

McNAMARA-O'HARA
SERVICE
CONTRACT
ACT
COMPLIANCE
GUIDE

Disclaimer

The Department of Labor is providing this Compliance Guide and related materials to facilitate access to information on the McNamara-O'Hara Service Contract Act. This Guide is intended as general information only and does not carry the force of legal opinion. The *Federal Register* and the *Code of Federal Regulations* remain the official sources for regulatory information published by the Department of Labor.

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REFERENCE MATERIALS

The McNamara-O'Hara Service Contract Act

(<http://www.dol.gov/whd/recovery>)

Title 29, Code of Federal Regulations (C.F.R.): Parts 4, 531, 541, and 785

(<http://ecfr.gpoaccess.gov>) or (<http://www.wdol.gov>)

U.S. Department of Labor, Prevailing Wage Resource Book, October 2010

(<http://www.dol.gov/whd/recovery/pwrb/toc.htm>)

I. SCOPE AND INTENT

THE MCNAMARA-O'HARA SERVICE CONTRACT ACT (SCA) (41 U.S.C. §§ 6701-6707)

SCA Legislative History and Purpose

- ◇ The SCA became effective in January 1966. The law was amended in 1972 and 1976. It is the most recent of the government contract labor standards laws administered by the Wage and Hour Division (WHD).
- ◇ The SCA was enacted to, in effect, “close the gap” in labor standards protection between supply contracts subject to the Public Contracts Act and construction contracts subject to Davis-Bacon Act. (Services were the only remaining category of federal procurement not covered by labor standards laws.)
- ◇ The SCA was intended to remove wages as a factor in the competition for federal service contracts by requiring the payment of not less than the locally prevailing wage rates and fringe benefits, or in certain cases, the wage rates and fringe benefits contained in a predecessor contractor's collective bargaining agreement (section 4(c) of the Act). (Labor costs are often the predominant factor affecting bids on federal service contracts being awarded to the lowest bidder.)

SCA Requirements

- ◇ The SCA applies to most contracts entered into by the United States or the District of Columbia that are principally for the furnishing of services through the use of service employees.
- ◇ The major SCA labor standards provisions are:
 - ◇◇ Prevailing minimum wage and fringe benefit compensation standards for service employees working on contracts over \$2,500, and Fair Labor Standards Act (FLSA) minimum wages for contracts of \$2,500 or less.
 - ◇◇ Recordkeeping and posting requirements as contained in 29 CFR 4.6.

◇◇ Safety and health protection.

◇ WHD has sole SCA enforcement responsibility of the wage and fringe benefit requirements of the SCA, while the Occupational Safety and Health Administration (OSHA) enforces the safety and health provisions of the SCA.

This Guide has been created to assist service contractors on the performance of their contracts.

It is not a legal document. The source references stated within are to be used in conjunction with this Guide.

Compliance

Recent experience has shown certain types of noncompliance recur in SCA transportation contracts. In all cases, the contractors made an after-the-fact wage payment to their employees because:

- ◇ they paid a rate below the rate stipulated in the contract;
- ◇ they paid a "trip rate" which was insufficient to cover the stipulated rate and fringe benefits;
- ◇ they failed to pay for down time and start-up time needed for breakdown, dock waiting time, safety checks, gassing and warm-up of the vehicle;
- ◇ they failed to separately state fringe benefits; and
- ◇ they paid certain owner-operators as though they were not subject to the SCA.

II. SCA COVERAGE -- GEOGRAPHICAL SCOPE, OWNER-OPERATORS

Geographical Scope

- ◇ The SCA applies only to contracts to furnish services within the “United States.”

- ◇◇ “United States” is defined as any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnston Island.

- ◇◇ Excluded from the definition of “United States” is any other territory under the jurisdiction of the United States and any United States base or possession within a foreign country.

41 U.S.C. § 6701(4) and 6702(a)(3); 29 C.F.R. § 4.112.

- ◇ Contracts for services inside and outside the “United States”:

- ◇◇ A service contract to be performed entirely outside of the “United States” is not covered by the SCA.

- ◇◇ Services to be performed exclusively on a vessel operating in international waters outside the geographic areas named above are not covered under the SCA.

- ◇◇ A service contract to be performed partly inside and partly outside the “United States” is covered by the SCA and therefore must include the requisite SCA contract provisions. SCA labor standards apply to the work under that contract that is performed within the “United States,” but do not apply to the work under that contract that is performed outside the United States.

