

PREVAILING WAGE RESOURCE BOOK

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

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This publication contains materials developed primarily for use in prevailing wage training conferences. The contents are designed to enhance the knowledge of procurement personnel and others whose responsibilities include work with the Service Contract Act and the Davis-Bacon and related Acts. Study of this volume should facilitate dissemination of information to those who are interested in the administration and enforcement of these laws. This publication is intended to provide practical guidance to procurement personnel and the general public rather than definitive legal advice.

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**INTRODUCTION TO THE
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THE DAVIS-BACON ACT (DBA)

Davis-Bacon Act (DBA)

- Enacted in 1931, amended in 1935 and 1964
 - 1935 amendments - predetermination language
 - 1964 amendments - fringe benefits

Purpose of the DBA

- To protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels.

Requirements of the DBA

- Requires payment of locally prevailing wages and fringe benefits to laborers and mechanics employed on **federal government contracts** in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) of public buildings or public works.

Examples:

1. General Services Administration contracts to build federal office buildings.
 2. Department of Defense contracts to build military housing.
- Prevailing wages are determined in advance by the Department of Labor (DOL) National Office and included in the bid specifications for covered contracts. (See “DB Wage Determinations” tab below.)
 - The language of the Davis-Bacon Act requires **contractors and subcontractors** to pay “**all laborers and mechanics** employed **directly upon the site of the work**, unconditionally not less often than **once a week**, and without subsequent deduction or rebate on any account, the full amount accrued at the time of payment, computed at wage rates not less than those in the advertised specifications, **regardless of any contractual obligation which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics.**”
 - DBA requirements apply to contractors and subcontractors.
 - “Laborers or mechanics” must be paid at least “prevailing wages”.

- DBA applies only to employment on the “site of the work”.
- The laborers and mechanics must be paid weekly.
- Persons performing the duties of laborers and mechanics must be paid the prevailing wage rate regardless of any contractual arrangement, *e.g.*, an independent contractor or owner-operator relationship.

Coverage of the DBA

- The statute applies to contracts “in excess of \$2,000 to which the **United States or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works** of the United States or the District of Columbia.”

In considering Davis-Bacon coverage on contracts in excess of \$2,000, three criteria apply:

- (1) Is the agreement a contract to which the United States or the District of Columbia is a party?
- (2) Is the agreement a “contract for construction”?
- (3) Is the “contract for construction” a contract for the construction of a public building or public work of the United States or the District of Columbia?

In this connection, DOL Regulations at 29 CFR 5.2(k), defines public building or public work as a “building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly **by authority of or with funds of a federal agency** to serve the interest of the general public regardless of whether title thereof is in a federal agency”.

- The Act applies to public buildings or public works of the United States or the District of Columbia **within the geographic limits of the States of the Union and the District of Columbia.**

The DBA does not apply to federal construction contracts in Guam, Puerto Rico, the Virgin Islands or other territories; *however*, some “related Acts” which provide federal assistance to local governmental bodies in the territories do require the payment of DB prevailing wage rates.

➤ **Lease Construction Contracts**

On June 22, 1994, the Wage and Hour Division (Wage and Hour) issued All Agency Memorandum No. 176, advising the contracting agencies that the application of the Davis-Bacon Act to any lease contract can be determined only by reviewing the specific facts of the particular contract. Factors to be considered in determining whether a lease contract is subject to the Act include:

- Length of the lease,
- The extent of government involvement in the construction project (e.g., the building is built to government specifications and the work is subject to periodic inspection by the government),
- The extent to which the building is used for private rather than public purposes,
- The extent to which the costs of the construction will be paid for by the lease payments, and
- Whether the contract is written to avoid application of the Davis-Bacon Act.

DAVIS-BACON RELATED ACTS (DBRA)

Davis-Bacon Related Acts (DBRA)

Congress has extended Davis-Bacon prevailing wage requirements to other laws -- related Acts -- which provide federal assistance for construction through:

- Grants
- Loans
- Loan guarantees
- Insurance

(as contrasted with direct federal government contracts for construction).

Most of the related Acts are listed in 29 CFR 5.1(a). These laws include by reference the requirements for payment of prevailing wages set in accordance with the Davis-Bacon Act.

Examples:

- Federal Highway Administration provides grants to states for the reconstruction of roads and bridges on federal-aid highways.
- U.S. Department of Housing and Urban Development (HUD) finances the construction of low income residences on housing authority projects.
- Other federal agencies which assist construction through grants, loans, loan guarantees and insurance include the Departments of Health and Human Services and Education and the Environmental Protection Agency.

At the present time the following DBRA statutes are most frequently used to fund/assist construction:

National Housing Act
Housing Act of 1950
Federal Aid to Highways Acts
Federal Water Pollution Control Act
Postal Reorganization Act
U.S. Housing Act of 1937
Housing and Community Development Act of 1974

Coverage of DBRA

- Some of the related Acts contain specific coverage criteria for the construction affected by the federal assistance they provide. Thus, a determination of whether the DB prevailing wage provisions apply requires an analysis of the actual labor standards provision in the related Act. For example:
 - The labor standards provision of the Housing and Community Development Act of 1974 does not apply to the rehabilitation of residential property designed for fewer than 8 families.
 - The labor standards provision of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) applies only to projects funded in whole or in part under Section 104 of the Act and not to clean-ups provided/funded through other sections of that Act.
 - Certain statutes require the payment of DB prevailing wage rates only to those portions of a construction project assisted with federal monies while other statutes -- by virtue of the language of the labor standards provision in the individual related Act -- clearly require the payment of prevailing wage rates to all construction work on a project funded “in whole or in part” by federal monies.
- While DBA does not have any provision granting the Secretary of Labor the authority to waive its application, certain related statutes may provide for a waiver or exception by the administering agency.

DISTINGUISHING DBA VS. DBRA

- **DBA projects:** an agency of the federal government signs the contract. Such as:
 - Department of Veterans' Affairs
 - General Services Administration
 - Department of Defense
 - Department of the Interior
- **DBRA projects:** an agency other than the federal government signs the construction contract. For example:
 - On a Department of Housing and Urban Development (HUD)-assisted project, a local housing authority or a city or town may sign the construction contract.
 - On an Environmental Protection Agency (EPA)-funded contract for a sewer project, a local public works/water-sewer authority may sign the construction contract.
 - On an interstate highway project, a state highway department signs a contract for federally-assisted highway construction.

FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED

- The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state and local governments.
- The FLSA was enacted into law in 1938. It has been amended many times since to modify the scope of its coverage and revise the federal minimum wage. The FLSA established a nationwide overtime pay standard that continues in effect, a rate of not less than one and one-half times the regular rate of pay is required for all hours worked over 40 in a workweek. The basic minimum wage provisions of the FLSA are in section 6 of the Act, and overtime requirements in section 7, exemptions from both the minimum wage and overtime provisions in section 13(a), and exemptions from the overtime requirements in section 13(b).
 - For example, under section 13(a)(1) of the FLSA, persons employed in a bona fide executive, administrative or professional capacity are exempt from that law's minimum wage and overtime requirements. The rules that apply to determining whether the exemption applies are spelled out in the Code of Federal Regulations (CFR) at 29 CFR Part 541, which defines the terms "any employee employed in a bona fide executive, administrative or professional capacity". Employees who are exempt from the FLSA under these rules are not covered by the Davis-Bacon Act and Service Contract Act.
- The FLSA establishes two ways in which an employee can be covered by its requirements: "enterprise coverage" and "individual coverage."
 - Enterprise coverage applies to employees who work for certain businesses or organizations (or "enterprises") which are engaged in interstate commerce or the production of goods for commerce and which have at least two employees; and gross sales of not less than \$500,000 a year. Enterprise coverage also applies to government agencies, to schools (including preschools), to hospitals, and to institutions primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises of such institutions.
 - In addition, when there is no enterprise coverage, FLSA standards apply to individual employees if they are "engaged in commerce or in the production of goods for commerce." Employees who come within individual coverage under the FLSA include those who: produce goods that will be sent out of state (such as a worker assembling components in a factory or a secretary typing letters in an office); regularly make telephone calls to persons located in other States; handle records of interstate transactions; are required to travel to other States; and perform janitorial work in buildings where goods are produced for shipment outside the State where the employee works.

- The minimum wage and/or overtime pay requirements of the FLSA may apply along with the wage and fringe benefit and overtime pay requirements of the government contract laws discussed in this reference book.
- Various terms, rules and regulations established under the FLSA also apply to employment under the government contracts laws discussed in this Reference Book.
- The FLSA requires employers to keep records on wages, hours and other items, as specified in DOL recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The following records must be kept with respect to employees subject to the minimum wage and/or the overtime pay provisions of the FLSA:
 - Personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age.
 - hour and day when workweek begins
 - total hours worked each workday and each workweek,
 - total daily or weekly straight-time earnings,
 - regular hourly rate for any week when overtime is worked,
 - total overtime pay for the workweek,
 - deductions from or additions to wages,
 - total wages paid each pay period, and
 - date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers, and special information is required for employees working under uncommon pay arrangements and employees to whom lodging or other facilities are furnished.

- DOL regulations that implement the requirements of the Fair Labor Standards Act are set forth in Title 29 of the Code of Federal Regulations (CFR). For example:
 - 29 CFR 519 – Records to Be Kept by Employers
 - 29 CFR 531 – Wage Payments Under the Fair Labor Standards Act of 1938 (includes rules concerning when the reasonable cost or fair value of board, lodging or other facilities customarily furnished by the employer for the employee's benefit may be considered part of wages)

- 29 CFR 541 – Defining and Delimiting the Terms “Any Employee Employed In A Bona Fide Executive, Administrative, or Professional Capacity (Including Any Employee Employed In the Capacity of Academic Administrative Personnel or Teacher In Elementary or Secondary Schools), or In the Capacity of Outside Salesman”
 - 29 CFR 776 – Interpretative Bulletin on the General Coverage of the Wage and Hour Provisions of the Fair Labor Standards Act of 1938
 - 29 CFR 778 – Overtime Compensation
 - 29 CFR 785 – Hours Worked
 - 29 CFR 790 – General Statement As to the Effect of the Portal-to-Portal Act of 1947 on the Fair Labor Standards Act of 1938
 - 29 CFR 793 – Joint Employment Relationship Under Fair Labor Standards Act of 1938
- A common problem in the construction industry arises where contractors hire so-called independent contractors, who in reality should be considered employees. In determining whether an individual is an independent contractor, or an employee who may be subject to requirements of the Fair Labor Standards Act, a discussion in “Wage and Hour Fact Sheet No. 13” of factors considered in relationship to determining whether there is an employment relationship under the Fair Labor Standards Act, may be valuable. Significant factors in that regard are:
 - 1) The extent to which the services rendered are an integral part of the principal's business.
 - 2) The permanency of the relationship.
 - 3) The amount of the alleged contractor's investment in facilities and equipment.
 - 4) The nature and degree of control by the principal.
 - 5) The alleged contractor's opportunities for profit and loss.
 - 6) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
 - 7) The degree of independent business organization and operation.
- Where such questions arise, please contact a local Wage and Hour office for guidance. To identify the Wage and Hour Office closest to you, you may call the Wage-Hour toll-free help line at 1-866-4USWAGE (1-866-487-9243). A customer service representative is available to assist you from 8am to 5pm in your time zone. Alternatively, see: <http://www.dol.gov/esa/contacts/whd/america2.htm>.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (CWHSSA)

Purpose of CWHSSA

- Enacted in 1962 – consolidated a number of “eight hour” laws, some dating back to the 1890s, and originally provided for overtime pay after 8 hours a day on federal construction contracts, and provided for overtime pay after 40 hours a week.

Requirements of CWHSSA

- CWHSSA requires overtime pay for laborers and mechanics at a rate of one and one-half times the basic rate of pay for hours worked on **covered contracts** in excess of 40 in a workweek.
- Effective January 1, 1986 the daily (8-hour) overtime requirement was eliminated. Therefore, like the Fair Labor Standards Act (FLSA), CWHSSA requires overtime pay after 40 hours.
- In addition to back wages for unpaid overtime hours, CWHSSA also provides for an assessment of **liquidated damages** at the rate of \$10 per day for each day that each laborer and mechanic worked without payment of the required overtime compensation.
- In those situations where there are concurrent FLSA and CWHSSA violations, the back wages are generally computed and reported under CWHSSA rather than FLSA. This is because under CWHSSA:
 - The back wages can be withheld to ensure back wage restitution.
 - Liquidated damages may be assessed against the employer.
 - Debarment action may be initiated.

Coverage of CWHSSA

- CWHSSA covers most federal contracts which may require or involve the employment of **laborers** or **mechanics**. In addition to laborers and mechanics covered under DBA/DBRA, CWHSSA also specifically covers **guards** and **watchmen**.
- CWHSSA applies to contracts in excess of \$100,000 to which the **United States or any Agency or instrumentality thereof, or any territory**, or the District of Columbia is a party; or which is made on behalf of the United States **or any**

Agency or instrumentality thereof, or any territory, or the District of Columbia.

- CWHSSA applies to DBA, SCA and DBRA contracts in excess of \$100,000.
 - However, by its terms, CWHSSA does not apply where federal assistance is only in the nature of a loan guarantee or insurance (see section 103(a)(3)). For example, HUD assistance in the form of loan guarantees under the National Housing Act is not subject to CWHSSA.
- CWHSSA is self-executing. The failure to include CWHSSA stipulations in a contract does not preclude its application.
- CWHSSA has no job site limitation. If an employee performs part of the construction work at the job site, part of the work at a shop, and/or travels between covered contract work locations, the statute applies to all hours of the contract work performed by covered workers.

CWHSSA Exemptions

- CWHSSA does not apply to contracts for:
 - Transportation by land, air or water.
 - Transmission of intelligence.
 - Purchase of supplies or materials or articles ordinarily available in the open market.
 - Work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act.
 - Construction or services where the contract is not greater than \$100,000.
 - Agreements entered into by or on behalf of the Commodity Credit Corporation for storage in or handling by commercial warehouse of certain items including grains, beans, seeds, cotton, wool and naval stores.
 - Certain sales of surplus power by the Tennessee Valley Authority (TVA).
 - Work performed in a workplace within a foreign country.

COPELAND “ANTI-KICKBACK” ACT (CA)

Coverage, Purpose and Requirements of CA

- The Copeland Act applies to DBA and DBRA contracts .
- The Copeland “Anti-Kickback” Act and implementing regulations in 29 CFR 3 collectively provide for the following safeguards:
 - Prohibit “kickbacks” of wages and back wages.
 - Require contractors on covered projects to submit weekly a “Statement of Compliance” (i.e. certifying that the contractor has paid the required wages).
 - Regulate payroll deductions from wages.
 - Specify methods of payment of wages.

Regulation of payroll deductions

- 29 CFR 3.5 permits the following deductions from wages **without the approval of the Secretary of Labor**:
 - (1) Deductions for social security or federal or state income tax withholding.
 - (2) Deductions for bona fide prepayment of wages.
 - (3) Deductions for court ordered payments.
 - (4) Deductions for contributions to fringe benefit plans, provided that the deduction is not prohibited by law, that it is either voluntarily consented to by the employee in writing in advance of the time the work is done or provided for in a collective bargaining agreement, that no profit or other benefit is obtained by the contractor, and that the deduction serves the convenience of the employee.
 - (5) Deductions for purchase of U.S. savings bonds when voluntarily authorized by the employee.
 - (6) Deductions to repay loans or to purchase shares in a credit union.
 - (7) Deductions voluntarily authorized for contributions to organizations such as the Red Cross, United Way, or similar charitable organizations.

- (8) Deductions to pay union initiation fees and membership dues, provided that a collective bargaining agreement provides for such deductions.
 - (9) Deductions for the “reasonable cost” of board, lodging, or other facilities meeting the requirements of section 3(m) of FLSA.
 - (10) Deductions for the cost of safety equipment purchased by the employee if such equipment is not required by law to be furnished by the employer, if such deduction is not prohibited by FLSA or other law, and if the cost on which the deduction is based does not exceed the actual cost to the employer.
- Pursuant to 29 CFR 3.6, any contractor may apply to the Secretary of Labor for permission to make any deductions not permitted under 29 CFR 3.5. **The Secretary of Labor may approve payroll deductions** whenever all of the following conditions are met:
- (1) The contractor does not make a profit or benefit directly or indirectly from the deduction.
 - (2) The deduction is not otherwise prohibited by law.
 - (3) Either the employee voluntarily consented to the deduction in writing in advance of the time the DBA/DBRA work is performed or the deduction is provided under the terms of a bona fide collective bargaining agreement.
 - (4) The deduction serves the convenience and interest of the employee.

