

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



SEP 22 1993

MEMORANDUM NO. 173

MEMORANDUM FOR ALL CONTRACTING AGENCIES OF THE FEDERAL GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM:

MARIA ECHAVESTE
Administrator

SUBJECT:

Adjustment of McNamara-O'Hara
Service Contract Act SCA Wage Rates

This is to inform you that the U.S. Department of Labor has published an administrative variance in today's Federal Register, September 22, 1993, which announces that a one-time 2.8 percent increase in wage rates is being made to all SCA wage determinations not previously updated during FY 1993. Individual and blanket wage determinations are being revised to reflect the wage adjustment.

SCA wage determinations are normally updated based on Bureau of Labor Statistics (BLS) Area Wage Surveys. While this practice continues, this year's transition to the occupational formats of the Fourth Edition of the Service Contract Act Directory of Occupations and the inclusion of new State and local data in many BLS surveys have delayed analyses required before many wage determinations can be revised.

With the approaching fiscal year, this one-time adjustment is being made, based upon BLS Employment Cost Index data, under Section 4(b) of the SCA. This provision authorizes the Secretary to allow reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act in special circumstances where such action is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards.

For those contracting agencies participating in the blanket wage determination program, revised blanket wage determinations will be mailed to the appropriate contracting facility. Upon receipt, the revised wage determinations should be applied in accordance with the requirements of section 4.5(a)(2) of Regulations, 29 CFR Part 4.

We sincerely appreciate your cooperation in assuring that updated SCA wage determinations are appropriately included in procurement actions being taken.

May 8, 1994, would be reduced to \$1 million. FDA has not received any comments or new information that would alter its determination.

Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART—101 FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.30 is amended by adding new paragraph (m) to read as follows:

§ 101.30 Percentage juice declaration for foods purporting to be beverages that contain fruit or vegetable juice.

(m) Products purporting to be beverages that contain fruit or vegetable juices are exempted from the provisions of this section until May 8, 1994. All products that are labeled on or after that date shall comply with this section.

Dated: August 31, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93-23181 Filed 9-21-93; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Labor.

ACTION: Administrative variance from final rules; request for comments.

SUMMARY: This document sets forth an administrative variance being adopted by the Department of Labor as an interim measure for updating, on a one-time basis, determinations of prevailing wages and fringe benefits issued for Federal service contracts under the McNamara-O'Hara Service Contract Act. Public comment on this variance is requested.

DATES: This variance is effective September 22, 1993. Comments are due on or before October 4, 1993.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, 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. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219-5122. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219-8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The McNamara-O'Hara Service Contract Act of 1965 (SCA), as amended, 41 U.S.C. 351 *et seq.*, provides that contracts entered into by agencies of the Federal and District of Columbia governments that are in excess of \$2,500 which are principally for the furnishing of services in the United States through the use of service employees shall contain provisions specifying the minimum monetary wages and fringe benefits to be paid to the various classes of service employees engaged in performing work under such contracts, as determined by the Department of Labor to be prevailing in the locality where the work is performed. Prevailing wage determinations issued under SCA are based for the most part on Area Wage Surveys conducted by the Department

of Labor's Bureau of Labor Statistics (BLS), which are typically conducted on a biennial basis and provide information on wages by Metropolitan Statistical Area (MSA) and occupational classification.

BLS surveys conducted over the past year would ordinarily be used to update SCA wage determinations as each survey is received. Under this process, the wages paid to service workers are based on wage determinations that reflect the most current prevailing wage information, which typically results in adjusted wage rates at the time newly competed contracts commence or when contract options or contract extensions are exercised for new periods of performance. However, due to the complexities and additional data included in many of these new BLS surveys, and other circumstances, the Wage and Hour Division has not been able to complete its required analyses of many such surveys to enable updates to be accomplished on a locality-by-locality basis for all existing wage determinations potentially affected by the new BLS area surveys. Therefore, without taking extraordinary measures, as set forth below, the Department will be unable to provide employees with wage increases consistent with SCA's statutory intent.

Section 4(b) of the SCA authorizes the Secretary to provide reasonable limitations and allow reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act in special circumstances where such action is necessary and proper in the public interest or to avoid the serious impairment of Government business and is in accord with the remedial purpose of the Act to protect prevailing labor standards.