- ◇◇ Employees must be paid the proper SCA rates for all hours of worked performed within the “United States” even if those same

employees or other employees perform some work outside of the “United States.”

29 C.F.R. § 4.112; Field Operations Handbook § 14b04(c).

◇ Nationality of the employees is not relevant to SCA coverage. All employees, regardless of country of citizenship or residency, who perform service work on an SCA-covered contract within the “United States” are covered under the SCA and must be paid proper SCA rates.

SCA Coverage

- ◇ Categories of contracts to which the SCA does not apply include, among others, contracts for:
 - ◇◇ carriage of freight where published tariffs rates are in effect;
 - ◇◇ direct services to a Federal agency by an individual;
 - ◇◇ transportation by common carriers on regularly scheduled routes or via standard commercial services;

41 U.S.C. § 6702(b); 29 C.F.R. § 4.123(d) and (e).

- ◇ Independent contractors, including subcontractors, typically are covered under the SCA.
 - ◇◇ The SCA defines “service employee” as any individual engaged in the performance of the contract, without regard to the status of the contractual relationship. 41 U.S.C. § 6701(3).
 - ◇◇ A person’s status as an “owner-operator” or an “independent contractor” is immaterial in determining coverage under the SCA. 29 C.F.R. § 4.155.

Exemption from SCA for Business Owners

- ◇ The SCA excludes from its coverage individuals employed in a bona fide executive, administrative, or professional capacity under 29 C.F.R. Part 541, the regulations implementing the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1). 41 U.S.C. § 6701(3) (C); 29 C.F.R. § 4.113(a) (2).

- ◇◇ An individual’s status under these exemptions is a fact-dependent inquiry and does not turn on the individual’s title.
- ◇◇ These exemptions are to be narrowly construed.
- ◇◇ The entity asserting the exemption has the burden of proving it.
- ◇ A “business owner” qualifies as an exempt executive employee. 29 C.F.R. § 541.101. Four conditions must be met to be considered a “business owner”:
- ◇◇ (1) the entity employing the employee must constitute an enterprise (i.e., a business, not just an individual who works for himself);
- ◇◇ (2) the employee has a bona fide 20-percent equity interest in the enterprise;
- ◇◇ (3) the employee must be employed by the enterprise; and
- ◇◇ (4) the employee must be actively engaged in the management of the enterprise.¹
- ◇ An ownership interest is not alone sufficient.

An individual who has a 20 percent or greater interest in a business, but who is required to work long hours, makes no management decisions, supervises no one, and has no authority over personnel does not qualify for the executive exemption.

III. WAGES REQUIRED UNDER THE SCA

- ◇ SCA wage determinations apply to Federal Government and District of Columbia contracts, the principal purpose of which is to furnish services through the use of service employees. Each such contract in excess of \$2,500 (and the related bid solicitations) are required to contain provisions that specify the monetary wages and fringe benefits to be paid service employees engaged in the contract’s performance. 41 U.S.C. § 6703(1).
- ◇ The SCA wage determinations, issued by the WHD, set forth the prevailing wages and fringe benefits that prime contractors and subcontractors must pay

¹ Section 541.102 provides a non-exhaustive list of activities that qualify as “management.”

service employees working on covered contracts.

- ◇◇ Wages – the minimum monetary compensation required to be paid to the various classes of service employees – are usually listed in the wage determination as hourly wage rates. 29 C.F.R. § 4.166.
- ◇◇ Fringe benefits are defined in the SCA, 41 U.S.C. § 6703(a)(2), as follows: Such fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor.

The various fringe benefits listed in the SCA are illustrative of those which may be included in the wage determination. Which fringe benefits are included in a wage determination depends on the type of wage determination to be issued and the evaluation of source data used to develop the wage determination. Fringe benefits may be provided as monetary compensation (cash payments) in lieu of providing the listed benefits, provided certain records are kept. Contractors may not include the cost of fringe benefits or equivalents furnished as a credit toward the hourly wage.

- ◇◇ Payroll is required not less often than semi-monthly for all covered service employees. Contractors and subcontractors are not required to pay their service employees hourly; they may pay such employees on a daily, weekly, or other time basis, or by piece or task rates, so long as the method used, when converted to an hourly rate each workweek, is at or above the rate established in the wage determination. 29 C.F.R. §§ 4.165, 4.166
- ◇ The U.S. Transportation Command Center will, in consultation with the WHD, identify the required rates and attach them to the contract.
- ◇ Operating expenses of a personally owned or leased vehicle cannot be borne by an owner-operator or lease-operator covered by the SCA if such vehicle is to be used in conjunction with the contract and if bearing such expenses would reduce the employee's hourly wage rate below the statutory minimum.