“Statement of Compliance”

- 29 CFR 3 requires contractors and subcontractors on DBA/DBRA-covered construction projects to submit each week a “Statement of Compliance” certifying compliance with the DBA/DBRA requirements. This “statement of compliance” is usually referred to as the certified payroll.
- Falsification of the certified payrolls is a criminal violation that can result in a fine of up to \$5,000, up to 5 years in prison, or both.

The “Anti-Kickback” provisions

- The “anti-kickback” section of the Copeland Act prohibits the kickback of wages and back wages.
- To induce any person working on a federally funded or assisted construction project to give up any part of the compensation to which he/she is entitled is a

criminal violation punishable by a fine of up to \$5,000, 5 years in prison, or both.

As early as possible, Wage and Hour should be notified of potential criminal violations such as the kickback of wages and the falsification of certified payroll records.

WALSH-HEALEY PUBLIC CONTRACTS ACT (PCA)

Purpose of PCA

- The PCA provides labor standards for employees working on federal contracts over \$10,000 for the manufacturing or furnishing of goods, supplies, articles, or equipment.

Requirements of PCA

- The Act contains minimum wage, maximum hours, and safety and health standards, and prohibits the employment of children under 16 years of age and convict labor on contract work.
- The minimum wage requirement under PCA is the FLSA minimum wage and the overtime requirements are also the same as the FLSA.

Contracts requiring both PCA and DBA

DBA also applies to PCA contracts when such contracts require **more than an incidental** amount of construction work – such as installation of communication systems or erection of a metal tower facility using equipment and supplies procured under a PCA contract.

Examples of work under PCA contracts that may be covered by DBA:

1. Contracts for the supply of a security system may require:
 - Replacement of existing conduit,
 - Laying cable, and
 - Tearing out and replacing walls.
2. Contracts for the supply and installation of modular furniture or energy-efficient lighting fixtures that must be attached to a structure, requiring:
 - Bolting to floors, walls and/or ceilings,
 - Modification of the walls, floors and/or ceilings to accommodate shelving,
 - Hooking up electrical connections for desk area outlets; or
 - Installing new ballasts and/or lighting fixtures.

Where there is more than an incidental amount of construction work, DBA requirements should be incorporated in the contract, along with PCA requirements.

THE MCNAMARA-O'HARA SERVICE CONTRACT ACT (SCA)

The McNamara-O'Hara Service Contract Act of 1965 (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 Wage and Hour.

Legislative History and Purpose of SCA

- The SCA was enacted to, in effect, “close the gap” in labor standards protection between supply contracts subject to the PCA and construction contracts subject to DBA. (Services were the only remaining category of federal procurement not covered by labor standards law.)
- 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 (apart from the FLSA minimum wage) 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.)

Requirements of SCA

- 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 FLSA minimum wages for contracts of \$2,500 or less.
 - Recordkeeping and posting requirements.
 - Safety and health protection.
- Wage and Hour has sole SCA enforcement responsibility, except that the Occupational Safety and Health Administration (OSHA) enforces the safety and health provisions of the Act. (This is unlike the Davis-Bacon Act (DBA or DBRA) where enforcement activity is shared with contracting agencies.)

Coverage of SCA

What federal government contracts are subject to SCA?

- Contracts entered into by any agency or instrumentality of the federal government, whether by the executive, judicial, or legislative branches, or by the District of Columbia. Examples: the Department of Defense, the Department of the Interior's General Services Administration, DOL, etc.
- Contracts issued by wholly owned corporations of the government. Examples: Tennessee Valley Authority, Postal Service.
- Contracts with non-appropriated fund activities, i.e., concession contracts. Examples: military post exchanges (PX's), cafeteria boards in federal buildings.
- Contracts between a federal agency and a state or local government are covered. Contracts between federal agencies are not covered (example: DOL and the General Services Administration).
- SCA applies only to federal contracts, not to federally "assisted" contracts (unlike DBRA).

Three elements necessary for coverage:

- The contract is principally (i.e., primarily) for services (as distinguished from construction or manufacturing or some other purpose).
- The contract involves work to be performed within the United States as defined in section 8(d) of the SCA.

The SCA applies to service contracts performed in any of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands, American Samoa, Guam, Wake Island, Johnston Island, and the Northern Marianas. (Canton Island, Eniwetok Atoll, and Kwajalein Atoll are now independent and no longer a part of the U.S. even though still listed in the statute.)

Contracts that are performed entirely outside the U.S. are not covered. For example, a weather service contract performed on a vessel operating exclusively in international or foreign waters.

- The contract is performed through the use of service employees as defined in section 8(b) of the SCA.

Section 8(b) of the Act defines “service employee” as any person engaged in the performance of a covered contract except those persons who individually qualify for exemption as bona fide executive, administrative or professional employees as defined in 29 CFR Part 541. 29 CFR 4.113(b); 29 CFR 4.156.

Coverage of service employees depends on whether they perform the work of service employees as defined in section 8(b) of the SCA, regardless of any contractual relationship that may be alleged to exist between a contractor and an employee. 29 CFR 4.155.

Examples of types of service contracts (list of typical services noted in 29 CFR 4.130):

- Security and guard services
- Janitorial services
- Cafeteria and food service
- Grounds maintenance
- Laundry and dry cleaning
- Data processing
- Electronic equipment maintenance and operation
- Chemical testing and analysis
- Support services at government installations
- Drafting and illustrating, mapping and charting services
- Operating and maintenance of government bases
- Warehousing

Some types of contracts not covered by SCA (based on legislative history):

- Any contract whose principal purpose is something other than the procuring of services through the use of service employees – for example, a construction, supply or manufacturing contract.
- Contracts for the leasing of space.
- Contracts for professional medical services (where the employment of “service employees” is not involved or is a minor factor).
- Contracts to operate or manage an entire federal facility or program (*i.e.*, government-owned contractor/privately-operated “GOCO” or “GOPO”).

Sometimes contracts are entered into with a prime contractor to operate a federal facility or program for and on behalf of the government. Because the contractor is in effect operating in the place of the government as an “agent for the government,” such a contract is not considered subject to the SCA. However, contracts entered into by the operating contractor with secondary contractors, for and on behalf of the government, that have services as their principal purpose are subject to SCA. 29 CFR 4.107(a).

Statutory exemptions

The SCA by its own terms (section 7 of the Act) does not apply to the following:

- Any contracts of the United States for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works (contracts subject to DBA). 29 CFR 4.116.
- Any work (work not contract) required to be done in accordance with provisions of the Walsh-Healey Public Contracts Act. 29 CFR 4.117.
- Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect (29 CFR 4.118). The effect of this exemption has become limited in scope due to changes in transportation laws . (See All Agency Memorandum No. 185 for further information.)
 - This exemption applies only to contracts for carriage by a common carrier. A transportation service contract is exempt only if the service is actually governed by published tariff rates in effect pursuant to state or federal law. A contract between the government and the carrier would be evidenced by a government bill of lading citing the published tariff rates.
 - Contracts for ambulance or taxicab services are typically not exempt because they are usually not deemed common carriers and/or the transportation is not governed by published tariff rates.
 - Mail haul contractors are not within the scope of this exemption because “mail” is not considered to be “freight” under federal law. (However, see the discussion of relevant regulatory exemptions, below.)
 - Contracts principally for packing, crating and warehousing of household goods are also not exempt, even though performed by an otherwise common carrier, because the local hauling is a minor, incidental purpose of the contract.

- Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934. 29 CFR 4.119.
- Any contract for public utility services, including electric light and power, water, steam, and gas. 29 CFR 4.120.
- Any employment contract providing for direct service to a federal agency by an individual or individuals. 29 CFR 4.121.
- Any contract with the U.S. Postal Service, the principal purpose of which is the operation of postal contract stations. 29 CFR 4.122.

Regulatory exemptions

The Secretary of Labor under section 4(b) of SCA is also authorized to provide reasonable limitations, variations, tolerances and exemptions from provisions of SCA but only in special circumstances where it is found that such action is necessary and proper in the public interest or to avoid serious impairment to the conduct of government business and is in accord with the remedial purpose to protect prevailing labor standards. The regulatory exemptions that have been established are discussed in detail in the “Regulatory Exemptions” section of the SCA Resource Book.

CONTRACTS COVERED BY BOTH SCA AND DBA

Both DBA and SCA apply to contracts involving construction work where such contracts are principally for services. DBA applies when the construction is **substantial** (type and quantity of construction work to be performed; not merely its value, in dollars or cost percentages, compared to the total contract value) and the construction is physically or functionally **segregable** from other contract work, and as a practical matter can be performed on a segregated basis. 29 CFR 4.116(c)(2).

Examples:

1. Base maintenance and operation contracts that the Department of Defense awards for operation of military bases are principally for services but often require substantial and segregable construction work such as:
 - > Painting or repainting base housing.
 - > Refinishing floors.
 - > Reroofing facilities.
2. Hazardous waste cleanup contracts may require landscaping activities that constitute substantial and segregable construction work such as:
 - > Elaborate earthmoving.
 - > Substantial soil removal.

DISTINGUISHING DBA AND SCA

SCA Covered Maintenance Work vs. DBA Repair Work

- Routine recurring maintenance work covered by SCA is typically work in which workers are engaged for the purpose of keeping something in such a condition that it may be continuously utilized; DBA typically covers activities such as the restoration of a facility by replacement, overhaul, or reprocessing of constituent parts or materials.
- Other factors considered in interpreting the application of the statutes are:
 - whether the activity is continuous in nature as opposed to single incident;
 - how much time is necessary to complete the task, i.e., is the activity accomplished in an hour or two hours of work versus days, weeks or months for repair of a particular building component.
- The DBA applies to activities that involve the alteration, relocation, or rearrangement of architectural and structural components of a facility that affect the structural strength, stability, safety, capacity, efficiency, or usefulness of the facility. The alteration of non-fixed components that are not an integral part of the building or work are likely to be SCA-covered activities.
- A particularly important factor is whether the activity is undertaken as part of a construction contract. For example, janitorial, cleanup, and landscaping activities that are undertaken at the conclusion of a construction contract are DBA-covered activities when they precede and are conditional to acceptance of the building by the owner.

Common Problem Areas

- Carpet laying and installation of draperies is DBA work when performed as an integral part of or in conjunction with new construction, alteration or reconstruction. The work is SCA-covered when scheduled as part of routine maintenance, such as replacing worn-out carpeting in a public building.
- Clean-up work is covered by DBA when performed as a condition precedent to the acceptance of a building as satisfactorily completed. If performed after the construction contractor and subcontractor have finished, left the site, and the contracting agency has accepted the building, the work would be SCA.

- Demolition standing alone is SCA, but if done at the site where further DBA construction is contemplated, then the demolition work is subject to DBA. All Agency Memorandum No. 190 provides a discussion of the application of these labor standards to demolition contracts.
- Exploratory drilling for the purpose of obtaining data to be used in engineering studies and planning of a project that has not been authorized or for which no funds have been appropriated would be SCA. Drilling of holes that fall within the term “work” as defined by 29 CFR 5.2(i), (for example), water wells, oil wells or other improvements, would be subject to DBA).
- Landscaping performed in conjunction with new construction or renovation work subject to DBA is also covered by the DBA. Other landscaping, *e.g.*, planting trees and flowers, mowing, or seeding, is SCA work.
- Elaborate landscaping, substantial earth moving, and reclamation of the type associated with hazardous waste cleanup contracts are subject to DBA. All Agency Memoranda Nos. 155 and 187 provide guidance concerning the application of DBA and SCA labor standards to hazardous cleanup contracts.

DISTINGUISHING PCA AND SCA WORK

- The SCA exempts from its provisions “any work required to be done in accordance with the provision of the Walsh-Healey Public Contracts Act”. The application of this exemption, provided in Section 7, paragraph 2 of the Act, is discussed in 29 CFR 4.117. The purpose of the exemption is to eliminate possible overlapping of the differing labor standards of the two Acts.
 - The SCA applies to contracts the principal purpose of which is the furnishing of services through the use of service employees.
 - The Walsh-Healey Public Contracts Act (PCA) applies to contracts in excess of \$10,000 for the manufacture or furnishing of materials, supplies, articles, or equipment.
 - There is no overlap if the principal purpose of a contract is the manufacture or furnishing of materials, supplies, articles or equipment, rather than the furnishing of services of the character referred to in the SCA. Such a contract would not be subject to the labor standards of the SCA, and such contracts in excess of \$10,000 would be covered by PCA labor standards.
 - An example would be a contract for the furnishing and plug-in installation of telephones or computers to pre-existing electrical outlet hook-ups, where the installation work is incidental to the procurement of the equipment.
 - Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are also subject to the PCA.
 - Remanufacturing shall be deemed to be manufacturing when the following five criteria are met:
 - The item or equipment is required to be completely or substantially torn down into individual component parts, and
 - The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment, and
 - The disassembled components, if usable, are commingled with existing inventory and lose their identification with respect to a particular piece of equipment (except for situations where the number of items or pieces of equipment involved are too few to make this practicable), and

>>>> The items or equipment overhauled are restored to original life expectancy, or nearly so, and

>>>> Such work is performed in a facility owned or operated by the contractor,

Remanufacturing shall also be deemed to be manufacturing in the case of major modification of an item, piece of equipment, or materiel which is wholly or partially obsolete when all of the following conditions exist:

>>>> The item or equipment is required to be completely or substantially torn down, and

>>>> Outmoded parts are replaced, and

>>>> The item or equipment is rebuilt or reassembled, and

>>>> The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition, and

>>>> The work is performed in a facility owned or operated by the contractor.

>>> The SCA exemption is for “work, i.e. specifications or requirements, rather than for “contracts” subject to the PCA. Thus, an SCA contract that is principally for the furnishing of services through the use of service employees, may include specifications or requirements to which it is appropriate for PCA labor standards to apply.

>> The SCA rather than PCA labor standards would apply to the repair or periodic and routine maintenance or servicing of equipment that does not involve remanufacturing. Remanufacturing does not include the repair of damaged or broken equipment that does not require complete teardown, overhaul and rebuilding, as described above, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. (Such contracts typically are billed on an hourly rate – labor plus materials and parts – basis.

>>> Examples of repair work to which SCA labor standards would apply rather than PCA are:

>>>> Repair of an automobile, truck or other vehicle , air conditioning and refrigeration equipment,

>>>> Repair of radios, televisions and other electronic equipment,

>>>> Reupholstering, reconditioning, repair and refinishing of furniture.

WHAT HAPPENS WHEN AN AGENCY COVERAGE DETERMINATION IS CHALLENGED?

- The contracting agencies have the initial responsibility for determining which labor standards statutes apply to particular contracts.
- DOL has the authority for final determinations on coverage.
- Disputes concerning the applicable labor standards statute for a particular project should be referred to Wage and Hour for a final determination of coverage. Each decision is based on the facts of a specific situation and how those facts relate to the coverage principles set forth by regulation, statute, and pertinent case law.
- In making coverage determinations, Wage and Hour solicits input from the affected parties, in particular, the contracting authority and/or federal agency.
- Final rulings of the Wage and Hour Division may be appealed to DOL's Administrative Review Board (ARB) under 29 CFR 7 regarding DBA and DBRA cases, and 29 CFR 8 regarding SCA cases. (On April 17, 1996, the ARB was established, to it were transferred the authorities and responsibilities previously delegated by the Secretary of Labor to the Wage Appeals Board (WAB) and the Board of Service Contract Appeals, and the latter Boards were eliminated. (See 61 FR 19982).
- The members of the ARB are appointed by the Secretary of Labor to review final rulings and interpretations on wage determination, coverage, and enforcement issues under the DBRA and SCA. The Board has the full authority of the Secretary of Labor in such matters.

SCA SURVEYS

BUREAU OF LABOR STATISTICS (BLS)

PROGRAM

SCA SURVEYS – BUREAU OF LABOR STATISTICS PROGRAM

- Until 1996, the U.S. Bureau of Labor Statistics (BLS) Occupational Compensation Survey Program (OCSP) was the data source most commonly used to develop SCA wage determinations. The OCSP was discontinued in 1996 and replaced by the National Compensation Survey (NCS). Also in 1996, BLS began collecting wage data under the Occupational Employment Statistics (OES) survey. After extensive discussions with SCA Stakeholders, Wage and Hour began updating SCA WD's using NCS and OES as primary data sources. The format for collecting and publishing data under NCS is significantly different from the OCSP format, and we are presently evaluating the NCS data to determine how it might be used for SCA purposes. In addition, we are examining the data produced by BLS's expanded Occupational Employment Statistics (OES) surveys, as well as exploring the possibility of funding separate surveys that may be conducted in a manner similar to the OCSP surveys.
- The National Compensation Survey (NCS) provides comprehensive measures of occupational earnings; compensation cost trends, benefits incidence, and detailed plan provisions. Detailed occupational earnings are available for metropolitan and non-metropolitan areas, broad geographic regions, and on a national basis. The index component of the NCS, the Employment Cost Index (ECI) measures changes in labor cost. Average hourly employer cost for employee compensation is presented in Employer Cost for Employee Compensation (ECEC).
- The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 700 occupations. These are estimates of the number of people employed in certain occupations, and estimates of the wages paid to them. Self-employed persons are not included in the estimates. These estimates are available for the nation as a whole, for individual states, and for metropolitan areas; national occupational estimates for specific industries are also available.

