

## SUBCHAPTER I—AIRPORTS [NEW]

[Reg. Docket No. 6120; Amdt. 151-4]

## PART 151—FEDERAL AID TO AIRPORTS [NEW]

## Miscellaneous Amendments

By rule-making action dated January 3, 1964 the Secretary of Labor amended Parts 1, 3, and 5 of Title 29 of the Code of Federal Regulations. These amendments were published in the FEDERAL REGISTER of January 4, 1964 (29 F.R. 95, et seq.).

Part 151 [New] of the Federal Aviation Regulations (FAR) incorporates provisions of 29 CFR Part 5, and hence must be amended to reflect those changes made by the Secretary of Labor which are pertinent to airport project contracts. Provisions of Part 5, in turn, incorporate provisions of Part 3 of Title 29 which were also amended.

The Secretary of Labor amended the wage determination provisions, 29 CFR 5.3 and 5.4. Section 151.47 (c) and (d) of the FAR which reflects these provisions is being amended accordingly.

The required contract provisions of 29 CFR 5.5 are reflected in § 151.49 of the FAR. Amended 29 CFR 5.5(a) requires that the contract provisions which it contains be inserted in full in the contracts to which § 151.49 applies. The amendments in this section of the Department of Labor Regulations require corresponding amendments in the introductory paragraph of § 151.49(a) and in § 151.49 (a) (5), (6), (8), (9), (10), (11), (12), (13), (15), and (16).

Section 151.49(b) is amended to reflect the amended exemption provisions, 29 CFR 5.14(a) (3) and (4). Amended § 151.49(c) reflects the changes in the provisions respecting adjustment of liquidated damages, 29 CFR 5.8 (a), (b), (c) and 5.14(c) (3).

Section 151.57(b) is amended to reflect a change in 29 CFR 5.6(a) (1).

For clarity and ease of cross-reference the subparagraph headlines provided in the Department of Labor Regulations are being added to the corresponding provisions of Part 151.

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

In consideration of the foregoing, effective September 7, 1964, Part 151 [New] of Title 14, Chapter I, Code of Federal Regulations, is amended in the following respects:

A. Section 151.47 is hereby amended by revising paragraphs (c) and (d) to read as follows:

§ 151.47 Performance of construction work: Letting of contracts.

(c) *Procedure for wage determinations by the Secretary of Labor.* At least 60 days before the intended date of advertising or negotiating, as described in paragraph (b) of this section, the sponsor shall send to the District Airport Engineer of FAA, completed Department of Labor Form DB-11 or DB-11(a), whichever is appropriate. Only those classifications which will be needed in the performance of the work shall be checked. Entries such as "entire schedule" or "all applicable classifications" are not permissible. Additional classifications needed which are not on the form may be typed in the blank spaces or on an attached separate list. Classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the industry, shall not be listed. Except in areas where the wage patterns are clearly established, the Form shall be accompanied by any pertinent wage payment information which may be available (29 CFR 5.3(a) (1) and (3), and (c)).

(d) *Use and effectiveness of wage determinations of the Secretary of Labor.* (1) Wage determinations remain effective for 120 calendar days from the date of the determination, and thereafter are void. If it appears that a determination may expire between bid opening and award, the sponsor shall so advise the FAA at the earliest possible time. If he wishes a new request for wage determination to be made and if any pertinent circumstances have changed, he shall submit a new Form DB-11 or DB-11(a) and accompanying information. If he claims that the determination expires before award and after bid opening due to unavoidable circumstances, he shall submit proof of the facts which he claims support a finding to that effect. (29 CFR 5.4(a))

(2) Any wage determination made by the Secretary of Labor may be modified by him prior to the award of the contract or contracts for which it was sought, but if the proposed contract is awarded on the basis of public advertisement and open competitive bidding, modifications received by the FAA later than 10 days before the opening of bids are not effective. A modification in no case will continue in effect beyond the effective period of the wage determination to which it relates. The Administrator sends any modification to the sponsor as soon as possible. If it is effective, it must be incorporated in the invitation for bids, by issuing an addendum to the specifications or otherwise. (29 CFR 5.4(b))

B. Paragraph (a) of § 151.49 is hereby amended—

1. By amending the introductory paragraph to read:

§ 151.49 Performance of construction work: Contract Requirements.

