits costs across the work force. These issues will be addressed more fully in the final rule, after review of the comments received.

The Department lacks sufficient data to be able to quantify the benefits to the affected workers and to society of providing workers prevailing fringe benefits, or any indirect effects on jobs, productivity, or the Federal deficit. The Service Contract Act was enacted in order to protect service employees from the practices of contractors who undercut prevailing wages and benefits in order to be the low bidder on service contracts. These workers are especially vulnerable since wages and benefits are frequently the predominant cost of service contracts. With regard to fringe benefits in particular, the Department believes that most contractors provide workers benefits only at the level provided on the wage determination. Thus SCA permits workers to receive fringe benefits—including in particular health benefits—which might not otherwise be provided because of the pressure of being the low bidder on the Government contract.

A preliminary regulatory flexibility analysis discussing the anticipated impact of the proposed rule on small businesses was also included in the notice of proposed rulemaking. In most respects the impact on small businesses will be the same as the impact on other businesses, although it is anticipated that any administrative difficulty may be greater for smaller firms. As discussed above, some alternatives appear to have greater administrative difficulty than others. It is anticipated that any impact could be mitigated by

the statutory authority for SCA-covered contractors to discharge their obligations to furnish prevailing fringe benefits by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash. Impact may also be minimized because (1) Such businesses

with SCA-covered contracts are currently required to pay their employees prevailing fringe benefits; and (2) SCA contractors will continue to be reimbursed by the Federal procurement agencies for fringe benefit expenditures.

Tables 6 through 9 provide many of the key statistics required to compute cost estimates for the eight alternative methodologies. Following these tables are detailed presentations of each methodology's data requirements and computations.

TABLE 6.—OCCUPATIONAL GROUP ECI TOTAL BENEFIT RATES & SCA FTE DISTRIBUTION

Occupational group	1995 ECI rates		SCA FTE distribution (percent)
	Total benefits	Wage*	
Professional, Specialty, & Technical .....	\$3.03	\$20.65	13.4
Administrative Support/Clerical .....	1.87	10.47	17.5
Precision Production/Craft/Repair .....	2.71	14.72	32.0
Transportation & Material Moving .....	2.09	11.42	4.1
Handlers/Cleaners/Helpers/ Laborers .....	1.24	8.18	12.0
Service Workers .....	0.65	6.35	21.0

\* Provided for information only.

TABLE 7.—ECI TOTAL BENEFITS RATES, 1995

All Private Industry .....	\$1.89
SCA Occupational Distribution* .....	1.97
White Collar .....	2.37
Production Worker .....	1.79
Northeast .....	2.30
South .....	1.64

TABLE 7.—ECI TOTAL BENEFITS RATES, 1995—Continued

Midwest .....	1.83
West .....	1.84
Estabs of 100 or more Workers .....	2.42
Estabs 1-99 Workers .....	1.29

\* Rate weighted by FTEs in 6 broad occupational groups. Utilized in Alternative II-B.

TABLE 8.—ECI WAGE & SALARY LEVELS\*

Private Industry .....	\$12.25
SCA Weighted .....	12.09

\* Utilized in Alternative IV.

TABLE 9.—SCA EXPENDITURES AND FTES BY REGION

	Expenditures (billions)	Percent of total	Estimate of SCA FTEs *
Northeast .....	2.0	9.9	20,919
South .....	11.9	58.6	123,822
Midwest .....	1.4	6.9	14,580
West .....	5.0	24.6	51,980

\* Excludes workers under CBAs. Source: FPDS universe data.

*Alternative Data Requirements & Cost Computations*

**Alternative I:**

Single benefit level based upon ECI data for workers in private industry.

*Data Requirements*

1995:	
Sick leave	0.14

Other leave	0.05	Hours=2,080/ FTE.
Insurance ...	1.15	
Retirement & savings.	0.52	
Other benefits.	0.03	
	1.89	

*Cost Computations*

Cost per FTE=Hours Worked×Benefit Rate per Hour =2,080×1.89=\$3,931.20

**Alternative II-A**

Single benefit level for each of six major occupational groups.

