

Project Manual Part - 7

28 Procedures for Determination of Wage Rates

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Title 29 – Labor

Subtitle A – Office of the Secretary of Labor

Part 1 Procedures for Predetermination of Wage Rates

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PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; and the laws listed in appendix A of this part.

Link to an amendment published at 88 FR 57722, Aug. 23, 2023.

Source: 48 FR 19533, Apr. 29, 1983, unless otherwise noted.

Editorial Note: Nomenclature changes to part 1 appear at 61 FR 19984, May 3, 1996.

§ 1.1 Purpose and scope.

Link to an amendment published at 88 FR 57722, Aug. 23, 2023.

- (a) The procedural rules in this part apply under the Davis-Bacon Act (946 Stat. 1494, as amended; 40 U.S.C. 276a–276a–7) and other statutes listed in appendix A to this part which provide for the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the

District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. appendix), except those assigned to the Administrative Review Board (see 29 CFR part 7), have been delegated to the Deputy Under Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

- (b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in appendix A, and any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.
- (c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 49823, Dec. 4, 1985]

§ 1.2 Definitions.⁽¹⁾

Link to an amendment published at [88 FR 57723, Aug. 23, 2023](#).

- (a)
 - (1) The prevailing wage shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.
 - (2) In determining the prevailing wages at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3 of this part.
- (b) The term area in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.
- (c) The term Administrator shall mean the Administrator of the Wage and Hour Division, U.S. Department of Labor, or authorized representative.
- (d) The term agency shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under title 1 of the State and Local Fiscal Assistance Act of 1972.
- (e) The term Wage Determinations OnLine (WDOL) shall mean the Government Internet Web site for both Davis-Bacon Act and Service Contract Act wage determinations available at <http://www.wdol.gov>. In addition, WDOL provides compliance assistance information. The term will also apply to any other Internet Web site or electronic means that the Department of Labor may approve for these purposes.

[48 FR 19533, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 70 FR 50894, Aug. 26, 2005; 82 FR 2223, Jan. 9, 2017]

⁽³⁾ These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

§ 1.3 Obtaining and compiling wage rate information.

Link to an amendment published at [88 FR 57723](#), Aug. 23, 2023.

For the purpose of making wage determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

- (a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements.
- (b) The following types of information may be considered in making wage rate determinations:
 - (1) **Statements showing wage rates paid on projects.** Such statements should include the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, whether or not the projects are Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.
 - (2) **Signed collective bargaining agreements.** The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.
 - (3) Wage rates determined for public construction by State and local officials pursuant to State and local prevailing wage legislation.
 - (4) In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.
 - (5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).
 - (6) Any other information pertinent to the determination of prevailing wage rates.
- (c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in § 1.3(b) of this part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of § 1.2(a) of this part.
- (d) In compiling wage rate data for building and residential wage determinations, the Administrator will not use data from Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements unless it is determined that there is insufficient wage data to determine the prevailing wages in the absence of such data. Data from Federal or federally assisted projects will be used in compiling wage rate data for heavy and highway wage determinations.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 4506, Jan. 31, 1985]

§ 1.4 Outline of agency construction programs.

Link to an amendment published at [88 FR 57724, Aug. 23, 2023](#).

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1671-DOL-AN.

§ 1.5 Procedure for requesting wage determinations.

Link to an amendment published at [88 FR 57724, Aug. 23, 2023](#).

- (a) The Department of Labor publishes general wage determinations under the Davis-Bacon Act on the WOOD Internet Web site. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, *Provided*, That questions concerning its use shall be referred to the Department of Labor in accordance with [§ 1.6\(b\)](#).
- (b)
 - (1) If a general wage determination is not available, the Federal agency shall request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Form SF-308 to the Department of Labor at this address: U.S. Department of Labor, Wage and Hour Division, Branch of Government Construction Contract Wage Determination, Washington, DC 20210. In preparing Form SF-308, the agency shall check only those classifications that will be needed in the performance of the work. Inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient. Additional classifications needed that are not on the form may be typed in the blank spaces or on a separate list and attached to the form.
 - (2) In completing SF-308, the agency shall furnish:
 - (i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.
 - (ii) The county (or other civil subdivision) and State in which the proposed project is located.
 - (3) Such request for a wage determination shall be accompanied by any pertinent wage payment information that may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in [23 U.S.C. 113](#), such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

- (c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

[48 FR 19533, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 50 FR 49823, Dec. 4, 1985; 70 FR 50894, Aug. 26, 2005; 82 FR 2223, Jan. 9, 2017]

§ 1.6 Use and effectiveness of wage determinations.

