

U.S. DEPARTMENT OF LABOR  
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

WASHINGTON, D.C. 20210

Date: December 3, 1969

Reply to  
Attn of: OCE

Subject: MEMORANDUM # 85



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

Re: Priority in Payment of Unpaid Wages and  
Liquidated Damages From Withheld Funds.

Enclosed for your information is a copy of Release D-1228 which  
contains amended Part 5.14(d) as it appeared in the Federal Register  
of November 22, 1969.

*Francis J. Costello*  
Francis J. Costello  
Assistant Administrator

Enclosure

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**PART 5 (29 CFR) – LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS STANDARDS ACT)**

*(Reprinted from the Federal Register of November 22, 1969)*

**Title 29—LABOR**

**Subtitle A—Office of the Secretary of Labor**

**PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS STANDARDS ACT)**

**Variation Concerning Priority in Payment of Unpaid Wages and Liquidated Damages From Withheld Funds**

Pursuant to authority in section 105 of the Contract Work Hours Standards Act (40 U.S.C. 331), having found it necessary and proper in the public interest to prevent injustice, I hereby amend § 5.14(d) of Title 29 of the Code of Federal Regulations by adding a new subparagraph as set forth below in order to establish a priority of payments for unpaid wages to affected employees and liquidated damages to the United States.

The provisions of 5 U.S.C. 553, which require notice of proposed rule making, opportunity for public participation, and delay in effective date are not applicable because these rules relate to public con-

tracts, loans, grants, and benefits. Further, I do not believe that such procedures would serve a useful purpose here. Accordingly, this amendment shall become effective immediately.

As amended, § 5.14(d) reads as follows:

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

(d) Variations. \* \* \*

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(Sec. 105, 76 Stat. 359; 40 U.S.C. 331)

Signed at Washington, D.C., this 18th day of November 1969.

GEORGE P. SHULTZ,  
Secretary of Labor.

[F.R. Doc. 69-13921; Filed, Nov. 21, 1969;  
8:49 a.m.]