*Data Requirements*

ECI H&W BENEFIT LEVELS OF OCCUPATIONAL GROUP

Occupational group	Sick leave *	Other leave *	In-surance	Re-tire & sav-ings	Other ben-efits	Total
Prof., spec., & tech. ....	N.P.	N.P.	1.67	0.91	0.05	3.03
Adm. support/clerical .....	N.P.	N.P.	1.22	0.42	0.02	1.87
Precision, prod./craft/repair .....	N.P.	N.P.	1.67	0.82	0.06	2.71
Trans. & material moving .....	N.P.	N.P.	1.31	0.65	0.01	2.09
Handlers, cleaners, & helpers .....	N.P.	N.P.	0.83	0.35	0.01	1.24

ECI H&W BENEFIT LEVELS OF OCCUPATIONAL GROUP—Continued

Occupational group	Sick leave *	Other leave *	In-surance	Re-tire & sav-ings	Other ben-efits	Total
Service workers .....	N.P.	N.P.	0.45	0.11	0.01	0.65

\*Not publishable.

SURVEY DISTRIBUTION OF EMPLOYMENT

Occupational group	Per-cent of total	Number of FTEs	Hours = 2,080.
Professional	13.4	28,314	
Administra-tive.	17.5	36,978	
Precision ....	32.0	67,616	
Transpor-tation.	4.1	8,663	
Handlers ....	12.0	25,356	
Service .....	21.0	44,373	

Sum=\$866,463,937  
Cost per FTE=Total Cost/  
211,300=\$4,100.63

Alternative II-B

Single benefit rate adjusted to employment composition of covered contracts.

Data Requirements

FTEs by Occupational Group: See II-A Data requirements. ECI H & W benefit levels by Occupational Group: See II-A data requirements.

Cost Computations

Total cost=FTEs for each Occupational Group×Corresponding H & W Rate; Sum and Divide by Total FTEs; Multiply Product by Total FTEs and then by Hours.

Occupational group	FTE's	H & W rate	Product
Prof., spec., & technical .....	28,314	3.03	85,791
Admin. support/ clerical .....	36,978	1.87	69,149
Precision prod/ craft/rep. ....	67,616	2.71	183,239
Trans. & mate- rial movers ...	8,663	2.09	18,106

Occupational group	FTE's	H & W rate	Product
Handlers/clean-ers/help-ers/ laborers .....	25,356	1.24	31,441
Service workers	44,373	0.65	28,842
Sum .....			416,568

416,568 divided by 211,300=1.97  
Cost per FTE=1.97×2080=\$4,097.60

Alternative II-C

Reconfigure II-A rates into two groups: white-collar and production occupation rates.

Data Requirements

White Collar=Summation of Professional, Specialists, & Technical Grouping and Administrative Support/ Clerical Grouping.

Production=Summation of Precision, Transportation, Handler, and Service Groupings.

Cost Computations

For each combined group, obtain a weighted rate as in II-B; multiply each combination rate by the FTEs included and the hours worked; then sum the costs for the two combination groups.

Cost Computations

Cost per occupation=FTEs×Hours×Occupation H&W Rate:  
Prof., Specialty, & Tech.—  
\$28,314×2080×\$3.03=\$178,446,154  
Admin. Support & Clerical—  
\$36,978×2080×\$1.87=\$143,829,629  
Precision Prod./Craft & Repair—  
\$67,616×2080×\$2.71=\$381,137,869  
Transp. & Material Moving—  
\$8,663×2080×\$2.09=\$37,659,794  
Handlers, Cleaners, Helpers & Laborers—  
\$25,356×2080×\$1.24=\$65,398,195  
Service Workers—  
\$44,373×2080×\$0.65=\$59,992,296

White collar	FTEs	H & W rate	Product
Prof, Specialists And Technicians .....	28,314	3.03	85,791
Admin. Support/Clerical .....	36,978	1.87	69,149
Sum .....	65,292	.....	154,940

Combined Rate=154,940 divided by 65,292 = 2.37. Cost=2.37×65,292×2080 = 321,863,443.

Production worker	FTEs	H & W rate	Product
Precision Prod./Craft/Rep .....	67,616	2.71	183,239
Transportation And Material Movers .....	8,663	2.09	18,106
Handlers/Cleaners/Helpers/ Laborers .....	25,356	1.24	31,441
Service Workers .....	44,373	0.65	28,842
Sum .....	146,008	.....	261,628

Combined Rate=261,628/146,008 = 1.79.  
Cost=1.79×146,008×2080 = 543,616,986.

Total Cost=321,863,443+543,616,986 = 865,480,429.  
Cost per FTE=865,480,429/211,300 = \$4,095.98.

Note: Alternative II-C also could be computed by weighting in accordance with the national incidence of the various occupational groups. No cost data are provided for this option.

Alternative III

Single benefit rate for each of four Bureau of Labor Statistics regions.