**SERVICE CONTRACT ACT
WAGE DETERMINATIONS**

SERVICE CONTRACT ACT, as amended (excerpt)

SERVICE CONTRACT ACT WAGE DETERMINATIONS

REQUESTING SCA WAGE DETERMINATIONS

**GUIDE TO COMPLETING AN INDIVIDUAL
SF-98 REQUEST**

**SAMPLE CONSOLIDATED SCA WAGE
DETERMINATION**

**SAMPLE SF-98 AND SF-98a REQUEST FOR AN SCA
WAGE DETERMINATION**

SERVICE CONTRACT ACT, as amended (excerpt)

“Sec. 2(a) Every contract (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of \$2,500, ... whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees shall contain the following:

- (1) A provision specifying the minimum monetary wages to be paid the various classes of services employees in the performance of the contract or any subcontract thereunder, as determined by the Secretary [of Labor], or her authorized representative, in accordance with prevailing rates for such employees in the locality or where a collective bargaining agreement covers any such service employees, in accordance with the rates for such employees provided for in such agreement, including prospective wage increases provided for in such agreement as a result of arm's-length negotiations.
- (2) A provision specifying the fringe benefits to be furnished the various classes of service employees....

Sec. 4 ... (c) No contractor or subcontractor under a contract, which succeeds a contract subject to this Act under and which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: *Provided*, that in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing ... that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality.” (Emphases added.)

SERVICE CONTRACT ACT WAGE DETERMINATIONS

A. SCA wage determination requirements

- The SCA wage determination (WD) sets the minimum wages and fringe benefits that contractors and their subcontractors must pay service employees working on covered contracts.
 - Wages are defined as monetary compensation provided to employees. They are usually listed in the wage determination as hourly wage rates.
 - Fringe benefits are defined in section 2(a)(2) of the Act 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 Act are illustrative of those which may be included in the WD. Which fringe benefits are included in the WD depends upon the type of WD to be issued and the evaluation of source data used to develop the WD. Fringe benefits may be provided as monetary compensation (cash payments) in lieu of providing the listed benefits, provided certain records are kept.

- Most WD's are revised periodically, as new health and welfare benefits or wage survey data become available. However, if a WD is properly included in the contract at the time of award, the contract does not need to be modified to include subsequent revisions to the WD prior to completion of the first year of the contract.
- Section 10 of the Act requires the Department of Labor to issue a WD for every service contract employing more than five service employees.
 - If the contract requires five or fewer service employees, the contracting agency must still request a WD, and if one is issued, include the applicable WD in the contract. **There is a common misconception among contracting officers that they need not submit a request if there will be five or fewer service employees performing on the contract. This has never been the case. The contracting agency must request a WD even if only one service employee will be employed on the contract, but the Wage and Hour**

Division (WH) has the option of not issuing a WD for contracts with five or fewer service employees.

- If no WD has been issued for a service contract involving five or fewer service employees, the contractor can pay no less than the minimum wage required by section 6(a)(1) of Fair Labor Standards Act. If the contract involves more than five service employees, the contract must contain a WD. However, we have over 204 wage determinations with each containing over 300 classifications. It would be a rare occurrence if the Department of Labor had not issued a wage determination for a geographic area.

B. SCA wage determinations format

- In 1994, WH began to issue SCA wage determinations in a revised format that includes nearly all standard occupations on a single wage determination. In the past, wage determinations were issued that only covered classes in broad occupational groupings. This format, generally referred to as the consolidated wage determination, reduces the need for Service Contract Act (SCA) conformance actions, and improves service to SCA wage determination customers.
- Currently there are 204 areas for which consolidated wage determinations are being issued.

C. Two bases on which SCA WD's are issued:

1. Prevailing in the locality. Determinations that set forth minimum monetary wage and fringe benefits determined to be prevailing for various classes of service employees in the locality after giving “due consideration” to the rates applicable to such service employees if directly hired by the Federal Government. (Sections 2(a)(1), 2(a)(2), and 2(a)(5) of the Act); and
 - Wage rates and fringe benefits prevailing in the locality (29 CFR 4.51):
 - Rates based on surveys and rates based on union dominance. These determinations are usually based on data collected by the Bureau of Labor Statistics (BLS) under the National Compensation and Occupational Employment Statistics Surveys.
 - Union Dominance. The SCA regulations provide that “where a single rate is paid to a majority (50 percent or more) of the workers in a class of service employees engaged in similar work in a particular locality, that rate is determined to prevail”. 29 CFR 4.51(b). These majority rate prevailing wage determinations are typically called union dominance wage determinations.

2. Collective Bargaining Agreement – (Successorship). Determinations that set forth the wage rates and fringe benefits, including accrued and prospective increases, contained in a collective bargaining agreement applicable to the service employees who performed on a predecessor contract in the same locality. (Sections 4(c) and 2(a)(1) and (2) of the Act).

➤ Wage rates and fringe benefits based on the predecessor contractor's collective bargaining agreement (CBA) – See 29 CFR 4(c):

- For section 4(c) to be applicable, the predecessor contract must involve substantially the same services being provided in the same locations.

Provisions of 4(c):

- The successor contractor is obligated to pay its employees the wages and fringes in the predecessor's CBA that they would have been entitled to if they were employed by the predecessor.
- This obligation exists whether or not the employees of the predecessor contractor are hired by the successor contractor. This obligation will continue to exist even if the successor contractor is signatory to its own CBA or chooses to sign or not sign the same CBA as entered into by the predecessor contractor.
- Since the obligations of section 4(c) are statutory, self-executing, they are not dependent upon the inclusion of the CBA rates in the WD. For example, if the Department of Labor issues a WD for a particular contract based upon prevailing rates rather than the CBA because the agency failed to advise WH of the existence of the CBA or the WD does not reflect accurately all the economic terms of the CBA, the successor contractor is still obligated to pay the CBA rates, unless the limitation in section 4.1b(b) applies, or if there is a hearing and a finding of “substantial variance,” as discussed below.
- The limitations to Section 4(c) can be found in 29 CFR 4.1(b). Specifically, the limitations in 4.1b(1) and (2) only apply if the contracting agency gives written notification to both the incumbent contractor and the union at least 30 day in advance of all applicable estimated procurement dates. If such notification is given, the CBA must be provided to the contracting officer (**Not DOL**) within the timeframes specified in Section 4.1b(b). If the CBA is not provided to the contracting officer within these timeframes then the CBA does not apply pursuant to Section 4(c) of SCA.

REQUESTING SCA WAGE DETERMINATIONS

A. Responsibility of contracting agency to request SCA wage determinations

Contracting agencies request a wage determination (WD) from the Department of Labor's Division of Wage Determinations, Branch of SCA Wage Determinations, using Standard Forms 98 (SF-98) and 98a, "Notice of Intention to Make a Service Contract and Response to Notice". The contracting agency must submit this form not less than 60 days nor more than 120 days, except with approval of WH, prior to any invitation for bids, request for proposals, or commencement of negotiations.

- The initial responsibility for determining whether a proposed contract may be subject to SCA and requires a wage determination rests with the contracting agency.

B. Individual SF-98 Requests

- For each proposed contract, contracting agencies must submit an individual SF-98 request. To do so, the agency must fill out and submit the Notice of Intention to Make a Service Contract -- Standard Form (SF) 98, with an attached SF-98a. These forms must be submitted for each anticipated contract. The wage determination issued in response to the request must be incorporated into the bid specifications and the resultant contract.
- The SF-98 requires the requesting agency official to specify the relevant procurement dates, the county and the state where the work will be performed, and the type of services to be performed under the contract. In addition, the agency must provide information on incumbent contractors. The previous wage determination, and any collective bargaining agreements that may apply. The SF-98a identifies the occupational classes and the number of service employees who will perform the work on the contract, and the hourly wage rates that would be paid if such workers were federally-employed.

C. Multi-year and Two-Step Procurement

- In the case of multi-year contracts subject to annual fiscal appropriations of Congress, the contracting agency must request a new WD each year for use on the anniversary date of the contract. 29 CFR 4.4(a)(1) and 4.145(a).
- If the multi-year contract is not subject to annual fiscal appropriations, the contracting agency must request a new WD at least every two years. Section 4(d) of the SCA and 29 CFR 4.145(b).
- When the place of performance of a contract is unknown at the time of solicitation, the contracting agency should contact the Wage and Hour Division's

Branch of Service Contracts Wage Determination for guidance. 29 CFR 4.4(a)(2)(i). The two step procedure:

- >> In the first step, the contracting agency will issue an initial solicitation with no wage determination, from which it identifies all interested bidders and their possible places of performance and then transmits this information to the Department of Labor with SF-98.

- >> In the second step, the Department of Labor will issue separate wage determinations for the various localities identified in the first step, to be incorporated in the solicitation prior to the submission of final bids. The appropriate wage determination applicable to the geographic location of the successful bidder shall be incorporated in the resultant contract and shall be observed, regardless of whether the contractor subsequently changes the place(s) of contract performances.

THE SERVICE CONTRACT ACT DIRECTORY OF OCCUPATIONS

A. Development of the SCA Directory of Occupations for Use in Requesting, Developing, and Applying SCA Wage Determinations

Since April 1985, the Wage and Hour Division has been publishing standard occupational titles and definitions in the "Service Contract Act Directory of Occupations." This is a key resource to be utilized in requesting and applying SCA wage determinations. The Directory is accessible at:

<http://www.dol.gov/esa/regs/compliance/whd/wage/main.htm>.

- Each year, WH receives requests for wage determinations for employees engaged in approximately 60,000 government service contracts covered under the SCA. Total annual federal government service contracting has been estimated in the billions of dollars. These SCA-covered contracts involve the performance of a wide range of services, including such diverse activities as aerial spraying, barber and beauty shop services, computer services, electronic equipment maintenance, furniture repair, surveying and mapping, trash removal, and warehousing. Employees in a wide spectrum of occupations are needed to perform these services.
- For any SCA-covered contract exceeding \$2,500 the contracting agency must request a wage determination on standard form SF-98 and SF-98a. In submitting these forms, the requesting agency is to list occupational titles of workers to be employed on the contracts. Use of the Directory allows contractor, federal procurement agency, and WH staff to associate standard job descriptions with these titles. Prior to publication of the Directory, ascertaining the content of each job for wage determination purposes became a difficult and time-consuming task. Widespread distribution and use of the Directory has greatly simplified this process.
- The great variety of services procured by the federal government and the many different occupations required in the performance of these services continue to present a major challenge in the acquisition of data and the development of appropriate wage determinations. At the present time, a variety of data sources are utilized in the development of SCA prevailing wage determinations. These sources include the Bureau of Labor Statistics (BLS) National Compensation Survey, and the Occupational Employment Statistics Survey. Since payroll titles and work assignments vary among establishments and geographic areas, such descriptions are useful as standards in classifying workers by occupation so that wage rates representing specific job content can be established.

- In order to effectively implement its primary assignment of issuing wage determinations, the Wage and Hour Division's Branch of Service Contract Wage Determinations requires standardized occupational language for use with all of the contracting establishments. In response to this need, the first edition of this Directory of commonly used occupational titles and descriptions was developed in 1985. A second edition was published in 1986, a third in 1991 that was never used and eventually withdrawn, and a fourth in 1993.
- The Directory contains occupational titles and descriptions and a classification structure under which the occupations are arranged according to their interrelationships. It makes available uniform occupational information providing composites of similar jobs performed in many geographic areas all over the country.

B. Federal Grade Equivalency (FGE) Information in the Directory

The Fourth Edition Directory provides information on the federal civil service grade levels most likely to correspond to the occupations included.

- This information reveals the grade levels that would be assigned to such occupations, if the work was being performed by a federal employee.
- For WH staff, such information is especially useful in connection with the development of prevailing wages for occupations for which no survey data are available or for which survey data are not available for various levels within a job family.
- Contractors and federal procurement agency staff may utilize federal grade equivalency (FGE) data to guide wage rate proposals for occupations to be conformed. FGE use for conformances is covered in the SCA Conformance Manual.

FGE rates are divided into the following three classifications for purposes of SCA administration:

- GS (General Schedule) refers to grade rates utilized for non-supervisory appropriated fund "white-collar" positions;
- WG (Wage Grade) refers to grade rates utilized for non-supervisory appropriated fund "blue-collar" positions; and
- AS refers to non-supervisory non-appropriated fund Administrative Services rates.

C. Using the SCA Directory of Occupations to Communicate Clearly in Completing the SF-98a: Needed Occupational Information

There are three arrangements of occupational information in the Directory:

- the Numerical Listing of Occupational Categories and Titles, Federal Grade Equivalencies, and location by page;
- titles and descriptions of categories; and
- the Alphabetical Index of Occupational Titles.

The classification system developed is structured on a three-tier arrangement: category, occupation, and level of difficulty. Each tier represents groupings in successively finer detail. This should enable users who so desire to tabulate or analyze data at different levels of aggregation.

Noted below are the 20 broad occupational categories arranged alphabetically and coded numerically.

01000	Administrative Support and Clerical Occupations
03000	Automatic Data Processing Occupations
05000	Automotive Services Occupations
07000	Food Preparation and Service Occupations
08000	Forestry and Logging Occupations
09000	Furniture Maintenance and Repair Occupations
11000	General Services and Support Occupations
12000	Health Occupations
13000	Information and Arts Occupations
15000	Laundry, Dry Cleaning, Pressing and Related Occupations
19000	Machine Tool Operation and Repair Occupations
21000	Materials Handling and Packing Occupations
23000	Mechanics and Maintenance and Repair Occupations
24500	Personal Needs Occupations
25000	Plant and System Operation Occupations
27000	Protective Service Occupations
29000	Technical Occupations
31000	Transportation/Mobile Equipment Operation Occupations
47000	Water Transportation Occupations
99000	Miscellaneous Occupations

The detailed numerical listing presents the categories, occupations, levels of difficulty, federal grade equivalencies, and the page numbers on which the occupational descriptions can be found. The coding system utilized by the Directory has the following characteristics:

- Each occupational title is identified by a five digit code.
- The first two digits of each occupational code identify the broad category of occupations to which each specific occupation belongs. For example, since the code for the broad category of Administrative Support is 01000, each specific occupation within this category begins with the first two digits 01, i.e., Court Reporter, 01030.
- Within each broad category, occupations are listed in alphabetical order. Therefore, the third and fourth digit of each occupation's code follow that alphabetical progression. For example, the code for Rental Clerk is 01290, while the code for Scheduler, Maintenance is 01300.
- Occupations that reflect distinct levels in "job families" are prefaced by "base" statements that describe occupational content common to each level.
- The levels of difficulty have been denoted by Roman numerals placed after the title, with the numeral "I" being the least difficult, and each numeral thereafter indicating a more difficult level. In general, the higher the grade level, the greater the level of complexity and compensation. The codes for each level, i.e., General Clerk I, General Clerk II, General Clerk III, and General Clerk IV, utilize the fifth digit to differentiate one from the other. For example, General Clerk I, 01115; General Clerk II, 01116; and General Clerk III, 01117, and General Clerk IV, 01118.
- Each broad category is defined so that homogeneous groupings can be delineated. The titles represent those most commonly used in the wage determination process. The descriptions represent composites of jobs found in a number of establishments and may differ from those in use in individual establishments or those prepared for other purposes.
- Some of these definitions have been adjusted to meet SCA operations requirements. Immediately following the title, there may be one or more titles in parentheses. These are alternative titles that are synonymous with the main titles with which they are shown, and appear in the alphabetical index in lower case.

D. Job description and Federal Grade Equivalent must be provided if the Directory does not include a class for the given job duties.

- Users of the Directory who are able to locate a given title or description, or who cannot match specific job duties with a corresponding occupational description in the Directory, should submit an appropriate occupational title and description with

the SF-98 request. This procedure will assist the Branch of Service Contract Wage Determinations in issuing wage determinations for occupations in response to SF-98 requests. Such information also provides the basis for future updates and revisions of the Directory. Note that wage determinations will not be issued for occupational titles requested if the applicable job duties are performed by an occupational classification listed in the wage determination of the SCA Directory. Job definitions included in the Directory may not be applicable when the service contract is governed by Section 4(c) of the Service Contract Act.