◇ The SCA requirements for contractors flow down to any subcontractors with which the prime contractor contracts. The prime contractor remains jointly and severally liable with any subcontractor for any SCA violation. The prime contractor is required to include the SCA contract clauses and any wage determinations in all subcontracts. 29 C.F.R. § 4.6.

IV. TRAVEL AND WAIT TIME

Consider the interpretations of 29 C.F.R. Part 785 before you apply the points below. Contact your local Wage and Hour office for further information.

The principles that apply in determining whether time spent in travel is working time or not depend upon the kind of travel involved.

Points to Remember:

◇ Time spent by an employee in travel as part of his/her principal activity, such as travel from job site to job site during the workday, must be counted as time worked.

◇ Time worked includes: fueling the truck; time at a meeting place to receive instructions; the pick up or delivery of a trailer at a designated place or to pick up tools; and the travel from that designated place to the work place.

◇ Scheduled periods during which an employee is completely relieved from duty and which are long enough to enable him/her to use the time effectively for his/her own purpose are not hours worked.

◇ If a driver reaches his/her destination and, while waiting for the items to be unloaded or for the return trip, is required to take care of his/her employer's property (i.e., fueling, waiting for a load, maintenance & unscheduled down time), then that waiting time must be considered hours worked.

◇ Driving a contract vehicle to the job site or a point designated in the contract is hours worked.

Examples of covered and non-covered government contracts work on a given trip:

Home to job site (**no**).....Job site to home (**no**)
(normal home to work)

Home to work shop (**no**)Work shop to job site (**yes**)
Job site...job site... job site (**yes**)

V. RECORDS REQUIRED

SCA contractors and subcontractors are required to keep certain records. The following are requirements that should be noted by contractors and subcontractors:

- ◇ Service contractors are required to maintain the name, address, social security number, classification, rate of monetary wages paid, fringe benefits provided, and the number of daily and weekly hours worked, of each service employee.
- ◇ Any deductions, rebates, or refunds from the total daily or weekly compensation of an employee must be included in the records maintained.
- ◇ The records required for the SCA are similar to those required by the more generally applicable FLSA.
- ◇ Contractors should request a list of all of employees of the predecessor contractor from the contracting agency. This list should contain the anniversary dates of the employees on the contract.
- ◇ Records are to be maintained for three (3) years from the completion of work on a contract.
- ◇ Records are to be made available for inspection and transcription by authorized representatives of the Wage and Hour Division.
- ◇ Records must be kept for each service employee performing work under the contract for each workweek during the performance of the contract.
- ◇ Each service contract should have a separate record of the covered work performed by the service employee.

See 29 C.F.R. § 4.6(g)(1).

VI. QUESTIONS AND ANSWERS²

Q. How does DOL determine minimum prevailing wage at different locations?

² WHD has included in these questions and answers a portion of the questions and answers that were previously provided to Transcom.

A. In accordance with 29 C.F.R § 4.51, the minimum monetary wages and fringe benefits set forth in SCA wage determinations are based on all available pertinent information as to wage rates and fringe benefits being paid in the relevant locality at the time the determination is made. Such information is most frequently derived from area surveys made by the Bureau of Labor Statistics. Based on that data, the prevailing minimum wage rates are established the classifications listed on the wage determination.

Q. Would the wage determination applicable to the location where the trip originates or where the trip terminates be used?

A. The wage determination generally will be determined based on where the work (trip) starts, *i.e.*, the "head-out" point. For example, if the designated route is from Baltimore, Maryland to Dover, Delaware, and the driver is required to pick up a load in Baltimore and deliver it to Dover, the Baltimore rates would be applicable. If the driver then is required to transport a load from Dover to Baltimore, the Dover rate of pay listed on the wage determination would be applicable to that work.

Q. Is it necessary to inform the service employees working on a contract of the wage rates and fringe benefits attached to the contract?

A. Each service employee commencing work on the contract must be notified of the minimum monetary wage and of any fringe benefits required to be paid pursuant to the contract; or the contractor shall post the wage determination attached to the contract. 29 CFR § 4.6(e).

Q. Is a contractor allowed to make "cash" fringe benefit payments?

A. Yes, provided that such cash amount is equivalent to the cost of the fringe benefit required. 29 CFR § 4.177 (a) (1) & (d).

