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U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

September 7, 1962

MEMORANDUM # 40

TO: AGENCIES ADMINISTERING STATUTES REFERRED TO IN
29 CFR, SUBTITLE A, PART 5.

FROM: Charles Donahue *CD*
Solicitor

SUBJECT: Contract stipulations implementing the Contract
Work Hours Standards Act.

The Contract Work Hours Standards Act, which is title I of the Work Hours Act of 1962 (72 Stat. 357-60), a copy of which is attached, will become effective on October 12, 1962. This law requires payment to workers employed on most Federal and Federally assisted projects at not less than one and one-half times the basic rate of pay for all hours worked in excess of eight in a day and forty in a week.

Comprehensive regulations implementing the Contract Work Hours Standards Act will be issued by this Department in the near future. In the interim, to enable the contracting agencies to prepare appropriate and uniform overtime provisions for inclusion in contracts to be awarded on and after October 12, 1962, the enclosed stipulations, which will be published as a part of our regulations, are furnished at this time for your guidance and use.

It should be noted that all covered contracts executed on and after October 12, 1962, are subject to the provisions of the Contract Work Hours Standards Act, with one exception: contracts let on and after that date pursuant to invitations for bids which were outstanding on August 13, 1962. Federal Contracts coming within this exception will continue to be subject to the Eight Hour Laws. Contracts containing the Eight Hour Laws provisions shall continue to be awarded up to October 12, 1962, and Eight Hour Laws provisions may continue to be inserted in advertisement for bids issued after August 13, 1962, where the contract will be awarded prior to October 12, 1962. Effective October 12, 1962, the Eight Hour Laws are repealed except for their continued applicability in contracts previously awarded, or subsequently awarded if the award is pursuant to an invitation for bids issued prior to August 13, 1962.

(W. H. ...)
(D. ...)

The attached stipulations should be included in any contract which may require or involve the employment of laborers or mechanics upon a public work of the United States, of any territory, or of the District of Columbia, and in any other contract which may require or involve the employment of laborers or mechanics if such contract is one (1) to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party, or (2) which is made for or on behalf of the United States, any agency or instrumentality thereof, any territory, or the District of Columbia, or (3) which is a contract for work financed in whole or in part by loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof under any statute of the United States providing wage standards for such work.

It should be noted that the attached stipulations should not be included in a contract where the assistance from the United States or any agency or instrumentality is only in the nature of a loan guarantee, or insurance, or to contracts included within the exemptions contained in Section 103(b) of the Contract Work Hours Standards Act.

These stipulations should also not be included in contracts which the Senate indicated (on page 4 through 8 inclusive of its report, to accompany H.R. 10786, Report No. 1722, 87th Congress, 2nd Session, dated July 11, 1962), should be exempted by the Secretary of Labor under authority of Section 105 of the act. These contracts include certain Commodity Credit Corporation contracts and Tennessee Valley Authority contracts. Appropriate exemptions in conformity with the intent of the Senate as expressed in its report will be promulgated in the amended regulations to be issued.

Attachment

CONTRACT STIPULATIONS-CONTRACT WORK HOURS STANDARDS ACT

The following stipulations should be included in any contract subject to the Contract Work Hours Standards Act:

CONTRACT WORK HOURS STANDARDS ACT-OVERTIME COMPENSATION

(a) Overtime requirements.

No contractor or subcontractor contracting for any part of the contract work 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 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, whichever is the greater number of overtime hours.

(b) Violations; liability for unpaid wages; liquidated damages.

In the event of any violation of the clause set forth in paragraph (a), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor or subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause (a), 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 forty hours in a workweek without payment of the overtime wages required by the clause (a).

(c) Withholding for unpaid wages and liquidated damages.

The Federal agency for which the contract work is done or by which financial assistance for the work is provided may withhold, or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, the full amount of wages required by the contract and such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in clause (b).

(d) Insertion of clauses in subcontracts.

The contractor agrees to insert the foregoing clauses (a), (b), and (c), and this clause (d), in all subcontracts.