GUIDE TO COMPLETING AN INDIVIDUAL SF-98 REQUEST

A. Introduction

Supplies of the SF-98 and SF-98a are available in all General Services Administration (GSA) supply depots under stock numbers 7540-926-8972 and 75409-118-1008, respectively.

Key aspects of procedures for submitting individual SCA WD requests:

- > TIMING
- > CONTENT

B. Timing

The SF-98/98a and any required supporting documentation should be submitted to WH not less than 60 days (nor more than 120 days) prior to any:

- > Invitation for bids;
- > Request for proposals;
- > Commencement of contract negotiations;
- > Exercise of options or contract extensions;
- > Annual anniversary date of multi-year contracts subject to annual appropriation of the U.S. Congress; or
- > Biennial anniversary date of multi-year contracts not subject to annual appropriations of the U.S. Congress, unless otherwise advised by WH.

For unplanned procurement needs, individual SF-98 requests must be submitted as soon as possible, but not later than 30 days prior to the above listed contracting actions. For emergency procurement needs, appropriate WH officials should be consulted prior to submission (see WH staff listings at the back of this resource book). Requests should then be submitted as soon as possible according to instructions provided by the WH official contacted.

C. Content

The SF-98 specifies the relevant procurement dates, the location – **county and State** – of the work to be performed, the type of services to be covered by the contract, and provides information on incumbent contractors, previous wage determinations, and collective bargaining agreements that may apply. The SF-98a identifies the occupations (classes) of service employees to be employed under the SCA-covered contract, the number to be employed, and the hourly wage rates that would be paid if such workers were federal direct-hires.

The SF-98 includes instructions for proper completion on the reverse side. While all requested information is important for the proper issuance of the wage determination, certain items are key, as described below. See the properly completed sample individual request (SF-98 and SF-98a). The items discussed below reference the appropriate SF-98 or SF-98a blocks.

Procurement Dates (SF-98, Blocks 2, 3, & 4)

Procurement dates are important for evaluating the timeliness of requests and the WD response issued by WH. In addition, these dates are important to the evaluation of the currency of data sources to be used in developing the WD and the proper tracking of annual vs. multi-year service contracts.

Note that for multi-year contracts not subject to annual U.S. Congressional appropriations, a written statement describing the type of funding and anticipated term of the proposed contract must be attached to the SF-98 request. This type of multi-year service contract requires a new wage determination issuance at least every two years.

Place(s) of Performance (SF-98, Block 5)

Listing the city, **county**, and State where the services will be performed is critical to the issuance of the wage determination. Prevailing, area wide WDs are based on wage rates and fringe benefits determined to prevail in the locality of the place of performance. The place of performance could be the contractor's site, a government installation, or elsewhere.

When the place(s) of performance of an SCA-covered contract is unknown at the time of solicitation, a two-step solicitation process should be used.

- In the first step, the contracting agency will issue an initial solicitation with no wage determination, from which it identifies all interested bidders and their possible places of performance and then transmits this information to the Department of Labor with the SF-98.

- In the second step, the Department of Labor will issue separate wage determinations for the various localities identified in the first step, to be incorporated in the solicitation prior to the submission of final bids. The appropriate wage determination applicable to the geographic location of the successful bidder shall be incorporated in the resultant contract and shall be observed, regardless of whether the contractor subsequently changes the place(s) of contract performance.

Services to be Performed (SF-98, Block 6)

A clear description of the types of services called for by the procurement assists the wage determination staff in evaluating the request and in determining SCA coverage.

Usually a simple statement, such as that shown on the sample SF-98, will suffice. If services to be provided are unusual in any way, however, a detailed description may be necessary.

Information About Performance (SF-98, Block 7)

Identification of the status of the procurement alerts the wage determination staff to several important considerations that will be addressed. This include:

- Box A – Service Now Performed by a Contractor: Checking this box indicates that the procurement is recurring. Depending upon the procurement dates, the contract may be an annual, recurring contract, or a continuous, multi-year contract. Also, a contract that is currently being performed by a contractor may have a previously-issued wage determination on file that will be evaluated by WH staff as part of the WD development process. If you check this box, you must also complete box 8(a), 8(b), and if applicable, 8(c).
- Box B – This box indicates that no wage determination applicable to the specified locality and classes of employees is in effect.
- Box C – Service Not Presently Being Performed: Checking the box indicates that the procurement is a completely new service.

Collective Bargaining Agreement (SF-98, Block 8)

Attachment of the current, signed, applicable collective bargaining agreement (CBA) is necessary for SCA-covered contracts for which the SCA requires application of a section 4(c) wage determination. If an incumbent contractor is performing the services called for by the proposed contract and the service employees performing the contract are covered by one or more CBAs, the applicable CBAs must be attached. In addition to CBA(s) addressing the wage rates and fringe benefits afforded to the incumbent contractor's service employees, any related documents must be attached.

Note: For section 4(c) to apply, the proposed or successor contract must be for the same or substantially the same services and be performed in the same locality as that of the incumbent contract. If the applicable CBA(s) does/do not apply to all the service employees employed under the incumbent contract, the contracting agency must identify the occupational classes and/or work subject to the CBA(s).

Official Submitting Notice/Where To Send Response (SF-98, Blocks 9 and 10)

All information requested should be properly completed so that WH staff can address any inquiries it may have and issue its response to the appropriate contracting agency officials.

Occupational Classes and Number of Employees (SF-98a, Blocks 12 and 13)

The occupational classes of service employees expected to perform the proposed contract work must be listed on the SF-98a. The listing of all occupational classes of service employees to be employed under the proposed contract should utilize job titles and corresponding code numbers found in the SCA Directory of Occupations, where applicable. For occupations not contained in the Directory, an appropriate job title shall be given in Block 12 and a job description must be attached to the SF-98 request.

The WD to be issued will include the minimum wage rates and fringe benefits to be paid by the contractor for the occupational classes listed in the SF-98a for use in the performance of the SCA-covered contract. An occupational class is classified according to the duties, skills, and knowledge required. Such factors affect the job's relative rate of pay. Occupational classes vary considerably with regard to these factors; wage rates may, therefore, vary considerably by class.

Compare Federal Rates (SF-98a, Block 14)

The hourly rates or grade levels that would be paid if workers were federal direct-hires must be listed in the SF-98a. Wage rates for white collar classes have been established by the federal General Schedule (GS) rates and grades. Wage rates for blue collar classes are established by the federal Wage System Schedules (Wage Board or non-appropriated fund (NAF) rates and grades). These comparable pay rates or grade levels are used to apply the principles of due consideration required by section 2(a)(5) of the SCA.

Response to Notice Segment

These boxes are completed by WH staff as part of its response to the SF-98 request.

**SAMPLE CONSOLIDATED
SCA WAGE DETERMINATION**

**SAMPLE SF-98 AND SF-98a
REQUEST FOR AN
SCA WAGE DETERMINATION**

**HEALTH AND
WELFARE BENEFITS**

BASIS OF THE HEALTH AND WELFARE BENEFITS REQUIREMENT IN MOST SCA WAGE DETERMINATIONS

- The Health & Welfare (H&W) benefit rates in SCA wage determinations are based on data from Bureau of Labor Statistics publication: Employer Cost for Employee Compensation.
- Effective June 1, 1997, the Department implemented a new methodology for determining the health and welfare benefit requirement applicable to most employees under SCA.
 - The new methodology establishes a single H&W benefit rate. The new SCA single H&W rate reflects the total cost for private employers to provide all bona fide fringe benefits not legally required other than vacations and holidays (vacations and holidays are determined separately under SCA). In accordance with the requirements of 29 CFR 4.52, the prevailing health and welfare fringe benefits issued under the McNamara O'Hara Service Contract (SCA) are increased annually on June 1. As prescribed by the Regulations the new benefit rate is derived from the latest Bureau of Labor Statistics Employment Cost Index (ECI) summary of Employer Cost for Employee Compensation (ECEC). Effective June 1, 2002 the new SCA health and welfare benefit rate was increased to \$2.15 per hour or \$86.00 per week or \$372.67 per month.
 - On contracts to which an average \$2.56 rate applied previously, that health and welfare benefit is being "grandfathered" at the \$2.56 level through all options and renewals of such contracts as well as through all resolicitations for the same services. Thus, for such contracts, the \$2.56 H&W determinations will be phased out only after the new single rate equals or exceeds \$2.56 per hour.
 - The new methodology replaces a longstanding administrative practice of issuing two nationwide rates for health and welfare benefits for different SCA-covered contracts. The rates issued for a particular contract depended on the nature of the contract.

(See the final rule issued in the *Federal Register*, included here following this page, for detailed information concerning the decision to change to the new methodology for determining the H&W requirement.)

- A discussion of how to comply with these health and welfare benefit requirements is included in the "Compliance Principles" section of this Resource Book.

**NATIONAL TECHNICAL
INFORMATION SYSTEM (NTIS)**

**ELECTRONIC ACCESS TO
SCAWAGE DETERMINATIONS**

NTIS ONLINE INFORMATION SERVICE

Agencies interested in obtaining information on Service Contract Act Wage Determination Database through the NTIS FedWorld should direct their request, in writing, for the Memorandum of Understanding (MOU) and User's Guide, to:

U.S. Department of Labor,
Branch of Service Contract Wage Determinations,
200 Constitution Avenue, N.W., Room S-3014
Washington, D.C. 20210.

The Service Contract Act Wage Determination Database (SCAWDD) contains unsigned copies of the latest wage determinations developed by DOL. These wage determinations, issued by Wage and Hour in response to specific notices filed, set the minimum wage on federally funded service contracts.

For those federal agencies participating under an MOU with Wage and Hour, and meeting all MOU requirements, the SCAWDD may be used in the procurement process. For all other users, the wage determinations in the SCA Wage Determinations Database are for **INFORMATION USE ONLY**. They are not considered official wage determinations for specific solicitations or contracts and should **NOT** be incorporated therein. However, this information does provide a source of information concerning the rates being issued for upcoming service contracts. This data also forms a convenient and accurate basis upon which rates may be compared by occupation and geography.

The Database does not include listings for certain non-standard classes. A list of non-standard classifications follows this page.

Additional information can be obtained by visiting the NTIS web site at:

<http://servicecontract.fedworld.gov>.

NON-STANDARD CLASSES

1. AIRCRAFT SERVICES (LARGE MULTI-ENGINE AIRCRAFT * INCLUDING/EXCLUDING CNET POSTAL CONTRACTS)
2. AIR TRANSPORTATION
3. ALCOHOLISM DRUG ABUSE/COMPULSIVE OVEREATING & COUNSELING SERVICES
4. AERIAL PHOTOGRAPHERS/SEEDINGS/SPRAYING SERVICES *
5. BACKGROUND INVESTIGATORS
6. BEAUTY & BARBER
7. BREATH ALCOHOL &/OR DURG TESTING SERVICES *
8. BROADCASTING SERVICES
9. CHILD/ADOLESCENT PSYCHIATRIC SERVICES
10. DECKHAND
11. DECONTAMINATION SERVICES
12. DEMOLITION
13. DISASTER EMERGENCY CLEAN-UP & REPAID SERVICES
14. DIVING SERVICES *
15. DRILLER SERVICES
16. ELEVATOR MAINTENANCE *
17. EMERGENCY INCIDENT SERVICES
18. EQUIPMENT INSTALLATION & SERVICES
19. FAST FOODS
20. FIRE SAFETY SERVICES *
21. FIREWATCH SERVICES
22. FISH MARKETING
23. FISH & WILDLIFE SERVICES
24. FOOD & LODGING
25. FOREIGN LANGUAGE TRANSLATOR *
26. FORRESTRY & LAND MANAGEMENT
27. GAGE READING & WATER SAMPLER COLLECTOR
28. HAZARDOUS WASTE PICK-UP & DISPOSAL SERVICES
(MATERIAL/OIL SPILLS & RELATED CLEAN-UP SERVICES)
29. HEALTH PHYSICS TECHNICIAN
30. INCOME TAX PREPARATION SERVICES *
31. INSPECTION/APPRaisal SERVICES *
32. INSPECTOR
33. INTERPRETER (SIGN LANGUAGE)
34. LAW ENFORCEMENT
35. MAINTENANCE & MODIFICATIONS OF WEAPONS SYSTEMS *
36. MOVING & STORAGE
37. NURSING HOME SERVICES
38. OCCUPATIONAL THERAPIST
39. OIL & GAS EXTRACTION/DRILLING
40. PSYCHIATRIC SERVICES

41. QUALITY ASSURANCE SERVICES *
42. RADIOLOGY SERVICES
43. RELOCATION SPECIALIST
44. REMOVAL OF OIL SPILLS, HAZARDOUS WASTE MATERIALS *
45. RESIDENTIAL & HALFWAY HOUSE
46. ROCK CRUSHING & STOCKPILING
47. SMALL PACKAGE DELIVERY SERVICES (GSA CONTRACTS ONLY) *
48. SAMPLER COLLECTOR
49. TELECOMMUNICATION EQUIPMENT INSTALLATION & SERVICES
50. TRANSCRIBING MACHINE TYPIST
51. TRANSPORTATION & DISPOSAL HAZARDOUS WASTE
52. TUGBOATS AND COSTAL VESSELS *
53. URINE COLLECTION SERVICES *

* RATES FOR THESE CLASSIFICATIONS ARE ISSUED IN NATIONWIDE
WAGE DETERMINATIONS

SCA
CONFORMANCE PROCESS

**CONTRACT CLAUSE STIPULATED AT 29 CFR 4.6(b)(2)
AND RELATED REQUIREMENTS AT 29 CFR 4.152(c)(1)**

**CONFORMANCE GUIDE FOR THE McNAMARA-O'HARA
SERVICE CONTRACT ACT**

**CONTRACT CLAUSE STIPULATED AT 29 CFR 4.6(b)(2)
AND
RELATED REQUIREMENTS AT 29 CFR 4.152(c)(1)**

“4.6 Labor standards clauses for Federal service contracts exceeding \$2,500.

The clauses set forth in the following paragraphs shall be included in full by the contracting agency in every contract. ...

(b)(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. ...

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to Wage and Hour Division, Employment Standards Administration, the U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action... .

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of the determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the

same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classifications by indexing (i.e. adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.”

“4.152 Employees subject to prevailing compensation provisions of sections 2(a)(1) and (2) and 4(c) [of the SCA]

(a) Under sections 2(a)(1) and (2) and 4(c) of the Act, minimum monetary wages and fringe benefits to be paid or furnished various classes of service employees to be paid or furnished the various classes of service employees performing such contract work are determined by the Secretary of Labor ... in accordance with prevailing rates and fringe benefits for such employees in the locality or in accordance with the rates contained in a predecessor contractor’s collective bargaining agreement, as appropriate and are required to be specified in such contracts and subcontracts thereunder. ... Pursuant to section 4.6(b)(2), conforming procedures are required to be observed for ... classifications of service employees not listed in the wage determination incorporated in the contract.

(b) The duties which an employee actually performs govern the classification and the rate of pay to which the employee is entitled under the applicable wage determination. ...

(c)(1) Some wage determinations will list a series of classes within a job classification family, e.g., Computer Operators Class A, B, and C, or Electronic Technicians, Maintenance Class A, B, and C, or Clerk Typist, A and B. Generally, the lowest level listed for a job classification family is considered to be the entry level and establishment of a lower level through conformance (§ 4.6(b)(2)) is not permissible. Further, trainee classifications cannot be conformed. Helpers in skilled maintenance trades (e.g. electricians, machinist, automobile mechanics, etc.) whose duties constitute, in fact, separate and distinct jobs, may also be used if listed on the wage determination, but cannot be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may only be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title.”

CONFORMANCE GUIDE FOR THE McNAMARA-O'HARA SERVICE CONTRACT ACT

Introduction

Under the McNamara-O'Hara Service Contract Act (SCA), procurement agencies file a notice with the Department of Labor indicating intent to enter into a service contract in excess of \$2,500. Before contract solicitation, the Wage and Hour Division (Wage and Hour) furnishes the contracting agency with a wage determination that specifies the minimum wage and fringe benefit rates to be paid service employees for each occupation to be utilized in fulfilling the contract requirements.

The SCA conformance process is a method by which contractors may legally employ workers required in occupations that are not included on the governing SCA wage determinations. When wage determinations do not include an occupation in which covered workers will be/are employed, the conformance process allows affected contractors to propose the use of workers in that occupation at a wage rate which is reasonable relative to other occupational wage rates in the applicable wage determination.