Q. How long is a contractor allowed to wait to pay its employees between pay periods?

A. Each employee, subject to the Act, shall be paid unconditionally by the contractor all wages due free and clear no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. 29 CFR § 4.6 (h).

Q. Would carriers be exempt from overtime rates?

A. Note that the SCA does not have an overtime requirement. The Contract Work Hours and Safety Standards Act (CWHSSA) is the applicable statute here. SCA covered contracts may be subject to the overtime provisions of CWHSSA. CWHSSA requires the payment of overtime for hours worked in excess of 40 hours in a week on covered SCA contracts in excess of \$100,000 for all laborers and mechanics, including guards and watchmen. However, CWHSSA contains a

provision that excludes from coverage any contract for transportation by land, sea, or air. Accordingly, CWHSSA appears not to apply to Transcom types of contracts.

The FLSA also contains an overtime requirement for hours worked in excess of 40 in a workweek. However, section 13(b)(1) of the FLSA provides for an exemption from the FLSA's overtime pay requirements for certain motor carriers. FLSA regulations regarding the motor carrier exemption are set forth at 29 C.F.R. Part 782. WHD's Fact Sheet #19 outlines this exemption and is available on the WHD's Website. Similarly, section 13(b)(2) of the FLSA provides an exemption from the FLSA's overtime pay requirements for certain railroad carriers. For general information regarding overtime compensation, please see FLSA regulations at 29 C.F.R. Part 778 and WHD's Fact Sheet #23, available on the WHD's Website.

Q. Under what circumstances would "off-duty" time be considered compensable hours for a long-haul team driver? Would not this inquiry be very fact-specific, depending in part upon how much the driver is able to use the time to his or her own benefit and for his or her own purposes?

A. Under the SCA, compensable hours, commonly referred to as hours worked, are determined following the FLSA regulations at 29 C.F.R. Part 785, which are incorporated into the SCA regulations through 29 C.F.R. § 4.178. WHD's Fact Sheet # 22 provides general information concerning what constitutes hours worked under the FLSA and is available on WHD's Website. The determination of hours worked tends to be a fact-specific inquiry. However, as a general principle, off-duty time, including waiting time and on-call time is compensable unless the employee is completely relieved from duty and such time periods are long enough to permit the employee to be able to use the time effectively for his or her own purposes. 29 C.F.R. § 785.14-785.17. The compensability of rest and meal periods is governed by the regulations at 29 C.F.R. § 785.18-785.19. Sleep time is governed by the regulations at 29 C.F.R. § 785.20-785.22. See also 29 C.F.R. § 785.33-785.41 concerning travel time. Additional information concerning compensable time is set forth in Section IV of this Guide.

Q. Is a part-time employee working a regular scheduled workweek of only 16 hours entitled to 40 hours of paid vacation? Would he/she be paid for a full eight-hour day when holiday pay is an issue?

A. A part-time employee working a regular scheduled workweek of 16 hours would only be entitled to 16 hours per week of vacation time or its equivalent each year, if he/she has met the qualifications. In the case of holidays, the part-time employee (in this instance) would be entitled to two-fifths (i.e., a pro-rata share) of the holiday pay due full-time employees. See 29 CFR § 4.176 (a) (1) and (2).

Q. Does DOL have any form of template or other tool to assist owner operators and/or the carriers that utilize them to confer their compensation packages from the current "cents-per-mile" system to hourly rates in order to determine SCA compliance?

A. Contracting agencies are required to include applicable wage determinations in covered service contracts; the wage determinations then "flow down" through – and must be included in – all covered subcontracts. A wage determination will contain the hourly wage rates and fringe benefits applicable to the various classifications of service employees on the contract. Carriers thus are responsible for ascertaining the applicable hourly wage rates by consulting the appropriate wage determination included in the relevant contract or subcontract. DOL does not have a "template" for converting compensation packages from a cents-per-mile method to an hourly rate method. Rather, contractors are responsible for ensuring that their service employees are compensated at the hourly prevailing wage rate on the wage determination.

(Consistent with the SCA's implementing regulations, the term "contractor" as used in this response includes subcontractors, see 29 C.F.R. § 4.1a, and the term "service employee" encompasses owner-operators and other independent contractors. Under the SCA, a person's status as an owner-operator or independent contractor is immaterial in determining coverage under the SCA, and all such persons performing the work of service employees must be compensated in accordance with the SCA. 29 C.F.R. § 4.155

Q. How are independent owner-operator expenses treated as part of the calculation of an effective rate per hour? What categories of expenses must be included?

