

ACTION: Final rule.

SUMMARY: This amendment incorporates the new labor standards involving apprenticeship and training programs which must be employed in airport aid grant construction contracts. The amendment was made necessary by changes in the Department of Labor regulations.

EFFECTIVE DATE: December 27, 1977.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Section 22 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1722) sets forth requirements pertaining to the minimum rates of wages to be paid for work on projects for airport development. That legislation has been implemented by § 152.55(a) of the Federal Aviation Regulations (14 CFR 152.55(a)). The minimum rates are those established by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5).

The Secretary of Labor has revised Part 5 of the regulations (29 CFR Part 5) which govern the use of apprentices and trainees in government contracts in an amendment to Title 29 of the Code of Federal Regulations (40 FR 30480; July 21, 1975). The amendment deleted Part 5a (29 CFR Part 5a), Labor Standards For Ratios of Apprentices and Trainees To Journeymen On Federal and Federally Assisted Construction, from the regulations, while incorporating many of the provisions of that part in the republished Part 5. The amended Department of Labor regulations require that all training programs have prior approval in order for contractors in Federal or Federally assisted construction projects to pay trainees a trainees wage rate (§ 5.2(c)(2)) and not the wage rate of a journeyman. They also specify that only an allowable ratio of trainees to journeymen be employed, and that those employed receive the proper wage. All records of wages paid must be maintained and available for inspection by the contracting officer or a representative of the Wage and Hour Division of the Department of Labor (§ 5.5). Finally, revised Part 5 mandates that in all Federal or Federally assisted construction contracts, apprentices, trainees, and journeymen be utilized in conformity with equal opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

This amendment to Part 152, Appendix H incorporates the amended regulations of the Department of Labor. All references to Part 5a of the Department of Labor regulations have been deleted, and Paragraph D has been revised in accordance with the Department of Labor regulations applicable to apprentices and trainees. Editorial changes in the Department of Labor regulations re-

quire the FAA to amend Paragraph K and subparagraphs A(4) and C(2) of Appendix H to conform those paragraphs to the applicable Department of Labor regulations.

Subparagraph H(2) has been deleted because the Regulations of the Secretary of Labor do not require the insertion of this subparagraph in a Federal or federally funded construction contract.

Paragraph I has been revised to update the references therein, to incorporate the current occupational and health standards regulations of the Department of Labor.

Section 152.55(a) of the Federal Aviation Regulations (14 CFR 152.55(a)) allows the Director, Airports Service, to amend any provision of Appendix H as required to conform Appendix H to the applicable regulations of the Department of Labor. The FAA has transferred the duties and responsibilities of the Director, Airports Service, to the Assistant Administrator, Office of Airports Programs. This amendment revises § 152.55(a) to reflect that change.

The principal authors of this document are James Burnett, Office of Airports Programs, and Richard J. Burton, Office of the Chief Counsel.

Since this amendment relates to grants made under the Airport Aid Program and since the revised contract provisions are required to be inserted in each construction contract by section 22 of the Airport and Airway Development Act of 1970, as amended, and the regulations of the Secretary of Labor, I find that notice and public procedure thereon are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Accordingly, Part 152 of the Federal Aviation Regulations (14 CFR Part 152) is amended, effective December 27, 1977, as follows:

§ 152.55 [Amended]

1. By deleting the phrase "Director, Airports Service" and substituting therefore the phrase "Assistant Administrator, Office of Airports Programs" in the second sentence in § 152.55(a).

2. By amending Appendix H by deleting the phrase "and 5a" in the introductory paragraph and revising paragraphs A(4), C(2), D, H, I, and K to read as follows:

A. Minimum wages.

(4) If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: *Provided, however,* The Secretary of Labor has found, upon written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program (29 CFR 5.5(a)(1)(iv)).

[4910-13]

[Docket No. 17498; Amdt. No. 13-1]

PART 152—AIRPORT AID PROGRAM**Labor Contract Provisions**

AGENCY: Federal Aviation Administration (FAA), DOT.

AAP

C. Payrolls and basic records.

(2) The contractor will submit weekly a copy of all payrolls to the (insert sponsor's name) for availability to the FAA, as required by § 152.59(a). The copy shall be accompanied by a statement signed by the employer or his agent 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 Cope-land regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a) (1) (iv) (see subparagraph (4) of paragraph A above), shall satisfy this requirement. The prime contractor shall be responsible for submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the FAA and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the (insert sponsor's name) for availability to the FAA, that their employment is pursuant to an approved program and shall identify the program (29 CFR 5.5(a) (3) (ii)).

D. Apprentices and trainees.

(1) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. 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 a trainee as defined in subparagraph (2) of this paragraph or is not registered or otherwise employed as stated 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 to the (insert sponsor's name) or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination (29 CFR 5.5(a) (4) (i)).

(2) *Trainees.* Except as provided in 29 CFR 5.15 trainees will not be permitted to work at

less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than 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 the (insert sponsor's name) or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved (29 CFR 5.5(a) (4) (ii)).

(3) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this paragraph shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30 (29 CFR 5.5(a) (4) (iii)).

(4) *Application of 29 CFR 5.5(a) (4).* On contracts in excess of \$2,000 the employment of all apprentices and trainees as defined in 29 CFR 5.2(c) shall be subject to the provisions of 29 CFR 5.5(a) (4) (see paragraph D (1), (2), and (3) above).

H. Withholding for unpaid wages and liquidated damages. The FAA may withhold or cause to be withheld, from any monies 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 paragraph G of this provision (29 CFR 5.5(c) (3)).

I. Working conditions. No contractor may require any laborer or mechanic employed in the performance of any contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards (29 CFR Part 1926) and other occupational and health standards (29 CFR Part 1910) issued by the Department of Labor.

K. Contract termination debarment. A breach of clause A, B, C, D, E, or J may be grounds for termination of the contract, and for debarment as provided in § 5.6 of the Regulations of the Secretary of Labor as codified in 29 CFR 5.6 (29 CFR 5.5(a) (7)).

(Sec. 22, Airport and Airway Development Act of 1970, as amended 49 U.S.C. 1722), § 1.47(f) (1), Regulations of the Office of the Secretary of Transportation, (49 CFR 1.47 (f) (1).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by

Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on December 16, 1977.

LANGHORNE BOND,
Administrator.

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