(a) *Contract provisions.* Each sponsor entering into a construction contract

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for a project shall, in addition to any other provisions necessary to insure completion of the work in accordance with the grant agreement, insert in full the following provisions (or modifications thereof approved by the Administrator in advance) in the contract (29 CFR 5.5(a), 5.6(a)(1):

2. By amending subparagraph (5) by inserting "*Minimum wages.* (i)" after the designation "(5)" and adding a subdivision reading as follows:

(i) The sponsor shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the sponsor to the FAA for approval and transmittal to the Secretary of Labor. In the event that the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for final determination. (29 CFR 5.5(a)(1))

3. By amending subparagraph (6) by inserting "*Withholding*" after the designation "(6)".

4. By amending subparagraph (8) by inserting "*Payrolls and payroll records.* (i)" after the designation "(8)" and amending the second paragraph of subparagraph (8) to read:

(i) The contractor will submit weekly a copy of all payrolls to the sponsor for transmission to the FAA. The copy shall be accompanied by a statement indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) shall satisfy this requirement. The contractor will make his employment records available for inspection by authorized representatives of the sponsor, the FAA and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. (29 CFR 5.5(a)(3))

5. By amending subparagraph (9) to read as follows:

(9) *Apprentices.* Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, prior to using any

apprentices on the contract work. (29 CFR 5.5(a)(4))

6. By amending subparagraph (10) to read as follows:

(10) *Compliance with Copeland Regulations* (29 CFR Part 3). The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference. (29 CFR 5.5(a)(5))

7. By amending subparagraph (11) to read as follows:

(11) *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 in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be. (29 CFR 5.5(c)(1))

8. By amending subparagraph (12) by changing the citation at the end from "(29 CFR 5.5(b)(2))" to "(29 CFR 5.5(c)(2))".

9. By amending subparagraph (13) by changing the citation at the end from "(29 CFR 5.5(b)(3))" to "(29 CFR 5.5(c)(3))".

10. By amending subparagraph (15) to read as follows:

(15) *Subcontracts.* The contractor will insert in each of his subcontracts the clauses contained in paragraphs [insert designations of 14 paragraphs of contract corresponding to subparagraphs (1), (3) through (14), and (16) hereof], and also a clause requiring the subcontracts to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made. (29 CFR 5.5(a)(6), 5.5(c)(4))

11. By amending subparagraph (16) to read as follows:

(16) *Contract termination; debarment.* A breach of paragraphs [insert designations of paragraphs of contract corresponding to subparagraphs (5) through (15) hereof] may be grounds for termination of the contract. A breach of paragraphs [insert designations of paragraphs of contract corresponding to subparagraphs (5), (6), (8), (10), and (15) hereof] may also be grounds for debarment as provided in 29 CFR 5.6 of the Regulations of the Secretary of Labor. (29 CFR 5.5(a)(7))

C. By amending paragraph (b) of § 151.49 to read as follows:

(b) *Exemption of certain contracts.* Subparagraphs (5) through (15) of paragraph (a) of this section do not apply to prime contracts of \$2000 or less (29 CFR 5.14(b)(3)).

D. By amending paragraph (c) of § 151.49 to read as follows:

(c) *Adjustment in liquidated damages.* A contractor or subcontractor who has become liable for liquidated damages under subparagraph (12) of paragraph (a) of this section and who claims that the amount administratively determined as liquidated damages under sec. 104(a) of the Contract Work Hours Standards Act is incorrect or that he vi-

olated inadvertently the provisions of the Contract Work Hours Standards Act notwithstanding the exercise of due care, may—

(1) If the sum determined is in excess of \$100, apply to the Administrator for a recommendation to the Secretary of Labor that an appropriate adjustment be made or that he be relieved of liability for such liquidated damages (29 CFR 5.8(a) and (b)); or

(2) If the sum determined is \$100 or less, apply to the Administrator for an appropriate adjustment in such liquidated damages or for release from liability for such liquidated damages. (29 CFR 5.8(c), 5.14(c)(3))

E. By amending paragraph (b) of § 151.57 to read as follows:

§ 151.57 *Grant payments: General.*

(b) *Contractor's certifications.* Each application that involves work performed by a contractor must contain, in the contractor's certification in the periodic cost estimate, a statement that "there has been full compliance with all labor provisions included in the contract identified above and in all subcontracts made under that contract", and, in the case of a substantial dispute as to the nature of the contractor's or a subcontractor's obligation under the labor provisions of the contract or a subcontract, and additional phrase "except insofar as a substantial dispute exists with respect to these provisions". (29 CFR 5.6(a)(1))

(Federal Airport Act, 49 U.S.C. 1101 through 1119, and 29 CFR Part 5, as amended)

Issued in Washington, D.C., on July 31, 1964.

N. E. HALABY,  
Administrator.

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