In determining how certain costs (such as fuel and maintenance costs) should be considered for purposes of determining whether the applicable prevailing wage rate has been paid, contractors should note that costs that are primarily for the benefit or convenience of the contractor must be paid by the contractor, not by the service employee, if payment of such costs by the service employee would reduce the employee's hourly wage rate below the applicable SCA prevailing wage. Determining whether particular expenses are primarily for the benefit or convenience of the contractor requires balancing the benefits to the contractor versus the benefits to the owner-operator or other service employee.

As a general matter, deductions from the wages required under the SCA, other than those specifically authorized by law (*e.g.*, tax withholdings), are not permitted. See 29 C.F.R. § 4.165(a)(1). The regulations allow, however, for deductions for the reasonable cost or fair value of "board, lodging, or other facilities," as defined in 29 C.F.R. Part 531, in situations where "such facilities are customarily furnished to employees, for the convenience of the employees, not primarily for the benefit of the employer, and the employees' acceptance of them is voluntary and uncoerced." See 29 C.F.R. §§ 4.167 and 4.168(a). Thus, if the board, lodging, or other facilities are primarily for the benefit or convenience of the contractor, the costs of providing these items are properly the expense of the contractor and cannot be deducted from SCA wages or treated as a bona fide fringe benefit. See 29 C.F.R. §§ 4.167 and 4.171(e); see also 29 C.F.R. § 4.168(b) (the cost of maintaining and furnishing uniforms is a business expense of the employer under specified conditions). Further, the SCA's wage requirements are not met when a

service employee “kicks back” any portion of his wages, directly or indirectly, to the employer or to another for the employer’s benefit. See 29 C.F.R. § 4.168(a).

Part 531, incorporated in part into the SCA regulations at 29 C.F.R. § 4.167, makes clear that the cost of furnishing facilities found by the Administrator to be primarily for the benefit or convenience of the contractor cannot be included in computing wages. See 29 C.F.R. § 531.3(d)(1). The Part 531 regulations provide numerous examples of “facilities” primarily for the benefit or convenience of the employer, including tools of the trade and other materials and services incidental to carrying on the employer’s business. See 29 C.F.R. §§ 531.3(d)(2) and 531.32(c). The examples in the regulations indicate that the balancing of the benefits is “based on whether the employment-related cost is a personal expense that would arise as a normal living expense.” See *Arriaga v. Florida Pac. Farms, LLC*, 305 F.3d 1228, 1243 (11th Cir. 2002).

In light of these principles, a contractor may not require its service employees to bear the cost of items or services that are for the primary benefit or convenience of the contractor if bearing such costs would reduce the service employee's hourly wage rate below the SCA minimum. Thus, for example, a Transcom contractor who enters into an SCA-covered agreement must either pay the expenses incurred by a covered owner-operator in connection with performance of the subcontract or compensate the owner-operator at a rate sufficient to ensure the owner-operator receives an SCA-compliant hourly wage rate after he has paid those expenses. Such expenses include, but are not limited to fuel, oil, and maintenance. In circumstances when the precise amount of expenses cannot be determined, it may be appropriate to use a fleet-wide average per-mile expense rate, based upon a contractor’s own information or generally available and recognized industry expense information.

Q. If a contractor has only one or two part-time employees on the contract, is it still required to keep records on them? If so, what type?

A. Yes. As explained more fully in Section V of this Guide, records such as name, addresses, social security number, work classification, rate of monetary wages paid, fringe benefits provided, number of daily and weekly hours worked are to be maintained on all service employees. See 29 CFR § 4.6(g) (i) - (vi).

Q. If DOL discovers a single lane where a TPS team is inadequately compensated, yet on other lanes the team is adequately compensated, thereby “averaging out” as adequate pay, has a violation occurred? In other words, does DOL look for a pattern of noncompliance before declaring the carrier is in noncompliance with SCA, or is a single instance enough to get a carrier in trouble?

A. 29 C.F.R. § 4.6 (b)(1) provides that each service employee employed in the performance of a service contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages for all hours worked on the covered SCA contract.

29 C.F.R. § 4.166 provides that the standard by which monetary wage payments are measured under the Act is the wage rate per hour. An hourly wage rate is not, however, the only unit for payment of wages that may be used for employees subject to the Act. Employees may be paid on a daily, weekly, or other time basis, or by piece or task rates, so long as the measure of work and compensation used, when translated or reduced by computation to an hourly basis each workweek, will provide a rate per hour that will fulfill the statutory requirement. Whatever system of payment is used must ensure that each hour of work in performance of the contract is compensated at not less than the required minimum rate. Failure to pay for certain hours at the required rate cannot be transformed into compliance with the Act by reallocating portions of payments made for other hours which are in excess of the specified minimum.