The conformance request must be forwarded to the contracting agency no later than 30 days after employment of workers in the occupation to be conformed has begun. However, if contractor bids or offers are to approximate actual costs, contractors probably need to develop the conformance proposal, for their own use, prior to responding to requests for proposals or invitations for bids.

This Guide presents the principles upon which SCA conformance actions are based. A brief description of how this process normally works also is included. For a more detailed presentation of this information, consult the Service Contract Act Conformance Guide, U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, February 1998. This publication may be obtained from the U.S. Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Telephone orders may be placed at (202) 512-1800.

Conformance Principles

The regulations that prescribe the SCA contract stipulations specify the conformance process, and emphasize that "the process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula." 29 CFR 4.6(b)(2). (The SCA contract stipulations are reiterated in the Federal Acquisition Regulations (FAR) at 48 CFR 52.222-41.)

However, six principles, embodied in the regulations, may guide participants in the SCA conformance process:

- An occupation may be conformed only if the work covered by that occupation is not covered by another occupation included in the governing wage determination.
- A conformance may not be used to artificially split or subdivide classifications listed in wage determinations.
- In general, helpers, trainees, and occupations below the lowest level of established job families may not be conformed.
- Leaders are conformed when the leader's duties, added to related journeyman occupation on the governing wage determination, are significant enough to create a new occupation.
- Conformed wage rates must bear a reasonable relationship to those listed in the applicable wage determination, maintaining pay relationships between job classifications based on the skills required and the duties performed.
- Agreement or disagreement of the employees involved, or their authorized representative, should be obtained in good faith and included in the conformance proposal.
- Adherence to these principles helps to ensure that an appropriate conformance action is developed, regardless of the specific techniques employed. Furthermore, reliance may be placed upon the use of:
 - 1) standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other factors;
 - 2) the way different jobs are weighted under Federal pay systems (Federal Wage Board Pay System and the General Schedule); and
 - 3) other wage determinations issued in the same locality.

Developing and Processing An SCA Conformance Request

While the SCA conformance principles provide guidance to follow regulatory intent, participants often require assistance in determining how these principles may be translated into specific action. The following information describes one way that this may occur:

- When a contractor receives a solicitation or proposed contract modification, the contractor determines if the work to be performed by employees is covered by any classification listed on the wage determination. (The work covered by most occupational titles listed on SCA wage determinations may be identified in the Service Contract Act Directory of Occupations, available from the U.S.

Government Printing Office Superintendent of Documents or from the internet at <http://www.dol.gov/esa/regs/compliance/whd/wage/main.htm>.) If all the work is included in job descriptions for the wage determination occupations, there is no need for a conformance. Note again, that a conformance may not be used to artificially split or subdivide classifications listed in wage determinations.

- The contractor identifies the occupations that must be conformed. Note again, that conformance of helpers, trainees, and occupations below job family entry levels is not permissible, to help ensure that workers performing the range of duties of the journeyman are compensated at the prevailing rate.
- An occupational job family is a group of classifications that perform duties that reflect distinct levels of work based upon skills, duties and responsibilities; e.g., Secretary I, II, III, IV and V.
- Helpers in skilled maintenance trades, whose **duties are separate and distinct**, may be used if listed on the wage determination, but cannot be conformed. Apprentices are permitted to work at less than predetermined rates when registered in a bona fide apprenticeship program.
- The contractor determines if the position to be conformed is a “Leader”. (A Leader is not a supervisor but an employee who typically helps to coordinate employee work, may open and close establishments, assists with exceptionally difficult problems, trouble shoots, helps organize operations, and may keep attendance and other records.) To be the subject of a conformance request, the Leader duties should be substantial enough to create an occupation substantively different from the journeyman position. If the position to be conformed is a Leader, and the journeyman position is in the wage determination, the contractor proposes to conform the Leader at a wage rate commensurate with the additional duties performed. (The Federal Government often compensates Leaders at 110 percent of the journeyman rate.) If the journeyman position is not in the wage determination, the journeyman occupation must first be conformed.
- The contractor obtains or develops a job description for the occupation to be conformed. (As noted above, the SCA Directory is available from the U.S. Superintendent of Documents, and on the Department of Labor internet web site.)
- The contractor obtains a measure of complexity/ difficulty of the skills required and duties performed by workers in the occupation to be conformed. Note that one such measure is the Federal Grade Equivalency (FGE), as expressed in the SCA Directory of Occupations. FGE levels may be determined based upon skill and knowledge, the level of responsibility, and the scope of work.
- The contractor develops the proposed conformed hourly wage rate. The proposed wage rate should be reasonable relative to other occupational wage rates on the applicable wage determination.

- The contractor utilizes the occupation and its wage rates to be proposed in preparing a response to the solicitation or contract modification. After contract award or initiation of the modification, the contractor obtains in good faith input from the affected employees, or their authorized representative, that indicates whether there is agreement or disagreement with the proposed rates. The contractor then completes items 3 through 15 on Standard Form 1444 (or provides the same information in another format) and forwards the conformance proposal to the contracting officer, no later than 30 days after employees perform any work on the contract.

The contracting officer reviews the conformance request, completes SF-1444 items 2 and 16, develops an agency recommendation, and forwards all related material to the Wage and Hour Administrator.

- Wage and Hour reviews the conformance request package and approves, disapproves, or establishes the rate for the subject occupation. The Division's final decision is transmitted to the contracting officer within 30 days of Wage and – Hour's receipt, unless the contracting officer is informed that additional time will be required.
- When a contract, whether an option or extension period, or a new contract, succeeds a contract under which a class was previously conformed, the contractor can use indexing to determine a new wage rate for the conformed class. To index, the contractor calculates the overall percent change between the previously issued rates listed on the applicable wage determination for those occupations utilized on the contract or in the Broad Occupational Category and the rates for those occupations issued for the extension or new contract period. The resulting percentage is then applied to the wage rate of the conformed class, and the contracting officer is informed of this action. Alternatively, the contractor may request a new conformance for the occupation required but not listed in the current wage determination.

**REVIEW &
RECONSIDERATION**

OF SCA

WAGE DETERMINATIONS AND CONFORMANCE ACTIONS

INTRODUCTION TO REVIEW AND RECONSIDERATION

REQUEST PROCEDURES AND RELEVANT TIME FRAMES

**PROCESSING PROCEDURES AND DECISION-MAKING
CRITERIA**

APPEALS

INTRODUCTION TO REVIEW AND RECONSIDERATION OF SCA WAGE DETERMINATIONS

- A request for review and reconsideration of a WD issued and/or the basis upon which it was developed is a petition to the DOL to reexamine the data used to issue the WD.
- Review and reconsideration provides an opportunity for any affected or interested party to request Wage and Hour review of the wage determination issued in light of additional information provided by the requester.
- Wage and Hour's decision may result in the issuance of a new or revised determination, or may affirm the wage determination.
- Review and reconsideration provisions are established by the regulations at 29 CFR 4.56.

REQUEST PROCEDURES AND RELEVANT TIME FRAMES

A request for review and reconsideration can be submitted by any affected and/or interested party, including, but not limited to, contracting agencies, contractors or prospective contractors; contractor or employer associations, employees or their representatives; labor unions; or other interested government agencies.

- The request should be submitted in a letter addressed to the Administrator, Wage and Hour Division, and should identify the specific Wage Determination that needs to be reviewed.
- The letter must provide supporting evidence documenting where and why the wage determination is incorrect.
- See sample request and response on pages 6-7.

For competitively advertised procurements, requests must be submitted before the opening of bids.

For negotiated procurements or the exercise of contract options or extensions, requests must be submitted no later than 10 days before the contract or contract option/extension period begins.

The Administrator has 30 days from the date of receipt of the request to issue a decision, or notify the interested party in writing that additional time is necessary.

The time frames for review and reconsideration requests are specified at 29 CFR 4.56 of the regulations.

PROCESSING PROCEDURES AND DECISION-MAKING CRITERIA

If the request provides no supporting evidence or is untimely, the wage determination stands as is, and a written reply is sent to the interested party advising them of that result. Where the request is submitted in a timely manner and supporting evidence is provided as required by the regulations, a data review and evaluation is conducted.

Analysis of Request and Evidence

1. In addition to the supporting evidence provided by the interested party, the Department will review:
 - Data originally used to develop and issue the WD.
 - Any additional relevant data that has since become available.
2. Data submitted as evidence supporting a change in the WD and additional data, as described above, are reexamined based on the following criteria:
 - Did the request rely on use of a single rate paid to 50 percent or more of the service employees in a given class? Is the mean or median used to determine what the wage rates should be? Are they calculated correctly?
 - How does the data, used to issue the wage determination or conformance decision, compare to the data submitted by the interested party? Which data result in more relevant and reliable indicators of what is prevailing?
 - If any additional data have since become available, how does it compare to the data submitted by the interested party and the data used to issue the WD decision?
 - Did major differences exist between data submitted as evidence and data used to issue the WD decision? Are there additional data sources that can be used?
3. Review and reconsideration can result in either an affirmation, revision, or issuance of a new wage determination.
 - If the data submitted as evidence in conjunction with that originally used, and any other relevant data that have since been released suggest that the WD was incorrectly developed, the wage determination is revised utilizing these resources as the basis for reissuing a WD.
 - The application of criteria and statistical techniques used to perform review and reconsideration are the same as those used to develop a WD.

APPEALS

The Administrator's decision can be appealed to the Administrative Review Board pursuant to the provisions of 29 CFR Part 8: "Practice Before the Administrative Review Board with regard to Federal Service Contracts."

**ADMINISTRATIVE HEARINGS
REGARDING APPLICATION OF**

SECTION 4(c)

**"SUBSTANTIAL VARIANCE" AND
"ARM'S-LENGTH" NEGOTIATIONS**

**INTRODUCTION TO SECTION 4(C)
"SUBSTANTIAL VARIANCE" AND "ARM'S-LENGTH"
ADMINISTRATIVE HEARINGS**

REQUEST PROCEDURES AND RELEVANT TIME FRAMES

APPEALS TO THE ADMINISTRATIVE REVIEW BOARD

**INTRODUCTION TO
SECTION 4(C)
"SUBSTANTIAL VARIANCE" AND "ARM'S-LENGTH"
ADMINISTRATIVE HEARINGS**

There are two types of hearing appeals concerning section 4(c) wage determinations:

- an appeal based on substantial variance issues; or
- an appeal based on issues concerning arm's-length negotiations.

Section 4(c) of the Act, and its implementing regulations, provides that whenever a section 4(c) WD is issued, the successor contractor is required to pay the minimum wage rates and fringe benefits contained therein as based on the predecessor's collective bargaining agreement (CBA). These rates are to be paid unless there is found to be a substantial variance between the Section 4(c) collectively bargained rates and those prevailing in the locality, and/or the lack of an arm's-length negotiation in arriving at the collectively bargained rates. The implementing regulations are at 29 CFR 4.10.

Substantial Variance

A finding that a 4(c) substantial variance exists at a hearing before an Administrative Law Judge requires that such wage rates and/or fringe benefits in the CBA are found to vary substantially from those which would otherwise prevail for services of a similar character in the locality.

Service Contract Act does not define the term “substantial variance,” however, the plain meaning of the term requires that a considerable disparity in rates must exist before the successorship obligation may be avoided. Furthermore, no discrete comparison rate is conclusive. Collectively-bargained rates often can be expected to exceed service industry “prevailing rates,” and where some variance should be the norm, a finding of “substantial variance” would require a collectively-bargained rate clearly to fall out of line when compared to a comprehensive mix of rates.

A request for a hearing must contain information and analysis concerning the differences between the collectively-bargained rates issued and the rates contained in:

- (a) Corresponding Federal wage board rates and surveys. While it is not necessary that the challenged rate be higher than the corresponding Federal rate, this is an important factor.
- (b) Relevant BLS survey data and the comparable SCA area wage determination.

- (c) Other relevant wage data. For example, rates paid in local hospitals would be appropriate for comparison on contracts for hospital aseptic services, while the rates paid in local schools could be of value in comparison for janitorial or food service workers.
- (d) Other collectively-bargained wages and benefits.

It is expected that a request for a hearing will address all relevant issues. However, it is recognized that a petitioner may not be able to submit complete data at the time the hearing request is made. Where efforts to obtain supporting evidence are in progress, information must be provided concerning the approximate time necessary to complete the gathering of additional data. Merely providing a statement that data are not available is not sufficient. The request must adequately demonstrate the effort made to obtain or develop such information.

The Administrator can grant or deny the substantial variance hearing request. A request is granted only if the review results in a determination that there may exist a substantial variance. Wage and Hour must respond to the request within 30 days of receipt.

If a substantial variance is found to exist, a new WD must be issued which reflects prevailing rates for the locality rather than those found in the predecessor contractor's CBA. The collectively bargained Section 4(c) rates in the WD are required to be paid until a final decision from the Administrative Law Judge or Administrative Review Board.

Arm's-Length Negotiations

As described in section 4.11 of the Regulations, this provision precludes arrangements by parties to a CBA who either separately or together, act with an intent to take advantage of the wage determination process. In short, it addresses the "Sweetheart Agreement," between contractor and union, which includes making a CBA contingent upon the issuance of a supporting WD requiring reimbursement of the contractor by the funding agency.

The primary example of these types of agreements involve contingent CBA provisions that attempt to limit the contractor's obligations by such means as requiring issuance of a wage determination by Wage and Hour, requiring the contracting agency to include the wage determination in the contract, or requiring the contracting agency to adequately reimburse the contractor. Such contingent arrangements evidence an intent to take advantage of the wage determination scheme under SCA, and therefore generally reflect a lack of arm's-length negotiations.

Pursuant to section 4.4 (c) of the Regulations, copies of the predecessor contractor's CBA, regardless of any contingencies contained therein, must be submitted with the SF-98 wage determination request. The determination as to whether the CBA has application for 4 (c) purposes must be made pursuant to the SCA and Department of Labor regulations by Wage and Hour, and not by the contracting agency.

As a result of a 4(c) arm's-length hearing, investigation or otherwise pursuant to the Secretary's authority, if it is found that the CBA itself or any of the wage rates or fringe benefits contained therein were not established through arm's-length negotiations, the wage rates cannot be issued for wage determination purposes. If a lack of arm's-length

negotiations is found to exist, a new WD must be issued which reflects area-wide, prevailing rates for the locality rather than those found in the predecessor contractor's CBA. For arms-length negotiation issues, however, a two-step process may be needed.

- The Administrator must first issue her findings in response to a request before a hearing can be initiated.
- Such findings may result in a direct referral of the case to the Administrative Law Judge (ALJ) or the Administrative Review Board.
- If the Administrator's findings do not include a direct referral of the case, the interested party must then request the hearing through a subsequent letter.

REQUEST PROCEDURES AND RELEVANT TIME FRAMES

The following information on section 4(c) appeals discusses the use of the Administrative Law Judge (ALJ) and the Administrative Review Board's hearing processes to adjudicate substantial variance or arm's-length negotiation issues.

Substantial Variance Hearing and Arm's-Length Determination Request

Either request can be submitted by any affected interested party, including, but not limited to, contracting agencies, contractors, prospective contractors, contractor and employer associations, employees or their representatives, or other interested government agencies. The interested party submits a written request for the substantial variance hearing or arm's-length determination to the Administrator, Wage and Hour Division.

The request must contain information as specified in the regulations at 29 CFR Part 4, (section 4.10(b)(1)(i)(A), (B), (C), and (D) for substantial variance proceedings, and section 4.11(b)(1)(i), (ii) and (iii) for arm's-length determinations), and must include the following information:

- The number of all wage determinations at issue, name of the contracting agency involved, and a brief description of the services to be performed under the contract (substantial variance request only).
- A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, or commencement date of the contract or its follow-up option period.
- That the applicable CBA wage rates and fringe benefits contained therein were not reached as a result of arm's-length negotiations, or that the CBA rates substantially vary from those prevailing in the locality.

(Note: Supportive evidence such as data concerning wages and/or fringe benefits prevailing in the locality or information concerning arm's-length negotiations should be included. If the only information submitted concerning a substantial variance of fringe benefits is a DOL wage determination, it is insufficient, and the party requesting the hearing will be so advised.)

- Names and addresses (to the extent known) of any interested parties.

For either type of request, information must be submitted as follows (according to 29 CFR 4.10(b)(3)(i) and (ii) for substantial variance hearing requests; and section 4.11(b)(2)(i) and (ii) for arm's-length determinations):

- prior to 10 days before contract award, of an advertised contract; or

- prior to the contract or option period start date, if a negotiated contract, or existing contract with an option extension period.