**DATA REQUIREMENTS**  
[FPDS Distribution of SCA-Covered Contract Expenditures by Region \*]

	Percent	Billion	FTEs
Northeast .....	9.9	\$2.0	20,919
South .....	58.6	11.9	123,822
Midwest .....	6.9	1.4	14,580

**DATA REQUIREMENTS—Continued**  
[FPDS Distribution of SCA-Covered Contract Expenditures by Region \*]

	Percent	Billion	FTEs
West .....	24.6	5.0	51,980
Total .....	100.0	20.3	211,301

\*Based upon FPDS universe data.

**H & W Benefit Levels by Region**

	Sick leave	Other leave	Insurance	R & S	Other benefits	Total
Northeast .....	0.19	0.07	1.39	0.62	0.03	2.30
South .....	0.11	0.04	1.01	0.46	0.02	1.64
Midwest .....	0.11	0.04	1.15	0.49	0.04	1.83
West .....	0.15	0.04	1.11	0.51	0.03	1.84

**Cost Computations**

Total Cost=For each Region, FTEs x H & W Rate x Hours, then Sum for Total Cost.

Northeast—  
20,919x2.30x2080=100,076,496.

South—  
123,822x1.64x2080=422,381,606.

Midwest—  
14,580x1.83x2080=55,497,312.

West—  
51,980x1.84x2080=198,937,856  
Sum=776,893,270.

Cost per FTE=776,893,270/  
211,300=\$3,676.73.

**Alternative IV**

Single fringe benefit rate as a percent of wages.

**Data Requirements**

Single total benefits rate=\$1.89 (See Alternative I)

ECI Ave. Wage & Salary for 1995=\$12.25

ECI Ave. Wage & Salary weighted to SCA for 1995=\$12.09

**ECI AVERAGE WAGE WEIGHTED TO SCA OCCUPATIONS DISTRIBUTION**

(1)—Occupational group	(2)—ECI rate	(3)—SCA FTE's	(4)—Product (2)x(3)
Professional, specialty & technical .....	20.65	28,314	584,684
Administrative support/clerical .....	10.47	36,978	387,160
Precision production, craft & repair .....	14.72	67,616	995,308
Transportation & material movers .....	11.42	8,663	98,931
Handlers, cleaners, helpers, & laborers .....	8.18	25,356	207,412
Service workers .....	6.35	44,373	281,769
		211,300	2,555,264

Average SCA  
Wage=2,555,264÷211,300=\$12.09

Total benefits level/Average wages and salaries: 1.89÷12.25=15.4%

**Cost Computations**

Cost per FTE=(Hours×Average SCA Wage) (15.4%)

=(2080×12.09) (.154)  
=\$3,872.67

Note: This alternative may provide for application of the 15.4 percent to each occupational group wage. However, for the purpose of this cost analysis, the 15.4 percent was applied to the all-occupational group average wage.

**Alternative V-A**

“Insurance” and “Total Benefits” levels based upon size-of-establishment ECI data but applied according to the “nature of the contract.”

**Data Requirements**

Insurance level=Insurance for establishments of 1-99 workers=0.82

Total benefits=Summation of Insurance, Sick Leave, Other Leave, Retirement and Savings, and Other Benefits for establishments of 100 workers or more:

Ins ..... 1.45 FTEs by National Health and Welfare Level:

SL ..... 0.17  
OL ..... 0.06 Insurance=94,048

R & S ... 0.69  
OB ..... 0.05 Total Benefits=117,215  
2.42

Source: See Table 4.

**Cost Computations**

Cost: For each level, multiply FTEs×Benefit Rate X Hours; then sum to obtain total costs.

Insurance Cost=FTEs × Benefit Rate × Hour

=94,048 × 0.82 × 2080  
=160,408,269

Total Benefit Cost = FTEs × Benefit Rate × Hours

=117,215 × 2.42 × 2080  
=590,013,424

Cost per FTE=(160,408,269+590,013,424)/  
211,300  
=\$3,551.45

Note: For comparison purposes, 1995 data are utilized. Actual Health and Welfare benefit levels for FY 1996 continue to utilize 1994 ECI data.

Comparable computations utilizing rates currently issued, based upon 1994 ECI data:

Insurance=94,048 × 0.90 × 2080 =  
176,057,856

Total Benefits=117,215 × 2.56 × 2080 =  
624,146,432

Cost per FTE=(176,057,856 +  
624,146,432)/211,300  
=\$3,787.05

## Alternative V-B

Total Benefit levels, based upon size of establishment data, applied by employment size of establishments.

