

SUBCHAPTER I—AIRPORTS [NEW]

[Reg. Docket No. 1914: Amdt. 151-1]

PART 151—FEDERAL AID TO AIRPORTS [NEW]

Contract Work Hours; Overtime Wages

The purpose of this amendment is to incorporate into Part 151 [New] of the Federal Aviation Regulations the overtime wage regulations issued by the Secretary of Labor, 29 CFR Part 5, as amended (27 F.R. 10119, 28 F.R. 4251), issued under the Contract Work Hours Standards Act of August 13, 1962, 40 U.S.C. 327, et seq., as they apply to construction contracts for airport projects undertaken with Federal aid granted under the Federal Airport Act, as amended (49 U.S.C. 1101 through 1119).

The Contract Work Hours Standards Act, in pertinent part, applies to any contract for work financed, in whole or in part, by loans or grants from the United States or any agency thereof under any statute of the United States providing wage standards for such work (sec. 103(a)(3)). As it applies to contracts for Federal-aid Airport projects, it forbids the contractor or subcontractor for any part of such work to require or permit any laborer or mechanic to be employed on the work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless the worker receives compensation at a rate not less than one and one-half times his basic rate of pay for all excess hours worked (sec. 102(a) and (b)(1)). In case of a violation, it makes the contractor and subcontractor not only liable to the affected laborer or mechanic for his unpaid wages but also liable to the United States for liquidated damages at the rate of \$10 for each calendar day of violation. In addition, the Act provides for the withholding, from any moneys payable on account of work performed by the contractor or subcontractor, of such sums as have been "administratively determined" as owing by the contractor or subcontractor for unpaid wages and liquidated damages (secs. 102(b)(2), 104(a)). It further provides that the Administrator of the Federal Aviation Agency may, on the contractor's appeal, review the determination of liquidated damages and either affirm it or recommend to the Secretary of Labor that he adjust or forgive the liquidated damages where it is found that the sum determined is incorrect or that the contractor or subcontractor has violated the applicable provision inadvertently and notwithstanding the exercise of due care on his part (sec. 104(c)). The Act authorizes the Secretary of Labor to provide reasonable limitations and, by regulation, to allow variations, tolerances and exemptions to and from the provisions in the Act (sec. 105).

The Secretary of Labor implemented the Contract Work Hours Standards Act by amendments to his regulations, 29 CFR Part 5, requiring the Administrator, among other agency heads, to cause these overtime wage provisions to be included in any contract subject to that Act, but exempting small contracts from its coverage. This amendment to Part 151 [New] accordingly directs the inclusion of the required provisions, by sponsors, in construction contracts financed by grants under the Federal Airport Act.

For convenience and clarity each subparagraph of § 151.49(a) which contains provisions required by regulations of the Secretary of Labor is amended by adding, at the end thereof, the citation of the Department of Labor rule on which it is based.

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 August 17, 1963, Part 151 [New] of Title 14, Chapter I, Code of Federal Regulations, is amended in the following respects:

1. Subparagraphs (11), (12), (13), and (14) of § 151.49(a) are redesignated as subparagraphs (14), (15), (16), and (17), respectively, and new subparagraphs (11), (12), and (13) are added to read:

(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 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. As used in this paragraph of this contract, the terms "laborers" and "mechanics" include watchmen and guards (29 CFR 5.5(b)(1)).

(12) *Violations; liability for unpaid wages; liquidated damages.* In the event of any violation of paragraph ----- [insert designation of paragraph of contract corresponding to subparagraph (11) of this paragraph] of this contract, 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 for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of said paragraph ---- of this contract, 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 said paragraph ---- of this contract (29 CFR 5.5(b)(2)).

(13) *Withholding for unpaid wages and liquidated damages.* The Federal Aviation 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 paragraph --- [insert designation of paragraph of contract corresponding to subparagraph (12) of this paragraph] of this contract (29 CFR 5.5(b)(3)).

2. The following subparagraphs of § 151.49(a) are amended by adding citations at the end of their present texts, as follows:

To subparagraph (5) add—(29 CFR 5.5(a)(1)).

To subparagraph (6) add—(29 CFR 5.5(a)(2)).

To subparagraph (8) add—(29 CFR 5.5(a)(3)).

To subparagraph (9) add—(29 CFR 5.5(a)(4)).

To subparagraph (10) add—(29 CFR 5.5(a)(5)).

To subparagraph (15) add—(29 CFR 5.5(a)(6)).

To subparagraph (16) add—(29 CFR 5.5(a)(7)).

3. Section 151.49(a)(15) is amended to read:

(15) The contractor will insert in each of his subcontracts the provisions set forth in paragraphs ----, ----, ----, ----, ----, ----, ----, ----, ----, ----, ----, ----, ----, ----, and ---- hereof [insert designations of 14 paragraphs of contract corresponding to subparagraphs (1), (3) through (14), and (16) of this paragraph].

4. The phrase "subparagraph (12)" in § 151.49(a)(16) is amended to read "subparagraph (15)".

5. Section 151.49(b) is amended to read:

(b) Subparagraphs (5) through (13), (15), and (16) of paragraph (a) of this section do not apply to construction contracts of \$2000 or less.

6. A new § 151.49(c) is added to read:

(c) 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 determined as liquidated damages is incorrect or that he violated those provisions inadvertently and notwithstanding the exercise of due care on his part may apply to the Administrator for a recommendation to the Secretary of Labor that an appropriate adjustment in liquidated damages be made or that he be relieved of liability therefor, pursuant to § 5.7a of 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, as amended. (27 F.R. 10119; 28 F.R. 4251)

This amendment is issued under the authority of the Federal Airport Act (49 U.S.C. 1101 through 1119), the Contract Work Hours Standards Act (40 U.S.C. 327-332), and 29 CFR Part 5, as amended.

Issued in Washington, D.C., on August 12, 1963.

N. E. HALABY,
Administrator.

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Airports