Link to an amendment published at [88 FR 57725](#), Aug. 23, 2023.

- (a)
 - (1) Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.
 - (2) General wage determinations issued pursuant to [§ 1.5\(a\)](#), notice of which is published on WDOL, shall contain no expiration date.
- (b) Contracting agencies are responsible for insuring that only the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications and for designating specifically the work to which such wage determinations will apply. Any question regarding application of wage rate schedules shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question.
- (c)
 - (1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished

from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)

- (i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:
 - (A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.
 - (B) In the case of projects assisted under the National Housing Act, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.
 - (C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.
 - (ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award (or after the beginning of construction where there is no contract award).
 - (iii) Actual written notice of a modification shall constitute receipt.
- (3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if notice of such actions is published before contract award (or the start of construction where there is no contract award), except as follows:
- (i) In the case of contracts entered into pursuant to competitive bidding procedures, a modification, notice of which is published less than 10 days before the opening of bids, shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if notice of the modification is published after bid opening.
 - (ii) In the case of projects assisted under the National Housing Act, a modification shall be effective if notice of such modification is published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.
 - (iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, a modification shall be effective if notice of such modification is published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

- (iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3)(ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modification, notice of which is published on WDOL prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.
 - (v) A modification to a general wage determination is "published" within the meaning of this section on the date notice of a modification or a supersedeas wage determination is published on WDOL or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first. Archived versions of Davis-Bacon and Related Acts wage determinations that are no longer current may be accessed in the "Archived DB WD" database of WDOL for information purposes only. Contracting officers should not use an archived wage determination in a contract action without prior approval of the Department of Labor.
 - (vi) A supersedeas wage determination or a modification to an applicable general wage determination, notice of which is published after contract award (or after the beginning of construction where there is no contract award) shall not be effective.
- (d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.
- (e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that:
- (1) There is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that
 - (2) a wage determination is withdrawn by the Department of Labor as a result of a decision by the Administrative Review Board, shall be effective immediately without regard to paragraph (c) of this section.
- (f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall

either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, *Provided That* the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

- (g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, *Provided That* upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *Provided further That* the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 49823, Dec. 4, 1985; 70 FR 50894, Aug. 26, 2005]

§ 1.7 Scope of consideration.

Link to an amendment published at [88 FR 57728, Aug. 23, 2023](#).

- (a) In making a wage determination, the area will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.
- (b) If there has not been sufficient similar construction within the area in the past year to make a wage determination, wages paid on similar construction in surrounding counties may be considered, *Provided That* projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county.
- (c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.
- (d) The use of helpers, apprentices and trainees is permitted in accordance with part 5 of this subtitle.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 4507, Jan. 31, 1985; 55 FR 50149, Dec. 4, 1990; 65 FR 69692, Nov. 20, 2000]

§ 1.8 Reconsideration by the Administrator.

Link to an amendment published at [88 FR 57728, Aug. 23, 2023](#).

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30-day period that additional time is necessary.

§ 1.9 Review by Administrative Review Board.

Any interested person may appeal to the Administrative Review Board for a review of a wage determination or its application made under this part, after reconsideration by the Administrator has been sought pursuant to [§ 1.8](#) and denied. Any such appeal may, in the discretion of the Administrative Review Board, be received, accepted, and decided in accordance with the provisions of [29 CFR part 7](#) and such other procedures as the Board may establish.

§ 1.10 xxx

Link to an amendment published at [88 FR 57728](#), Aug. 23, 2023.

Appendix A to Part 1

Link to an amendment published at [88 FR 57728](#), Aug. 23, 2023.

Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor

1. The Davis-Bacon Act (secs. 1–7, 46 Stat. 1494, as amended; Pub. L. 74–403, [40 U.S.C. 276a–276a–7](#)).
2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; [12 U.S.C. 1715c](#) and repeatedly amended).
3. Housing Act of 1950 (college Housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; [12 U.S.C. 1749a\(f\)](#)).
4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; [12 U.S.C. 1701q\(c\)\(3\)](#)).
5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; [16 U.S.C. 779e\(b\)](#)).
6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; [20 U.S.C. 355c\(a\)\(4\)](#), as amended).
7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; [20 U.S.C. 684\(b\)\(5\)](#)).
8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; [20 U.S.C. 954\(j\)](#)).
9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; [20 U.S.C. 1232\(b\)](#)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.