## Data Requirements

## TOTAL BENEFITS

	Establishments of 1-99 workers	Establishments of 100 workers or more
SL .....	0.10	\$2.42
OL .....	0.03	
Ins. ....	0.82	
R&S .....	0.33	
OB .....	0.01	
	\$1.29	

FTEs for contracts not subject to Section 4(c) collective bargaining agreements, 1-99 workers and 100 workers or more:

- Distribution of employment for known 4(c) contracts by establishment size—1-99: 13.6%; 100 & over: 86.4%.
- Obtain distribution of employment for 4(c) contracts by establishment size by multiplying the above percents by 64,537.
- Subtract 4(c) employment for each establishment category from the corresponding employment total.
  - 100 & over: 169,084 - 55,760 = 113,324
  - 1-99: 106,746 - 8,777 = 97,969
- Compute percent distribution of non-4(c) contracts by establishment category:
  - 100 & over: 113,324 - 53.6%
  - 1-99: 97,969 - 46.4%
  - Total: 211,293 - 100.0%

## Cost Computations

Cost = For each size group, FTEs × Corresponding Benefit Rate × Hours  
 Sum two size group totals:  
 100 & over:  
 $113,324 \times 2.42 \times 2080 = 570,427,686$   
 1-99:  $97,969 \times 1.29 \times 2080 = 262,870,421$   
 Cost per FTE =  $(579,427,686 + 262,870,421) / 211,300 = \$3,943.67$

## Technical Note

## Survey Design

Design of the survey benefited from guidance provided by representatives of the U.S. Army, the Bureau of Labor Statistics, the Office of Federal Procurement Policy, and the Federal Procurement Data System. In addition, a pilot test of the survey instruments and procedures was conducted with the assistance of the General Services Administration and the U.S. Air Force. Design of the survey's proportionate, systematic sampling, mailing of the survey materials, and data collection and processing were accomplished by

the University of Tennessee, under contract to the Wage and Hour Division.

## Sample and Population

The most comprehensive universe of detailed information about contracts under the McNamara-O'Hara Service Contract Act is the Federal Procurement Data System (FPDS) operated by the General Services Administration. This automated system is routinely and continually updated by information provided by Federal procurement officers on the contracts they administer. While the FPDS represents a rich source of statistical information, it is recognized that this data base is not all-inclusive. For example, it does not contain data from the U.S. Postal Service, the Air Force/Army Exchange Service, and most contracts under \$25,000. Therefore, since the Impact Analysis is based upon a sample drawn from the FPDS population, estimates made only represent the covered contracts included in the FPDS, and should not be considered as representing the universe of all covered contracts. For this reason, the focus of the Impact Analysis is on the relative differences among costs likely to be generated by each alternative listed. It should be noted that although contracts for which the required wages and fringe benefits were determined by collective bargaining agreements in accordance with Section 4(c) of the SCA were included in the universe and survey to determine contract employment, these contracts were excluded from the cost computations. Since fringe benefits on these contracts are not determined on the basis of prevailing fringe benefits, the cost of these contracts is not affected by the methodology selected.

## Sample Selection

Sample selection was proportional and systematic, by two-digit Standard Industrial Classification (SIC) Major Group. For example, assume that out of \$20 billion in covered contracts, total contract value in SIC 01 was \$100 million. A sample ratio of 0.005 ( $100,000,000 / 20,000,000,000$ ) is computed for SIC 01. If we further assume that the survey sample within the FPDS data base includes a total of 7,000 covered contracts, then  $7,000 \times 0.005$  or 35 would be the number of contracts selected for SIC 01. To randomly select the 35 contracts, first, the total number of FPDS contracts in SIC 01—further assumed to be 105—are arranged sequentially from most to least costly. One of the first three contracts is selected by chance, and then every third contract ( $105/35$ ) is systematically selected.

## Using Sample Data to Estimate the Population

Population estimates were developed by computing the ratio of Full Time Equivalent positions (FTEs) by occupation to total contract value for each SIC Major Group; population estimates by occupation for all SICs were added together to compute occupational population estimates; and population estimates for all occupations were added together to provide industry totals, and the all industry sum.

Continuing the above example, assume that six usable responses to the survey were received in SIC 01. Further assume that the employment data provided on the completed questionnaires revealed FTEs in six occupations. To obtain population estimates for employment in Occupation #1 for SIC 01, the total employment reported on the six questionnaires—8—is divided by the total contract value for the six contracts represented (\$10,000,000). The resulting ratio—0.000008—is then multiplied by the total contract value of all contracts in SIC 01 in the FPDS population—\$100,000,000. The product of this multiplication—80—is the population estimate for Occupation #1, SIC 01. Like calculations for the other five occupations found in SIC 01 would be completed to permit the estimation of the remaining population employment in SIC 01. Once these calculations are completed for all SICs and occupations, employment totals by occupation, industry, and total employment may be obtained.

