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U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON 25

October 15, 1962

MEMORANDUM #42

TO : AGENCIES ADMINISTERING STATUTES REFERRED TO IN 29
CFR, SUBTITLE A, PART 5.

FROM : E. Irving Manger *EM*
Associate Administrator

SUBJECT: Amendments to Parts 3 and 5 of Title 29 of the
Code of Federal Regulations.

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Enclosed is a copy of the amendments to Regulations,
Parts 3 and 5, as published in The Federal Register of October
12, 1962, in order to implement the Contract Work Hours Standards
Act and to make minor miscellaneous changes deemed warranted.

Enclosure

** Published 16 Oct. 1962*

cc: Messrs Saylor, Saylor, Gregory, Davis + Rista
~~BB~~ Contract Work Hours Standards Act

TITLE 29 - LABOR

SUBTITLE A - OFFICE OF THE SECRETARY OF LABOR

PART 3 - CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING AND PUBLIC WORK AND ON BUILDING AND WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

PART 5 - LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION

AMENDMENTS RELATING TO CONTRACT WORK HOURS STANDARDS ACT

Pursuant to section 2 of the Act of June 13, 1934 (40 U.S.C. 276) and Reorganization Plan No. 14 of 1950 (3 CFR 1949-53 Comp., p. 1007), Parts 3 and 5 of Title 29 of the Code of Federal Regulations are hereby amended in the manner indicated below in order to implement the Contract Work Hours Standards Act and to make minor miscellaneous changes.

The amendments shall become effective October 12, 1962.

The procedural and effective date requirements of section 4 of the Administrative Procedure Act do not apply because the amendments are within the exception to section 4 relating to public loans, grants, benefits, and contracts.

The amendments to 29 CFR Parts 3 and 5 are as follows:

1. 29 CFR 3.1 is amended in order to add a reference to the Contract Work Hours Standards Act. As amended, § 3.1 reads as follows:

§ 3.1 Purpose and scope.

The regulations in this part are promulgated to aid in the enforcement of the Copeland Act (40 U.S.C. 276c) and to effect the purpose of the Anti-Kickback Act (18 U.S.C. 874), the Davis-Bacon Act (40 U.S.C. 276a-276a-7), the Contract Work Hours Standards Act (secs. 101-106, 76 Stat. 357-360), and certain other statutes concerning rates of pay for labor.

(sec. 2, 48 Stat. 948, 62 Stat. 862; 40 U.S.C. 276c)

2. 29 CFR 5.1 is hereby amended to substitute a reference to the Contract Work Hours Standards Act for the reference to the Eight Hour Laws and to add references to other recent statutes containing labor standards provisions.

§ 5.1 Purpose and scope.

The regulations contained in this part are promulgated in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration; i.e.:

Davis-Bacon Act (40 U.S. C. 276a-276a-7), and as extended to the Federal-Aid Highway Act of 1956 (23 U.S. C. 113).

Copeland Act (40 U. S. C. 276c).

Contract Work Hours Standards Act (secs. 101-106, 76 Stat. 357-360).

National Housing Act (12 U.S.C. 1701q, 1703, 1708-1711, 1713, 1715a, 1715k, 1715l(d)(4), 1715v, 1751w, 1715e, 1716, 1743, 1747, 1748b, 1748h-2, 1750g).

Hospital Survey and Construction Act (42 U.S.C. 291h)
Federal Airport Act (49 U.S.C. 114)
United States Housing Act of 1937 (42 U.S.C. 1416)
Housing Act of 1949 (42 U.S.C. 1459)
School Survey and Construction Act of 1950 (20 U.S.C. 636)
Defense Housing and Community Facilities and Services Act
of 1951 (42 U.S.C. 1592i)
Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281)
Area Redevelopment Act (sec. 21, 75 Stat. 61)
Delaware River Basin Compact (sec. 15.1, 75 Stat. 714)
(Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. 133z-15;
3 CFR 1949-53 Comp., p. 1007)

3. Paragraph (b) of 29 CFR 5.5 is amended to insert the condition required by the Contract Work Hours Standards Act; paragraphs (c), (d), and (e) thereof are deleted; and paragraph (f) thereof is redesignated paragraph (c). As amended, § 5.5 reads as follows:

§ 5.5 Contract provisions.