Accordingly, the Department intends to vary the normal procedure for updating certain wage determinations that have not already been updated by BLS area surveys in the current year by adjusting the existing locality-based prevailing wage rates by the BLS-determined Employment Cost Index (ECI) for June 1993, which reflects a national prevailing increase in wages and salaries for civilian workers over the previous year of 2.8 percent. The use of the overall 2.8 percent increase in wage levels will be limited as a temporary, interim measure until subsequent updates of existing wage determinations are accomplished as a result of completing the analyses of occupational wage rates reported in the BLS surveys that have been conducted during the past year. Pursuant to this variance, the wage rates adopted in existing wage determinations for various

classes of service employees, excluding those already updated by BLS area surveys in the current year and those issued pursuant to section 4(c) of the Act that are based on collective bargaining agreements, are to be increased by 2.8 percent on a one-time basis.

Pursuant to section 4(b) of the SCA and § 4.123 of the SCA Regulations, 29 CFR part 4, the Department of Labor hereby adopts a variance to section 2(a) of the Act and Regulations, 29 CFR part 4, including §§ 4.51 and 4.53, to permit temporary updating of SCA wage determinations for the upcoming cycle of procurements in fiscal year 1994, which variance the Secretary of Labor finds to be 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 purpose of the Act to protect prevailing labor standards.

Under § 4.123 of Regulations, 29 CFR part 4, variations of general applicability and legal effect promulgated under section 4(b) of the SCA are published in the Federal Register. This document provides for an administrative variance of temporary effect affecting SCA wage determinations. Moreover, notice-and-comment rulemaking procedures may be waived when an agency for good cause finds that such procedure is impracticable or contrary to the public interest. Given the large number of contracts subject to the SCA which are due updated wage determinations before October 1, 1993, and recognizing that insufficient time exists to update such wage determinations on a timely basis by October 1, 1993, based on the existing BLS area wage surveys that have not yet been analyzed, the Department finds that notice and comment is both impracticable and contrary to the public interest. Public comment is nevertheless invited on this action and will be considered in any subsequent decisions to modify the application of the variance.

Executive Order 12291

This administrative variance relating to agency procedures for updating SCA wage determinations does not constitute a major rule within the meaning of Executive Order 12291 and does not, therefore, require the preparation of a regulatory impact analysis. SCA wage determinations are ordinarily updated based on BLS area surveys. The difference in the determined amounts based on BLS area surveys and the BLS-determined ECI national rate of 2.8 percent would not, in any event, result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Department has determined that this administrative variance relating to agency procedures for updating SCA wage determinations is not a rule under the Regulatory Flexibility Act that will have a significant economic impact on a substantial number of small entities. The variance only temporarily modifies existing procedures for updating prevailing SCA wage determinations, which will be overtaken by the completion of analyses of BLS area surveys and subsequent revision of affected wage determinations. The Secretary of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, no regulatory flexibility analysis is required.

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 20th day of September 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93-23390 Filed 9-21-93; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1222 and 1230

RIN 3095-AA22

Micrographic Records Management

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: NARA is revising its micrographic records management regulations to update micrographic standards, to establish agency micrographic program responsibilities, to modify coverage of temporary records, and to clarify inspection provisions. This rule was developed during a review to identify incomplete or outdated provisions in NARA regulations. This regulation will affect Federal agencies.

EFFECTIVE DATE: October 22, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Call Mary Ann Hadyka or Nancy Allard on 202-501-5110.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on December 2, 1992 (57 FR 57042). Comments were received from a Federal agency, a micrographic industry association, and two companies that manufacture micrographic products. A discussion of these comments follows:

All four commenters expressed concern over the proposal to eliminate aperture cards as a format for permanent and unscheduled records. The Federal agency believed that it would be costly and impractical to refile records that were already in aperture card format and urged that the ban not be applied to records in existence before the final rule is promulgated. The association noted that in many aperture card applications, no 35mm roll film is created because the aperture card camera creates an aperture card, not roll film. Addressing NARA's concern that the paper stock and adhesive used in aperture cards could adversely affect the microfilm image, the two micrographic companies stated that aperture cards meeting the requirements in ANSI IT9.2-1991 would not harm microfilm.

After reviewing the specifications in ANSI IT9.2-1991, we have decided to modify § 1230.12(d)(1)(i) to allow aperture cards that meet ANSI IT9.2-1991 to be used for permanent and unscheduled records.

One commenter had three additional recommendations. The first recommendation was to incorporate in part 1230 provisions for audits and correction cycles to ensure compliance with the regulation. NARA regulations at 36 CFR part 1220, subpart C provide for both NARA and internal agency evaluations of records management programs, including the micrographics program. The second recommendation