To protect the rights of covered workers under the SCA, DOL regulations provide for a number of remedies when compliance is in question. An important remedy is the withholding of contract funds sufficient to satisfy alleged wage underpayments pending resolution of a wage dispute. Some violations may be resolved through a written agreement with the contractor that identified violations will not be repeated and the identified violations have been corrected.

Q. What is the range of punishment options available to DOL should a compliance audit yield SCA violations?

A. To protect the rights of covered workers under the SCA, DOL regulations provide for a number of remedies when compliance is in question. An important remedy is the withholding of contract funds sufficient to satisfy alleged wage underpayments pending resolution of a wage dispute. Withholding action may be necessary to protect the employees' interests. The SCA contract clause set forth at 29 C.F.R. § 4.6(i) and FAR 48 C.F.R. § 52.222-41(k) directs the contracting officer to withhold or cause to be withheld from the prime contractor sums an appropriate DOL official requests or sums the contracting officer decides may be necessary to pay underpaid employees of the contractor or subcontractor(s). Such funds may be withheld from any federal contract with the prime contractor. (*See also* 29 C.F.R. § 4.187.) The same contract clause also stipulates that in the event of failure to pay the employees wages or fringe benefits due under the SCA, the agency may also suspend further payments until the SCA violations have ceased. Pursuant to 29 C.F.R. § 4.6(i), 29 C.F.R. § 4.190, and FAR 48 C.F.R. § 52.222-41(k), a contract may be cancelled by the contracting agency if any violation(s) are found of any of the SCA contract stipulations, and additional costs of completing the contract work under another arrangement may be charged to the original contractor. After a hearing, any contractor or person responsible for SCA violations may be debarred from receiving government contracts or performing as a subcontractor for a period of three years, unless the responsible DOL official (Administrative Law Judge or, if appealed, the Administrative Review Board) recommends relief from debarment because of "unusual circumstances."

VII. ENFORCEMENT

The Wage and Hour Division of the Department of Labor enforces and administers SCA along with many other labor laws. Compliance investigators, acting as

authorized Wage and Hour representatives, have the authority to conduct investigations and gather all data necessary to determine compliance.

Violators of the contract stipulations required by Section 2(a) (1), 2(a) (2), or 2(b) of the Act are subject to Section 3(a) of the Act that any violations shall render the party responsible for the amounts of any deductions, rebates, refunds or underpayments (which includes non-payment of compensation due to an employee engaged on the performance of the contract).

The Department of Labor may request that payment due on a contract be withheld in cases where it is necessary to pay restitution to the employees.

Enforcement procedures can be found online at wdol.gov under the library section in our prevailing wage resource manual.

For further information, you may contact the Branch of Government Contracts Enforcement, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue, N.W., Room S-3006, Washington, D.C. 20210 and by telephone at (202) 693-0064.

VIII. GLOSSARY

The McNamara-O'Hara Service Contract Act (SCA) requires payment of prevailing wage rates and fringe benefits on contracts to provide services for the federal government.

Service employees are persons engaged in the performance of a contract other than any person employed in a bona fide executive, administrative, or professional capacity as set forth in 29 CFR Part 541; and service employees also include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

Wage determination (WD) includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of sections 2(a) and/or 4(c) of the Act for application to the employment in a locality of any class or classes of employees in the performance of any contract in excess of \$2,500 which is subject to provisions of the McNamara-O'Hara Service Contract Act of 1965.

Contractor (interchangeable with employer) includes any subcontractor whose subcontracts are subject to the provisions of the Act. (The U.S. Government, its

agencies, and instrumentalities are not contractors, subcontractors, or joint employers for purpose of compliance with the provisions of the Act).

Administrator means the Administrator of the Wage and Hour Division or authorized representative.

Wage and Hour Division (WHD) is an organizational unit in the Department of Labor to which is assigned the functions of the Secretary of Labor under the McNamara-O'Hara Service Contract Act 1965, as amended.

Fringe benefits include, but are not limited to, health, welfare, pensions, holidays & vacations. Fringe benefits do not include any benefits required by any other Federal, State or local law (e.g., workers' compensation, unemployment insurance).

For additional information, please visit <http://www.dol.gov/whd/govcontracts>.