Wage and Hour Administrator Arm's-Length Ruling

For arm's-length determination requests, the Administrator issues findings as to whether arm's-length negotiations did or did not take place, or a finding that there is insufficient evidence to make a determination, thereby referring the case directly to the ALJ. The regulations do not state a required response time frame for the Administrator's decision.

Arm's-Length Hearing Requests

For those cases not submitted directly for a hearing before an ALJ, any interested party may subsequently request a hearing before the Board as follows:

- Submit a written request for a hearing to the Administrator within 20 days of the Administrator's ruling.
- Include in the request a detailed statement of the following:
 - Reasons why the Administrator's finding is incorrect.
 - Facts alleged to be disputed.

If no hearing is requested within the time limit, the Administrator's ruling stands. If an arm's-length hearing is requested, the Administrator refers the request to the:

- Administrative Review Board, or the Chief Administrative Law Judge if the Administrator finds facts to be in dispute.

ALJ Hearing Granted

Once a hearing is granted by the Administrator, an Order of Reference, completed with various supporting documentation attached is submitted by the Administrator to the Chief Administrative Law Judge (ALJ) and mailed, with a Certificate of Service, to all interested parties. Hearings are conducted by a designated ALJ in accordance with procedures outlined in 29 CFR Part 6.

Within 20 days of the Order of Reference mailing date as indicated by the Certificate of Service, interested parties wishing to participate in the hearing must submit a hearing response to the Chief ALJ. The Chief ALJ appoints an ALJ to hear the case who will then notify all interested parties of the time and place for the prehearing conference and subsequent hearing. These must be scheduled within 60 days from the mailing date of the Order of Reference.

APPEAL TO THE ADMINISTRATIVE REVIEW BOARD

An appeal concerning these hearings may be submitted:

- appeals to the Administrative Review Board pursuant to the procedures set forth in 29 CFR Part 8: “Practice before the Administrative Review Board with regard to Federal Service Contracts,” and

Substantial variance or arm's-length hearing requests denied by the Administrator, where material facts are in dispute shall be referred to the Administrative Law Judge.

Where material facts are not in dispute, the request shall be referred to the Administrative Review Board.

**SCA
ADMINISTRATIVE
EXEMPTIONS**

**SPECIAL MINIMUM WAGES FOR WORKERS WITH
DISABILITIES**

**ADMINISTRATIVE EXEMPTIONS FOR CERTAIN
“COMMERCIAL” SERVICES**

SPECIAL MINIMUM WAGES FOR WORKERS WITH DISABILITIES

Workers with disabilities who are employed under certificates issued by the Wage and Hour Division may be paid at “special minimum wage” rates below the rates that would otherwise be required for such work.

- 29 CFR 4.6(o)(1) allows contractors to pay less than the minimum wages required by sections 2(a)(1) and 2(b)(1) of the SCA to workers with disabilities in competitive employment, workers with disabilities in rehabilitation facilities, and student learners, in accordance with section 14 of the Fair Labor Standards Act (FLSA).

Section 14 of the FLSA provides for the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, to provide for the employment of certain workers at rates below the federal minimum wage. As stated in section 14(c):

The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals ... whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are –

- (A) lower than the [FLSA] minimum wage,
- (B) commensurate with those paid to non-handicapped workers employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and
- (C) related to the individual’s productivity.”

The FLSA further requires employers to provide written assurances that the hourly wage rates of individuals will be reviewed regularly, and that the employees’ wages will be adjusted to reflect changes in the locally prevailing wages paid to experienced workers who do not have disabilities performing essentially the same work.

Certification

- Employers must obtain an authorizing certificate from the Wage and Hour Division prior to paying special minimum wages to employees who have disabilities for the work being performed. Applications are available from the Wage and Hour Division’s Regional Offices. Completed applications must be

mailed to the following address: U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, 230 South Dearborn Street, Room 524, Chicago, Illinois 60604-1591.

Disability

- The fact that a worker may have a disability is not in and of itself sufficient to warrant the payment of a special minimum wage. Section 14(c) does not apply unless the disability actually impairs the worker's earning or productive capacity for the work being performed. A worker who has disabilities for the job being performed is one whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury. Disabilities which may affect productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism and drug addiction.

Commensurate Rate

- A special minimum wage is a wage paid a worker with a disability that is **commensurate** with that worker's individual productivity compared to the wages and productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the vicinity where the worker with a disability is employed. The commensurate wage is always a special minimum wage, *i.e.* a wage below that required by Section 6 of the FLSA or below the rate required under an applicable SCA wage determination. The commensurate rate is determined by the employer in accordance with 29 CFR 525.

The key elements in determining commensurate rates are:

- Determining the standard for workers who do not have disabilities, the objective gauge against which the productivity of the worker with a disability is measured.
 - Determining the prevailing wage. Most SCA contracts include a wage determination specifying the prevailing wage rates to be paid for work on the SCA contract. (On SCA contracts funded by appropriated funds, the contract will be amended annually to include a new prevailing wage determination.)
 - Evaluating the quantity and quality of the productivity of the worker with the disability.
- The productivity of hourly rate workers must be reevaluated at least every six months. Also, all special minimum wages must be reviewed and adjusted regularly to assure that they reflect changes in locally prevailing wages.

Where a worker is performing work subject to the SCA, the wage rate listed on the wage determination for the classification of work performed is the prevailing wage. If a covered contract does not contain a wage determination, (because the contract is for less than \$2,500 or fewer than five service employees are to perform contract work), the employer should determine the prevailing wage rate in accordance with instructions provided at 29 CFR 525.10.

Fringe benefits and Overtime

- Workers paid special minimum wages must receive the **full** fringe benefits (or cash equivalents) listed on the wage determination when performing work subject to the SCA. Temporary and part-time employees are entitled to an amount of the fringe benefits specified in an applicable determination that is proportionate to the amount of time spent in covered work.
- Vacation pay and holiday pay may be based on the commensurate wage rate.
- In workweeks where employees with disabilities who receive special minimum wages perform work subject to the SCA, they must receive the full fringe benefits listed in the wage determination, but only for those hours spent performing work subject to the SCA. SCA makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees.
- Generally, workers with disabilities are subject to the overtime provisions of the FLSA and/or CWHSSA and must be paid at least 1½ times their regular rate of pay for all hours worked over 40 in a workweek.

FLSA minimum wage application to employees who do not perform work subject to the SCA in an establishment where SCA contract work is performed

- Section 6(e)(1) of the FLSA extends application of the FLSA minimum wage to employees not employed on the SCA contract. Thus, for example, in a work center, where SCA contract work is performed, certain staff and employees not working on the service contract must be paid at least the FLSA minimum wage. (Commensurate rates would continue to apply to the disabled workers employed under special minimum wage certificates.)

Applicable regulations

- Regulations set forth at 29 CFR 525, “Employment of Workers with Disabilities under Special Certificates” govern the issuance of certificates authorizing the employment of workers with disabilities at special minimum wages pursuant to section 14(c) of the FLSA.

ADMINISTRATIVE EXEMPTIONS FOR CERTAIN “COMMERCIAL” SERVICES

There are two administrative exemptions that apply to specific types of “commercial” services. The final rule that established the 29 CFR 4.123(e)(2) exemption and expanded the 29 CFR 4.123(e)(1) exemption was published in the *Federal Register* on January 18, 2001, and includes a full discussion of the basis for exempting the affected categories of services.

29 CFR 4.123(e)(1) exemption

- Where certain conditions are met, this exemption applies to contracts or subcontracts for the maintenance, calibration, and/or repair of:
 - automated data processing equipment and office information/word processing systems,
 - scientific and medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element,
 - office/business machines not otherwise exempt, where the services are performed by the manufacturer or supplier.

Contracts and subcontracts principally for the maintenance, calibration, and/or repair of such equipment are exempt from SCA requirements where:

- (A) the equipment serviced are commercial items “sold or traded by the contractor (or subcontractor ...) in substantial quantities to the general public in the course of normal business operations”,
- (B) the services are furnished based on the established market price or established catalog price charged the general public for such maintenance, calibration, and/or repair services, and
- (C) the contractor uses the same compensation plan for service employees performing under the government contract as the contractor uses for the same and equivalent employees servicing the same equipment of commercial customers.
- (D) the contractor certifies as to the compliance with these provisions. The certification is included in the prime contract or subcontract, and the certification by the prime contractor as to its compliance with respect to the prime contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.

For the 29 CFR 4.123(e)(1) exemption to apply with regard to the prime contract, the contracting officer determines applicability on or before contract award, considering all factors, and by making an affirmative determination that all four conditions described above have been met. Similarly, for it to apply to a subcontract, the prime contractor determines applicability of the exemption on or before subcontract award, based on all factors, and by making an affirmative determination that all of the four conditions have been met.

29 CFR 4.123(e)(2)

- This exemption applies to contracts or subcontracts for the following services (provided that certain criteria for applicability are met).
 - Automobile or other vehicle maintenance services (e.g. aircraft) maintenance; other than contracts to operate a motor pool or similar facility);
 - Financial services involving the issuance and servicing of cards, such as credit, debit, purchase, smart cards, and similar card services;
 - Contracts with hotels/motels for conferences of limited duration (e.g. one to five day), including lodging and/or meals which are part of the contract for the conference, (excluding ongoing contracts for lodging on an as needed or continuing basis – such as longer term contracts to fulfill a continuing lodging need, as for lodging military recruits or government employees attending training at an agency training center);
 - Transportation of persons by common carrier by air, motor vehicle, rail or marine vessel on regularly scheduled routes or by standard commercial services (not charter services);
 - Maintenance, calibration, repair and/or installation services for all types of equipment – except where installation is subject to the Davis-Bacon Act (as provided in 29 CFR 4.116(c)(2) – where the services are obtained from the and performed by the manufacturer or supplier of the equipment under a contract awarded on a sole source basis;
 - Real estate services related to housing federal agencies or disposing of real property owned by the federal government (e.g. real property appraisal, broker, space planning, lease acquisition, lease negotiation, tax abatement, and real property disposal); and
 - Relocation services to assist federal employees or military personnel in buying an selling homes, including services of real estate brokers and appraisers (e.g. home marketing assistance, home sales services, destination area services, management reporting services, mortgage counseling, property management services), but excluding actual moving or storage of household goods and related services.

- The 29 CFR 4.123(e)(2) exemption applies only when all of the following criteria are met:
- (A) The services are “commercial” services, “*i.e.*, they are offered and sold regularly to non-Governmental customers, and are provided by the contractor (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations”,
 - (B) The contract (or subcontract) will be awarded on a sole source basis or the contractor/subcontractor will be selected on the basis of factors in addition to price (*i.e.*, the combination of other non-price or cost factors must be equally or more important than price in selecting the contractor/subcontractor),
 - (C) The services are furnished at prices that are, or are based on, established catalog prices available to the general public or market prices established by trade between buyers and sellers free to bargain for such services,
 - (D) Each service employee who will perform services under the government contract/subcontract will spend only a small portion of his or her time servicing the government contract/subcontract – less than 20 percent of the individual’s available hours (during the contract period if the contract period is less than a month, otherwise monthly average on an annualized basis). This exemption cannot apply if the contractor will perform the services with a dedicated workforce.
 - (E) The contractor uses the same compensation (wages and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for these and equivalent employees servicing the same equipment of commercial customers.
 - (F) The contracting officer (or prime contractor with respect to a subcontract) determines in advance, that all or nearly all offerors will meet the above requirements), and
 - (G) The contractor certifies in the prime contract or subcontract, as applicable, to the requirements in paragraphs A through C, and E, above. Certification by the prime contractor as to its compliance with respect to the prime contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the contracting officer or prime contractor has reason to doubt the validity of the certification, SCA stipulations shall be included in the prime contract or subcontract.

When bids are received, if the contracting officer determines that the earlier determination that all or nearly all bidders would meet the exemption requirements was incorrect, SCA requirements should be applied to the procurement.

- There are three categories of contracts **not** exempt from the application of SCA requirements under the 29 CFR 4.123(e)(2) exemption:
 - Contracts subject to collectively bargained wages and fringe benefits applicable to a successor contract where such rates and benefits apply under section 4(c) of the SCA (as well as any options or extensions to such contracts);
 - Contracts for the operation of a Government facility or portion thereof (the exemption may apply to subcontracts under such contracts if the subcontracts meet the criteria for exemption); and
 - Contracts entered into under the Javits-Wagner-O'Day Act (41 U.S.C. 47).

**SCA
COMPLIANCE
PRINCIPLES**

TIMELY PAYMENT OF WAGES AND FRINGE BENEFITS

“BONA FIDE” FRINGE BENEFITS

**FRINGE BENEFIT REQUIREMENTS –
HEALTH AND WELFARE BENEFITS**

**FRINGE BENEFIT REQUIREMENTS –
VACATION BENEFITS**

**FRINGE BENEFIT REQUIREMENTS –
HOLIDAY BENEFITS**

EQUIVALENT BENEFITS

TEMPORARY AND PART-TIME EMPLOYMENT

TIMELY PAYMENT OF WAGES AND FRINGE BENEFITS

➤ Wages

- Although the Service Contract Act (SCA) does not prescribe the length of the pay period, a pay period longer than semi-monthly (twice a month) is not appropriate and wage payments at greater intervals are not proper payments in compliance with SCA. 29 CFR 4.6(h) and 4.165(b).
- Failure to pay for certain hours of work at the required rate cannot be offset by reallocating excess payments made for other hours. 29 CFR 4.166.

➤ Fringes

- Payments to employees in cash for fringe benefits must be made promptly on the regular payday for wages.
- Payments to bona fide plans may be made on a periodic payment basis that is not less often than quarterly. 29 CFR 4.175(d)(1).

“BONA FIDE” FRINGE BENEFITS

- An employer may discharge his/her obligation to provide SCA fringe benefits by paying the specified fringe benefit contributions to an trustee or third person pursuant to a “bona fide” fund, plan, or trust on behalf of covered employees. Examples are life or health insurance, pension plan or retirement plans. 29 CFR 4.170 and 4.171.
- To be considered a “bona fide” fringe benefit for purposes of the SCA, a fringe benefit plan, fund or program must constitute a legally enforceable obligation which meets the following criteria. 29 CFR 4.171.
 - The fringe benefit plan, fund or program must be specified in writing and must be communicated in writing to the affected employees.
 - The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like.
 - The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan.
 - Contributions must be made pursuant to the terms of such plan, fund, or program. Any contributions made by employees must be voluntary, and if such contributions are made through payroll deductions, such deductions must be made in accordance with 29 CFR 4.168. (No contribution towards fringe benefits made by the employees themselves or provided from monies deducted from their wages may be included or used by an employer in satisfying any part of any SCA fringe benefit obligation.)
 - Generally, the contractor’s contributions must be paid irrevocably to a trustee or third person, no less often than quarterly, pursuant to an insurance agreement, trust or other funded arrangement (except as indicated below with regard to certain “unfunded” fringe benefit plans).
 - Unfunded fringe benefit plans:

With the exception of fringe benefit plans to provide vacations and holidays, unfunded "self-insured" plans under which a contractor typically pays insurance claims out of pocket to cover fringe benefit obligations are normally not considered "bona fide" plans or equivalent benefits for purposes of SCA. 29 CFR 4.171(b). A contractor must request approval by the Administrator of the Wage and Hour Division for an unfunded self-insured plan. 29 CFR 4.171(b)(2).

- The following are not bona fide fringe benefits (nor can they be considered equivalent benefits for SCA purposes):
 - Benefit plans or trusts which are disapproved by the Internal Revenue Code as not satisfying the requirements of the Internal Revenue Code or which do not meet the requirements of the Employee Retirement Income Security Act of 1974. 29 CFR 4.171(a)(5)
 - Any benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security. 29 CFR 4.171(c).
 - Board, lodging or other facilities for which the cost or value, determined in accordance with regulations under the FLSA contained in 29 CFR 531, is creditable toward the monetary wages specified under the Act. 29 CFR 4.171(d) and 4.167.
 - Facilities primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor, such as relocation expenses, travel and transportation expenses incident to employment; incentive or suggestion awards, recruitment bonuses; tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business; and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, the SCA contract, by law, or by the nature of the work, to wear such items. 29 CFR 4.171(e) and 4.168.
 - Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues. 29 CFR 4.171(f).
- Fringe benefits and overtime pay:
 - CWHSSA requires that on contracts to which it applies, any laborer or mechanic who works over 40 hours in a workweek must be compensated "at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek". The basic rate of pay excludes bona fide fringe benefits and cash equivalent payments.
 - 29 CFR 778.215 and 29 CFR 4.180-4.182 discuss the parallel exclusion of fringe benefits from the "regular rate" for overtime purposes under the FLSA.