Note that the survey data were collected by occupational groupings and definitions contained in the *Service Contract Act Directory Of Occupations*, a resource tool utilized in the issuance of Service Contract Act wage determinations, and generally familiar to contractors with covered contracts. For those contractors not familiar with the Directory's standard job titles and definitions, copies were made available. Once the survey data were received and verified, the occupational entries were reclassified into the six Census groups for which health and welfare benefit information is available from the Bureau of Labor Statistics. FTEs represent the number of annual full-time equivalents budgeted to the contract in FY 1994 from the obligated funds for each occupation listed. Since FTEs represent 2080 work hours per year, and sample data were collected and population estimates developed on this basis, and cost estimates developed reflect this definition.

### Data Collection and Response Rate

Collection of survey data was through a network of Federal Procurement Executives and Federal agency Data Collection Coordinators designated for this survey. Survey introductory materials were transmitted to the Federal Procurement Executives in September 1995. In October, all Data Collection Coordinators were provided with a comprehensive package of survey orientation materials. Later in October, and early November, agency procurement offices responsible for contracts selected for the sample were provided with survey questionnaires and materials. From December through March, Data Collection Coordinators were provided with their agency response rates and the list of contracts for which data were not yet received; an additional mailing was made to the Federal Procurement Executives; copies of the *Service Contract Act Directory Of Occupations* were provided on request; and data review and follow-up with submitting offices were carried-out.

The survey usable response rate—20.2 percent—varied somewhat by industry and Federal agency. In general the highest response rates, weighted by value, were for those industries that account for the majority of covered employment. For example, for the four industries that account for over two-thirds of population contract value (SICs 87, 73, 37, and 89), the sample contracts represented in the responses were valued at over \$3.4 billion, or 39.7 percent of the total value in the sample for those industries, and averaged over \$850 million per SIC (and not falling below \$303 million). The responses therefore appear to be similar to the FPDS data in the universe by industry, providing a measure of external validity that appears to limit the potential for bias of the estimates obtained from the sample data. For this reason it is believed that the responses received follow the general industry framework and represent the best picture the Department was able to obtain of employment in the various industries that make up the SCA universe. The process whereby FTE/contract value ratios (by occupational group within industry group), once established, are applied to the *population* (not the sample) to estimate FTE totals (as explained more fully in "Using Sample Data to Estimate the Population", above), is another factor that would tend to limit the potential for bias caused by the low response rate. However, the low response rate does not allow for a reasonable measure of internal validity to be assigned to the sample data.

**Document Preparation:** This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

### List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Signed in Washington, DC, on this 21st day of October, 1996.

Maria Echaveste,

*Administrator, Wage and Hour Division.*

[FR Doc. 96-27402 Filed 10-24-96; 8:45 am]

**BILLING CODE 4510-27-P**

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-208-FOR]

#### Kentucky Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rules; reopening of comment period.

**SUMMARY:** OSM is reopening the public comment period on a proposed amendment to the Kentucky permanent regulatory program (hereinafter referred to as the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to sections of the Kentucky Administrative Regulations (KAR) dealing with the assessment of civil penalties. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., [E.D.T.] November 12, 1996.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Field Office Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding

holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky, 40503. Telephone: (606) 233-2896.

Department of Surface Mining Reclamation, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. Telephone: (502) 564-6940.

#### FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Field Office Director, Lexington Field Office, Telephone: (606) 233-2896.

#### SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 917.11, 917.15, 197.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated July 19, 1994 (Administrative Record No. KY-1304), Kentucky submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. The proposed amendments were announced in the August 9, 1994, Federal Register (59 FR 40503). By letter dated January 11, 1995 (Administrative Record No. KY-1331), Kentucky resubmitted a proposed amendment that completed its regulation promulgation process. OSM reopened the public comment period in the February 17, 1995, Federal Register (60 FR 9314). By letter dated March 2, 1995 (Administrative Record KY-1347), Kentucky submitted additional revisions to the proposed amendment pertaining civil penalty assessment and revegetation. Based on the revised information, OSM reopened the comment period in the April 17, 1995, Federal Register (60 FR 19193). During its review of the proposed revisions, OSM noted that Kentucky did not submit the January 6, 1995, "Procedures for Assessment of Civil Penalties" incorporated by reference in the March 2, 1995, submission. Because the document was not made part of the administrative record, it was not subject