§ 4.56 Review and reconsideration of wage determinations.

(a) Review by the Administrator. (1) Any interested party affected by a wage determination issued under section 2(a) of the Act may request review and reconsideration by the Administrator. A request for review and reconsideration may be made by the contracting agency or other interested party, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Any such request must be accompanied by supporting evidence. In no event shall the Administrator review a wage determination or its applicability after the opening of bids in the case of a competitively advertised procurement, or, later than 10 days before commencement of a contract in the case of a negotiated procurement, exercise of a contract option or extension. This limitation is necessary in order to ensure competitive equality and an orderly procurement process.

(2) The Administrator shall, upon receipt of a request for reconsideration, review the data sources relied upon as a basis for the wage determination, the evidence furnished by the party requesting review or reconsideration, and, if necessary to resolve the matter, any additional information found to be relevant to determining prevailing wage rates and fringe benefits in a particular locality. The Administrator, pursuant to a review of available information, may issue a new wage determination, may cause the wage determination to be revised, or may affirm the wage determination issued, and will notify the requesting party in writing of the action taken. The Administrator will render a decision within 30 days of receipt of the request or will notify the requesting party in writing within 30 days of receipt that additional time is necessary.

(b) Review by the Administrative Review Board. Any decision of the Administrator under paragraph (a) of this section may be appealed to the Administrative Review Board within 20 days of issuance of the Administrator’s decision. Any such appeal shall be in accordance with the provisions of part 8 of this title.

Subpart C—Application of the McNamara-O’Hara Service Contract Act

INTRODUCTORY

§ 4.101 Official rulings and interpretations in this subpart.

(a) The purpose of this subpart is to provide, pursuant to the authority cited in §4.102, official rulings and interpretations with respect to the application of the McNamara-O’Hara Service Contract Act for the guidance of...
the agencies of the United States and the District of Columbia which may enter into and administer contracts subject to its provisions, the persons desiring to enter into such contracts with these agencies, and the contractors, subcontractors, and employees who perform work under such contracts.

(b) These rulings and interpretations are intended to indicate the construction of the law and regulations which the Department of Labor believes to be correct and which will be followed in the administration of the Act unless and until directed otherwise by Act of Congress or by authoritative ruling of the courts, or if it is concluded upon reexamination of an interpretation that it is incorrect. See, for example, *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); *Roland Co. v. Walling*, 326 U.S. 657 (1946); *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 507–509 (1943); *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 128 (1940); *United States v. Western Pacific Railroad Co.*, 352 U.S. 59 (1956). The Department of Labor (and not the contracting agencies) has the primary and final authority and responsibility for administering and interpreting the Act, including making determinations of coverage. See *Woodside Village v. Secretary of Labor*, 611 F. 2d 312 (9th Cir. 1980); *Nello L. Teer Co. v. United States*, 348 F.2d 533, 539–540 (Ct. Cl. 1965), cert. denied, 383 U.S. 904; *North Georgia Building & Construction Trades Council v. U.S. Department of Transportation*, 389 F. Supp. 58, 63 (N.D. Ga. 1975) (Davis-Bacon Act); *Curtiss-Wright Corp. v. McLucas*, 364 F. Supp. 750, 769–72 (D.N.J. 1973); and 43 Atty. Gen. Ops. (March 9, 1979); 53 Comp. Gen. 647, 649–51 (1974); 57 Comp. Gen. 501, 506 (1978). (c) Court decisions arising under the Act (as well as under related remedial labor standards laws such as the Walsh-Healey Public Contracts Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Fair Labor Standards Act) which support policies and interpretations contained in this part are cited where it is believed that they may be helpful. On matters which have not been authoritatively determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). In order that these positions may be made known to persons who may be affected by them, official interpretations and rulings are issued by the Administrator with the advice of the Solicitor of Labor, as authorized by the Secretary (Secretary’s Order No. 16–75, Nov. 21, 1975, 40 FR 55913; Employment Standards Order No. 2–76, Feb. 23, 1976, 41 FR 9216). These interpretations are a proper exercise of the Secretary’s authority. *Idaho Sheet Metal Works v. Wirtz*, 383 U.S. 190, 208 (1966), reh. den. 383 U.S. 963 (1966). References to pertinent legislative history, decisions of the Comptroller General and of the Attorney General, and Administrative Law Judges’ decisions are also made in this part where it appears they will contribute to a better understanding of the stated interpretations and policies.

(d) The interpretations of the law contained in this part are official interpretations which may be relied upon. The Supreme Court has recognized that such interpretations of the Act “provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it” and “constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance” (*Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). Interpretations of the agency charged with administering an Act are generally afforded deference by the courts. (*Griggs v. Duke Power Co.*, 401 U.S. 424, 433–34 (1971); *Udall v. Tallman*, 380 U.S. 1 (1965).) Some of the interpretations in this part relating to the application of the Act are interpretations of provisions which appeared in the original Act before its amendments in 1972 and 1976. Accordingly, the Department of Labor considers these interpretations to be correct, since there were no amendments of the statutory provisions which they interpret. (*United States v. Davison Fuel & Dock Co.*, 371 F.2d 705, 711–12 (C.A. 4, 1967).)
§ 4.102 Administration of the Act.

As provided by section 4 of the Act and under provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 38, 39), which are made expressly applicable for the purpose, the Secretary of Labor is authorized and directed to administer and enforce the provisions of the McNamara-O’Hara Service Contract Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act. The Secretary is also authorized to make reasonable limitations and to make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act (except section 10), but only in special circumstances where it is determined that such action is necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purposes of the Act to protect prevailing labor standards. The authority and enforcement powers of the Secretary under the Act are coextensive with the authority and powers under the Walsh-Healey Act. Curtiss Wright Corp. v. McLucas 364 F. Supp. 750, 769 (D NJ 1973).

§ 4.103 The Act.


§ 4.104 What the Act provides, generally.

The provisions of the Act apply to contracts, whether negotiated or advertised, the principal purpose of which is to furnish services in the United