FRINGE BENEFIT REQUIREMENTS – HEALTH AND WELFARE BENEFITS

- The health and welfare benefit requirement for the covered service employees is indicated in the applicable contract wage determination.
- There are 3 types of health and welfare fringe benefit requirements under SCA:
 - **Standard wage determination health and welfare benefit requirement** – Where the SCA wage determination states this type of fringe benefit, it is required to be paid for each individual employee and the benefit is computed on the basis of “all hours paid for” up to 40 per week and 2080 per year.
 - **“Grandfathered” average cost health and welfare fringe benefit** – Where the SCA wage determination states this type of fringe benefit, the employer contribution is required to average at least \$2.56 per hour computed on the basis of all hours worked by service employees employed on the contract (or portion of the contract to which the wage determination applies).
 - Pursuant to section 4(c) of the SCA, **collectively bargained fringe benefits** are required to be paid by a successor contractor under a contract to furnish substantially the same services as a predecessor contractor.
- As described in All Agency Memorandum No. 188, a single nationwide health and welfare rate method has been established for determining the health and welfare fringe benefit requirement incorporated in SCA wage determinations. Beginning June 1, 1997, a new methodology for determining a single rate was phased in, with continuing annual adjustments to the new methodology for determining the single rate was phased in with existing “low” health and welfare rate. The existing \$2.56 per hour health and welfare rate applicable to certain contracts is “grandfathered” until it is equaled or exceeded by the new single rate.

Standard Wage Determination Health and Welfare Fringe Benefit (Per Employee)

- Most SCA wage determinations require that health and welfare benefits be paid on a per hour per employee basis. Such wage determinations state the health and welfare fringe benefit requirement as a simple rate. Annual adjustments are based on new data. For example, on June 1, 2002, the amount specified for upcoming contracts was raised from \$2.02 to \$2.15 per hour. Thus, on a wage determination issued in late 2002 or early 2003, the health and welfare fringe benefit amount is stated as “\$2.15 an hour, \$86.00 a week, or \$372.673 a month.”

- This method requires health and welfare benefits in terms of a fixed contribution per hour on behalf of each service employee working on the contract. Under this type of wage determination, the specified health and welfare benefit is due **each** service employee on the basis of “**all hours paid for**,” including paid vacations, holidays, and sick leave, **up to** a maximum of 40 hours per week and 2,080 hours per year.
 - Under this type of wage determination, the actual benefits may differ among employees, so long as the total amount paid by the contractor for fringe benefits (and/or cash equivalents) provided to each individual, on an hourly basis, totals at least the fringe benefit rate specified in the contract wage determination for the work the individual performs for all his/her paid hours up to 40 per week. 29 CFR 4.175(a).
 - The type(s) and amount of benefits (if any), or cash equivalents to be provided is strictly a matter to be decided by the employer.
 - Employees excluded from participation in a fringe benefit plan must be furnished equivalent bona fringe benefits or be paid a cash equivalent payment during the period that they are not eligible to participate in the plan. On the other hand, it is not required that all employees participating in a fringe benefit plan be entitled to receive benefits from the plan at all times. For example, an employee who is eligible to participate in an insurance plan may be prohibited from receiving benefits from the plan during a 30-day waiting period. Contributions made on behalf of these employees would be creditable against the contractor's fringe benefit obligations. 29 CFR 4.175(c)(1).
 - **Example:** \$2.15 per hour paid for each employee:

<u>Employee</u>	<u>Hours Paid For</u>	<u>Fringe Benefits</u>	<u>Cash</u>	<u>Total</u>
Libby	80	\$ 82	\$90	\$172 (/ 80 = \$2.15)
Jean	100	\$180	\$35	\$215 (/100 = \$2.15)
Ann	20	0	\$43	\$ 43 (/ 20 = \$2.15)
Tim	80	\$172	0	\$172 (/ 80 = \$2.15)
Tom	60	\$100	\$29	\$129 (/ 60 = \$2.15)

**“Grandfathered” Health and Welfare Fringe Benefit
(Average Cost)**

“Life, accident, and health insurance plans, sick leave, pension plans, civic and personal leave, severance pay, and savings and thrift plans. Minimum employer contributions costing an average of \$2.56 per hour computed on the basis of all hours worked by service employees employed on the contract.”

- The “grandfathered” \$2.56 per hour health and welfare benefit is an average cost fringe benefit requirement computed on the basis of “all hours worked.”
 - The term “all hours worked” includes overtime hours and is not limited to 40 hours per week or 2,080 hours per year for each employee; the term “all hours worked” does not include paid leave hours, such as for vacations, holidays, or sick leave. Also, it does not include unpaid leave time, such as that provided under the Family Medical Leave Act.
 - Under the average cost concept, the fringe benefits provided by the contractor may vary among individual service employees, and compliance is achieved when the actual cost of these benefits divided by the total hours worked by service employees in a payment period equals or exceeds the amount required by the wage determination. 29 CFR 4.175(b).
- The types and amounts of benefits, if any, to be provided, and the eligibility requirements for service employees to participate in a fringe benefit plan, are decided by the contractor.
- If the contractor's contributions average less than the amount required by the wage determination during a payment period, then the contractor must make up the deficiency by providing cash equivalent payments to all service employees who worked on the contract during the payment period.
- Cash equivalent payments under average cost fringe benefit requirements can only be made in an amount determined to be deficient after payments have been made to the fringe benefit plans, and the payments must be made equally to all covered service employees.
- **Examples:**

- (a) \$2.56 average cost requirement - compliance through fringe benefit plan contributions only:

<u>Employee</u>	<u>Hours Worked</u>	<u>Employer Contributions for Fringe Benefits</u>
Libby	250	\$800
Jean	150	\$650
Ann	250	\$800
Tim	50	0
Tom	100	\$150
	<u>800</u>	<u>\$2400</u>

$$2400 \text{ (total contributions)}/800 \text{ (total hours)} = \$3.00 \text{ average}$$

- (b) \$2.56 average cost requirement - compliance through fringe benefit plan contributions and cash payments:

<u>Employee</u>	<u>Hours Worked</u>	<u>Employer Contributions for Fringe Benefits</u>
Libby	250	\$500
Jean	150	\$450
Ann	250	\$500
Tim	50	0
Tom	<u>100</u>	<u>\$150</u>
	800	\$1600

1600 (total contributions)/800 (total hours) = \$2.00 average

Libby	250	x	\$.56	\$ 140
Jean	150	x	\$.56	\$ 84
Ann	250	x	\$.56	\$ 140
Tim	50	x	\$.56	\$ 28
Tom	<u>100</u>	x	\$.56	<u>\$ 56</u>
	<u>800</u>			<u>\$448</u>

Total contribution: \$1600 (fringe benefits) + \$448 (cash) = \$2048

\$2048 (contributions)/800 (hours) = \$2.56

Collectively Bargained Fringe Benefits

- Section 4(c) of the SCA provides that no contractor or subcontractor under a contract which succeeds a contract subject to the SCA, under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits (including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits) provided for in a collective bargaining agreement to which such service employees would have been entitled if they were employed under the predecessor contract.
- In almost all cases, the Department of Labor issues a wage determination that recognizes the application of the fringe benefits (and wages) contained in the predecessor contractor's collective bargaining agreement. However, section 4(c) of the SCA is self-executing, and can apply regardless of whether such a contract wage determination was issued or incorporated in the contract. Certain administrative requirements and limitations may affect application of the predecessor contractor's negotiated wages and fringe benefits. 29 CFR 4.1b(b).

- Section 4(c) of the SCA does not require a successor to follow terms of the collective bargaining agreement other than the wage and fringe benefit provisions.
- Where section 4(c) applies, the successor contractor may discharge the obligation to furnish fringe benefits by any combination of bona fide fringe benefits and equivalent cash payments (as is the case where no predecessor's collective bargaining agreement is involved).
- As the successor is not permitted to pay less than the fringe benefits (and wages) to which employees would have been entitled under the predecessor contractor's collective bargaining agreement, any interpretation of the wage and fringe benefit provisions of the collective bargaining agreement, where its provisions are unclear, must be based on the intent of the parties to the collective bargaining agreement, provided that such interpretation is not violative of law. Thus, some principles discussed in regulations 29 CFR 4.170 through 4.177 regarding specific interpretations for the fringe benefit provisions of prevailing wage determinations may not be applicable to wage determinations issued pursuant to section 4(c). (Similarly, some principles discussed in 29 CFR 4.167, regarding wage payments, may also not be applicable in section 4(c) successorship situations.)
- In 29 CFR 4.163, regulatory guidance is provided specifically concerning compensation standards, including fringe benefits, under section 4(c) of the SCA.

FRINGE BENEFIT REQUIREMENTS – VACATION BENEFITS

- Vacation fringe benefits can be determined from the language of the fringe benefit provision in the wage determination.

Example:

“One week paid vacation after one year of service with a contractor or successor”. 29 CFR 4.173(a). Two factors must be considered for vacation benefits under this wage determination requirement:

- the total length of time an employee has been in the employer's service, both performing commercial work and performing on the federal contract, and
 - the total length of time an employee has been employed in any capacity in the continuous service of any predecessor contractor(s) who carried out similar contract functions at the same federal facility.
- By requiring prospective contractors who employ the same personnel to provide the same vacation benefits as an incumbent contractor, equity in bidding is achieved - otherwise the incumbent contractor would be at a distinct disadvantage when bidding.

Note: Not less than 10 days before contract completion, the incumbent prime contractor must furnish the contracting officer a list of all service employees who were on the contractor or subcontractor's payroll during the last month of the contract, together with the employees' anniversary dates of employment (when employment began with the incumbent as well as with any predecessor contractors). A copy of this list is provided to the successor contractor. 29 CFR 4.6(1)(2).

- Vacation need not be paid immediately but must be provided at a mutually agreed upon time or payment made before the next anniversary date of employment, termination of employment, or completion of the current contract, whichever occurs first. 29 CFR 4.173(c)(2).
- If an employee's rate increases during the period of the contract, the rate applicable to computation of any required vacation benefits is the hourly rate in effect in the workweek in which the paid vacation (or the cash equivalent) is provided, unless the wage determination specifies otherwise. 29 CFR 4.173(e).
- Whether the previous contract was covered by a wage determination is immaterial.

- The contractor by whom a person is employed at the time the vacation vests (i.e., the employee's anniversary date of employment) is liable for the full fringe benefits.
- There is no accrual or vesting of vacation eligibility before the employee's anniversary date and no segment of time smaller than one year need be considered in computing the employer's vacation liability, unless specifically provided for in the wage determination. 29 CFR 4.173(c)(1).
 - For example, if an employee entitled to one week paid vacation after one year of service has worked thirteen months for an employer (or one month with a successor contractor after one year with the predecessor contractor) is separated without receiving any vacation benefit, he would be entitled to one week of paid vacation. The employee would not be entitled to the additional fraction of one-twelfth of one week's paid vacation for the month he worked in the second year unless so stated in the applicable wage determination.

Continuous service

- If an employee's total length of service adds up to one year, he/she would be eligible for one week's vacation. However, such service must have been rendered continuously for a period of not less than one year for vacation eligibility.
 - The term continuous service does not require the combination of two entirely separate periods of employment. Whether or not there is a break in continuity so as to deprive an employee of his or her vacation entitlement is dependent upon the facts in a particular case. The primary consideration in making a determination of "break in service" is what caused the interruption and why did it occur, not the length of time of the break. In cases where employees have been granted leave with or without pay by their employer, or are otherwise absent with permission for such reasons as sickness or injury, or otherwise perform no work because of reasons beyond their control, there would not be a break in service. (Example of situation where a break has not occurred - employee absent for five months due to illness but employed continuously for three years.) 29 CFR 4.173(b).
 - If an employee quits or is fired for cause, a break in service would have occurred even if the employee was rehired at a later date. However, a contractor may not discharge and rehire at a later date in order to evade vacation fringe benefits requirements.

**FRINGE BENEFIT REQUIREMENTS –
HOLIDAY BENEFITS**

- An employee's entitlement to holiday pay vests by working in the workweek in which the named holiday occurs. 29 CFR 4.174(a)(1).
- Unless there is a provision in the wage determination to the contrary, an employee must receive the holiday fringe benefits even though he/she worked only part of the week in which the holiday occurred.
- An employee need not be paid for a holiday that occurs earlier in the workweek prior to his/her hiring, provided the holiday does not occur during the first week of the contract. 29 CFR 4.174(b).
- A contractor need not provide holiday pay to any employee who does not perform any work in the workweek in which the holiday occurred provided that the employer did not lay off the employee during that workweek to avoid having to pay for the holiday. 29 CFR 4.174(a)(2).
- If the SCA wage determination applicable under a contract does not include a paid holiday provision for any day declared by the President of the United States to be a holiday, the contractor is not required to pay covered service employees for that day off, even if they do not work that day. For example if the building where they work is closed because of a presidential declaration affecting federal employees on a Friday, December 26, and the contract wage determination does not indicate that holiday pay is required for the day, holiday pay would not be required under SCA. Such pay would be a matter of discretion for the contractor, and contract payments for such time not worked would be a procurement matter within the purview of the contracting agency.

EQUIVALENT BENEFITS

The employer may discharge his obligation to provide specified fringe benefits (including vacation and holiday pay) by:

- Furnishing at least the benefit amount listed on the contract wage determination for each employee to a third party or trustee, such as for life or health insurance and/or a pension plan, or by
- Furnishing equivalent combinations of bona fide fringe benefits (the types of fringe benefits may be different for individual workers), or by
- Making equivalent payments in cash to the employee. “Equivalent” means equal in terms of monetary cost to the employer, or by
- Providing any combination of bona fide fringe benefits and cash payments needed to meet the fringe benefit requirements under the contract.

Cash equivalents for fringe benefits. 29 CFR 4.177.

- Examples of cash equivalents:
 - If a wage determination requires health and welfare benefits of \$2.15 per hour, that fringe benefit obligation may be discharged by paying the employee \$2.15 per hour in cash in addition to his/her monetary wage, if separately stated in the employer’s records.
 - If a wage determination requires a successor contractor to pay the fringe benefits set forth in a collective bargaining agreement which has a health and welfare benefit of \$1.30 per hour, and a pension benefit of \$1.50 per hour, the fringe benefit obligation may be discharged by paying the employee \$2.80 per hour in cash in addition to his/her monetary wage, if separately stated in the employer’s records.
- Cash equivalents for fringe benefits stated in terms other than a cash amount:
 - Where fringe benefits are stated as a weekly or monthly amount, the hourly cash equivalent can be determined as shown in the following example.

Example: The fringe benefits for pension is \$120 per week, the hourly cash equivalent is \$120 divided by 40 hours or \$3.00 per hour.

Note: If the fringe benefits do not specify the daily or weekly hours of work for which fringe benefits are to be measured, a standard 8-hour day, 40-hour workweek will be applicable.

- Where fringe benefits are specified in terms such as “9 paid holidays per year” or “one week paid vacation after one year of service,” the employee's hourly rate of pay is multiplied by the number of hours making up the paid vacation or holidays to determine annual cost. (A standard 8-hour day and 40-hour week will be applicable unless the wage determination specifies otherwise.) The total annual cost is divided by 2,080 hours (40 hours a week x 52 weeks) to arrive at an hourly cash equivalent.

Example: The fringe benefit is 9 paid holidays per year.
 Employee's hourly rate is \$9.00.
 $\$9.00 \times 72 \text{ hours (9 days of 8 hours each)} = \$648.$
 $\$648 / 2,080 \text{ hours} = \0.31 per hour.

Example: The fringe benefit is one week paid vacation after one year of service. Employee's hourly rate is \$10.00.
 $\$10.00 \times 40 \text{ hours} = \$400.$
 $\$400 / 2,080 \text{ hours} = \0.19 per hour.

- Where an employer decides to pay an hourly cash equivalent instead of the vacation fringe benefit, the cash payments need not commence until the employee has completed “one year of service.” However, if the employee should terminate employment before receiving the full cash amount of the vested fringe benefit due, the employee must be paid the full amount of any difference remaining as a final cash payment.

Example: An employee became eligible for one week paid vacation on May 1 and the employer elects to pay the hourly cash equivalent to the employee in lieu of the paid vacation beginning that date. The employee terminates his employment on July 1. If the employee has received only one-sixth (2 of 12 months) of the vacation to which he/she is entitled, the employee is still due the remaining five-sixths (10 of 12 months) of the vacation pay upon termination.