* * * * *

(b) The Agency Head shall cause or require the following clauses set forth in subparagraphs (1), (2), and (3) of this paragraph to be included in any contract subject to the Contract Work Hours Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or

involve the employment of laborers or mechanics shall require or permit any laborer or mechanic to be employed on such work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any such calendar day or in excess of forty hours in any such workweek, as the case may be.

(2) Violations: liability for unpaid wages; liquidated damages.

In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages.

The [write in the name of the Federal agency] may withhold or cause to

be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) In any contract required to contain the clause set forth in subparagraph (2) of paragraph (a) of this section, the Federal Agency may modify the clause in subparagraph (3) of this paragraph so as to refer only to the withholding and determination of sums for liquidated damages.

(c) The provisions required to be included in the contracts by this section shall be physically included in the contracts. Incorporation of these provisions by reference is not compliance with the provisions of this section.

(Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S. C. 133z-15; 3 CFR 1949-53 Comp., p. 1007)

4. A new section, designated § 5.7a, is hereby added to 29 CFR Part 5, and reads as follows:

§ 5.7a Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours Standards Act.

(a) Findings and recommendations by head of agency. Whenever the head of an agency finds that the sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours Standards Act is incorrect or that the contractor or subcontractor

violated inadvertently the provisions of the Contract Work Hours Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, he may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages necessarily include findings with respect to any wage underpayments for which the liquidated damages are determined.

(b) Findings by the Department of Labor. The recommendations of the head of an agency submitted to the Department of Labor under paragraph (a) of this section shall be reviewed initially by the officer in charge of the Division of Wage Determinations. Whenever such officer concurs in the findings and recommendations of the head of the agency, he shall issue an order to that effect, which shall be the final action of the Department of Labor with respect to the issues involved. Whenever such officer makes findings differing from those of the head of the agency, his decision shall be transmitted forthwith to the Solicitor for review. The decision and order of the Solicitor shall be the final action of the Department of Labor with respect to the issues involved.

(Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 133z-15; 3 CFR 1949-53 Comp., p.1007)

5. 29 CFR 5.10 is amended to read as follows:

§ 5.10 Department of Labor investigations.

The Secretary shall cause to be made such investigations as he deems necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Head of an agency for an appropriate adjustment in liquidated damages assessed under the Contract Work Hours Standards Act. Federal agencies, contractors, subcontractors, sponsors, applicants or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigation. Any authorized representative of the Department of Labor under this section is deemed a person designated to aid in the enforcement of the overtime standards required by the Contract Work Hours Standards Act within the meaning of section 104(a) of that Act. A report of the investigation of such representative shall be transmitted to proper officers of the United States, any territory or possession, as the case may be, as required by the aforesaid section 104(a).

6. A new section, designated § 5.12a, is added to 29 CFR Part 5, and reads as follows:

§ 5.12a Limitations, variations, tolerances, and exemptions under the Contract Work Hours Standards Act.

(a) General. Upon his own initiative or upon the request of any Federal agency, the Secretary may provide under section 105 of the Contract Work Hours Standards Act reasonable limitations and allow

variations, tolerances, and exemptions to and from any or all provisions of that Act whenever he finds such action to be necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) Exemptions. Pursuant to section 105 of the Contract Work Hours Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(2) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organizations of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831i).

(Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 133z-15; 3 CFR 1949-53 Comp., p. 1007)

Signed at Washington, D. C., this 11th day of October, 1962.

/s/ W. Willard Wirtz
Secretary of Labor

Published in the Federal Register Oct. 12, 1962.