TEMPORARY AND PART-TIME EMPLOYMENT

- SCA makes no distinction between temporary, part-time, and full-time employees. In the absence of an expressed limitation on a wage determination, wage and fringe benefit requirements apply equally to all such employees. 29 CFR 4.165(a)(2).
- However, part-time employees need only be provided with a proportionate amount of the fringe benefits due full-time employees. 29 CFR 4.176.

Examples:

- Full-time employees due one week vacation (40 hours). A part-time employee works a regularly scheduled workweek of 20 hours. The part-time employee is due 20 hours ($20/40 = 1/2$) the hours due the full-time worker's paid vacation, based on working half the time the full-time employee works.
- Full-time employee works an 8 hour day and receives 8 hours pay as a holiday benefit. A part-time employee works 5 hours per day. The part-time employee is due 5 hours pay ($5/8$) as holiday benefit.
- Holiday or vacation pay obligations to temporary and part-time employees working an irregular schedule of hours may be discharged by paying such employees a proportion of the holiday or vacation benefits due full-time employees based on the number of hours each such employee worked in the workweek prior to the workweek in which the holiday occurs, or with respect to vacations, the number of hours which the employee worked in the year preceding the employee's anniversary date of employment. 29 CFR 4.176(a)(3).

INVESTIGATIVE PROCESS

UNDER

SCA/CWHSSA

SCA LABOR STANDARDS/CONTRACT STIPULATIONS

SCA/CWHSSA INVESTIGATION

**DETERMING COMPLIANCE WITH SCA/CWHSSA AND
RELATED FLSA REQUIREMENTS**

HEARING PROCESS AND APPEAL RIGHTS

SCA LABOR STANDARDS/CONTRACT STIPULATIONS

Section 2(a) of the SCA requires that stipulations (contract clauses) be included in all covered contracts in excess of \$2,500. Those stipulations are set forth at 29 CFR 4.6 (and in the Federal Acquisition Regulations at 48 CFR 52.222-41). Among the contract clause requirements are:

- Minimum wages to be paid the various classes of service employees.
- Fringe benefits to be furnished to the service employees.
- Safety and health provisions.
- Furnishing employees notice of required compensation.
- Wage board statement (an informational statement of rates that would be paid by the federal agency to the various classes of service employees if section 5341 or section 5332 of Title 5, United States Code, were applicable to them).
 - The Department of Labor (DOL) must give due consideration to such rates in making wage and fringe benefit determinations. (Note: Section 5341 of the United States Code refers to the wage board or coordinated federal wage system for so-called blue collar workers. Section 5332 refers to the general schedule pay system for so-called white collar employees.)
 - This wage board information may be of use to contractors or contracting agencies during conformance procedures. However, they are under no obligation to pay any wage rates other than those provided in the Department of Labor wage determination in the contract.
 - The wage board statement is not part of the wage determination and does not apply to service employees under the SCA. The statement is included in contracts for informational purposes only.
 - In addition to the SCA contract stipulations established in 29 CFR 4.6, contracts to which CWHSSA overtime requirements apply must also include the contract clause language set forth at 29 CFR 5.5(b) (and in the Federal Acquisition Regulations at 48 CFR 52.222-4).

SCA/CWHSSA INVESTIGATIONS

The Department of Labor has sole enforcement authority under the SCA (unlike the Davis-Bacon Act).

Wage and Hour is responsible for administering and enforcing a number of federal laws which set basic labor standards, among them:

- The Fair Labor Standards Act (FLSA)
- The Family and Medical Leave Act (FMLA)
- The Migrant and Seasonal Agricultural Worker Protection Act (MSPA)
- The Employee Polygraph Protection Act
- Certain employment standards and worker protections under the Immigration and Nationality Act
- The Davis-Bacon and related Acts
- The McNamara-O'Hara Service Contract Act

Investigations may be conducted under any one or more of the laws enforced by Wage and Hour. A Wage and Hour investigator may conduct an investigation to determine whether these laws apply to an employer. An investigator may also visit an employer to provide information about the application of, and compliance with, the labor laws administered by Wage and Hour.

Most employers are subject to the Fair Labor Standards Act (FLSA), which is the primary federal law of most general application requiring payment of the minimum wage and overtime premium pay, keeping certain basic payroll and employment records, and limiting the working hours and types of jobs for certain underage youths. Section 11(a) of the FLSA authorizes representatives of the Department of Labor to investigate and gather data concerning wages, hours, and other employment practices; enter and inspect an employer's premises and records; and question employees to determine whether any person has violated any provision of the FLSA.

Wage and Hour does not require an investigator to previously announce the scheduling of an investigation, although in many instances the investigator will advise an employer prior to opening the investigation. The investigator has sufficient latitude to initiate unannounced investigations in many cases in order to directly observe normal business operations and develop factual information quickly.

Wage and Hour conducts investigations for a number of reasons, all having to do with enforcement of the laws and assuring an employer's compliance. Wage and Hour does not typically disclose the reason for an investigation. Many are initiated by complaints. **All complaints are confidential; the name of the worker and the nature of the complaint are not disclosable; whether a complaint exists may not be disclosed.** In addition to complaints, Wage and Hour selects certain types of businesses or industries for investigation.

Regardless of the particular reason that prompted the investigation, all investigations are conducted in accordance with established policies and procedures.

Investigation Procedures

The following procedures for SCA investigations are generally applicable to Wage and Hour investigations under other laws.

The Wage and Hour investigator will identify himself/herself and present official credentials. The investigator will explain the investigation process and the types of records required during the review.

Generally, a Wage and Hour investigation may consist of the following steps:

- Examination of records to determine which laws or exemptions apply. These records include, for example, those showing the employer's annual dollar volume of business transactions, involvement in interstate commerce, and work on government contracts. *Information from an employer's records will not be revealed to unauthorized persons.*
- Examination of payroll and time records, and taking notes or making transcriptions or photocopies essential to the investigation.
- Interviews with certain employees in private. The purpose of these interviews is to verify the employer's payroll and time records, to identify workers' particular duties in sufficient detail to decide which exemptions apply, if any, and to confirm that minors are legally employed. Interviews are normally conducted on the employer's premises. In some instances, present and former employees may be interviewed at their homes or by mail or telephone.

In a full SCA investigation, the investigator will examine the following compliance issues:

- Has the employer posted the Wage and Hour poster "Notice to Employees Working on Government Contracts" (WH Publication 1313)?
- Did the federal agency incorporate the correct wage determination(s) in the contract?
- Did the employer post the wage determination or make it available to each employee?
- Are service employees paid the applicable prevailing wage(s) rate for the class(es) of work performed?
- Are service employees properly classified based on the work performed on a covered service contract?

- Has the employer kept accurate records of employees' hours of work, rate(s) of pay, payments made or costs incurred for fringe benefits, gross wages earned, and job classification(s)?
- Did individual service employees perform work in more than one classification; if so, was the work segregated in the employer's time and payroll records?
- If fringe benefits were not paid in cash, did the employer incur the appropriate costs to provide fringe benefits?
- Was overtime properly paid under either CWHSSA and/or FLSA?
- Are service employee(s) covered by a Wage and Hour certificate(s) that allows for the payment of special minimum wages to workers with disabilities under Section 14 of the FLSA?

Initial Employer Conference

- The investigator will contact a responsible official of the firm at the start of the investigation.
- Normally, the investigator will advise the official of the various steps that the investigation includes: the initial employer conference, contact with the federal contracting agency and prime contractor if applicable, examination of the contract documents, examination of the basic payroll records, employee interviews, site inspection, and final conference.
- The contractor will be asked to provide information, such as the firm's legal name and responsible company officials, trade name(s) if any, address of the firm's headquarters, and federal tax identification (FEIN) number.
- Generally, the investigation covers a two-year period, but this period can be extended in certain instances. The contractor will be asked to make available basic time and payroll records for that period. (An FLSA investigation may be conducted concurrently with the SCA/CWHSSA investigation.)

Review the Prime Contract

The contracting agency and/or the contractor will be asked to identify:

- The contracting agency/prime contractor, name and telephone number of the contracting officer, contract number, amount of contract, purpose of contract, date of contract award, period(s) of performance (start and ending dates, if known), place(s) of performance.

- The investigator may request copies of the contract award letter, the labor standards clauses, wage determination(s) in the contract, conformance actions, contract modifications by which the federal contracting agency exercised options and/or extended the contract, and the Standard Form (SF) 98 submitted to DOL by the federal contracting agency to request SCA wage determinations for the contract. The investigator may review/copy portions of the scope of work from the contract.
- The investigator will review the contract to determine:
 - Are required SCA contract stipulations in the contract?
 - Is/are the correct wage determination(s) in the contract?
 - Does the wage determination(s) apply to the geographic area(s) of contract performance?
 - Did the federal agency obtain and incorporate new wage determination(s) in the contract initially and/or at the execution of an option and/or extension of the initial contract term? 29 CFR 4.5(a)(2) and 29 CFR 4.6(b)(3).
 - Is a section 4(c) collective bargaining situation applicable to this contract?
 - Do employees considered to be outside the SCA definition of “service employees” because they are professional, administrative or executive employees meet the requirements for exemption under 29 CFR 541? 29 CFR 4.156.
 - Are all the classes of service employees who are employed on the contract listed in the contract wage determination and/or DOL approved conformances.

Subcontracts

- The investigator will review documents or information regarding labor standards and wage determinations that were provided by the prime contractor to the subcontractor. The subcontractor will be asked to provide a copy of the subcontract and any other relevant documents.
- The SCA contract clauses included in the prime contract require the prime contractor to insert the SCA stipulations and applicable wage determinations in any subcontract subject to SCA (29 CFR 4.6(j)). The prime contractor is responsible for violations by subcontractors.

- When a subcontractor is investigated, the investigator will typically notify the prime contractor at the beginning of the investigation.

Contracts that do not contain the SCA contract clauses

- If an investigator finds that a service contract in excess of \$2,500 does not contain SCA stipulations and/or the applicable wage determination(s), the investigation may be suspended until the contract is amended.
- The investigator will try to determine why a wage determination was not included in the contract.
- Where appropriate, Wage and Hour will advise the contracting agency to insert SCA stipulations and/or the applicable wage determination into the contract, and may subsequently proceed with the investigation. 29 CFR 4.5(c).

Examination of Basic Payroll Records

The recordkeeping requirements of the SCA are stated in the SCA contract clauses. 29 CFR 4.6(g). The employer is required to maintain the following records for each employee subject to the SCA and to make these records available for inspection and/or transcription on the request of an authorized representative of Wage and Hour. These records must be maintained for three years from the completion of the work. Also, the contractor may be required to provide the basic time and payroll records required under the FLSA. 29 CFR 516.2.

- Name, address, social security number of each employee.
- The correct work classification(s), rate(s) of monetary wages paid and fringe benefits provided, rate(s) of cash payments in lieu of fringe benefits, and total daily and weekly compensation paid to each employee.

Note: If the employer chooses to pay a cash equivalent to meet the fringe benefit requirements of the wage determination, the cash payment must be clearly identified as fringe benefits in the employer's records. 29 CFR 4.170.

- The number of daily and weekly hours worked by each employee subject to SCA requirements.
- Any deductions, rebates or refunds from the total daily or weekly compensation of each employee.

- A list of monetary wages and fringe benefits for which wages rates and fringe benefits have been determined in accordance with the contract clause setting forth the conformance procedures. 29 CFR 4.6(b).
- The list of a predecessor contractor's employees furnished to the contractor pursuant to 29 CFR 4.6(1)(2).
- If any service employee(s) are covered by a Wage and Hour certificate that allows for the payment of special minimum wages to workers with disabilities under Section 14 of the FLSA, the investigator may review the relevant records to determine firm's compliance with applicable certification and recordkeeping requirements. 29 CFR 525.

Hours Worked

- The hours worked by employees on an SCA-covered service contract are determined in accordance with the principles established under the Fair Labor Standards Act, as set forth in 29 CFR Part 785. See 29 CFR 4.178.
- In general, the hours worked by an employee include all periods in which the employee is suffered or permitted to work, whether or not required to do so, and all time during which the employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace.
- The hours worked which are subject to the compensation provisions of the SCA are those in which the employee is engaged in performing work on contracts subject to the Act.
- Failure to recognize and count all hours worked as compensable hours may result in violations of the prevailing wage and fringe benefit requirements of the SCA and/or the minimum wage requirements under the FLSA. Failure to pay for all compensable hours worked may result in violations of the overtime pay provisions of CHWSSA and/or FLSA which require the payment of an overtime premium for hours worked in excess of 40 in a workweek.

Identification of Contract Work

- In any workweek where the contractor (or subcontractor) is not exclusively engaged in work on a covered service contract, the contractor should identify separately and accurately in its records, or by other means, those periods during which its employees are engaged in work on a covered service contract.

In the absence of records that adequately segregate periods of covered contract work from non-covered work, all employees working in the establishment or department where such covered work is performed shall be presumed to have

worked on or in connection with the contract during the period of contract performance. 29 CFR 4.179.

Employee Interviews

- As stipulated in the SCA contract clauses at 29 CFR 4.6(g)(4), the contractor must permit authorized representatives of Wage and Hour to conduct interviews with employees at the work site during normal working hours.
- Employee interview statements are confidential and therefore must be conducted in an area that provides privacy.
- The investigator may interview current and/or former employees.

Review of Conformance Actions – 29 CFR 4.6(b)(2)

- If the investigator finds that the contractor employs classes of workers not listed on the wage determination, the investigator will:
 - Determine whether conformance procedures were followed for the unlisted class(es).
 - If the contractor has not received a response to a request for approval of a conformance action, the investigator will determine whether a conformance action was initiated, completed, approved, denied and/or returned to the agency for transmittal to the contractor.
 - If the contractor and contracting agency have not taken appropriate action to submit a conformance request, Wage and Hour can take action to determine a conformed classification, wage rate, and or fringe benefits that will apply retroactively. 29 CFR 4.6(b)(2)(vi)..
- Back wages cannot be computed and the investigation cannot be completed until Wage and Hour has taken final conformance action.
 - The conformance determination will apply retroactively to the date the affected class(es) of employees commenced work on the contract.

DETERMINING COMPLIANCE WITH SCA/CWHSSA AND RELATED FLSA REQUIREMENTS

Discharging minimum wage and fringe benefit obligations under SCA

- The contract wage determination specifies the prevailing minimum wages and fringe benefits that are to be paid to each of the various classes of service employees performing contract work. Where needed class(es) of service employees are not listed on the wage determination, wage rates and fringe benefits must be conformed for those employees. Trainee or helper classifications may not be conformed. 29 CFR 4.6(b) and 4.152(c)(1).
- The SCA wage and fringe benefit requirements are separate. Under SCA, wage payments above the monetary minimum cannot be used to meet fringe benefit obligations, and excess fringe benefits payments cannot offset any part of the required minimum wages. 29 CFR 4.167, 4.170, and 4.177. (Unlike under DBA, total remuneration – the wage determination basic hourly wage plus fringe benefits – does not achieve SCA compliance without records which separately state the amounts paid for basic wages and the amounts paid to meet fringe benefit requirements.)

Example: Wage determination rate \$10.25 per hour
Employee paid \$10.75 per hour.
Fringe benefits required are \$2.15 per hour.
Employer paid for fringe benefits at \$1.65 per hour.

Employer may not credit excess wage payment of \$.50 per hour to satisfy the fringe benefit deficiency of \$.50 per hour.

Substitution of one bona fide fringe benefit for another bona fide fringe benefit is allowed, *e.g.*, pension instead of health insurance. 29 CFR 4.177.

- No benefit required by any other federal law or by any state or local law, such as unemployment compensation or social security, is a fringe benefit for purposes of SCA. 29 CFR 4.171(c).
- An employer may discharge fringe benefit obligations by making equivalent payments in cash. 29 CFR 4.175 - 4.177. Such cash equivalent payments must be clearly identified as fringe benefits on the employer's payroll records. The hourly wage rate and fringe benefits payments may be combined in a single paycheck.
- Bona-fide fringe benefit payments – including cash equivalents – are not part of the “regular rate” for purposes of computing the overtime pay required under

the FLSA, and are not part of the “basic rate” on which CWHSSA overtime pay is computed.

Determining Compliance with the overtime provisions of CWHSSA

- The SCA does not require overtime pay, but CWHSSA and/or FLSA overtime pay requirements may apply to SCA contracts. 29 CFR 4.180 and 4.181.
- CWHSSA applies to any service contract in excess of \$100,000.
- CWHSSA applies to **laborers, mechanics, guards, and watchmen** for the time spent on covered contract work only (i.e., total up all time each employee spent working **on covered contracts** - exclude all commercial, non-government work). (Service employees on the contract, who are not as laborers, mechanics, guards or watchmen are not subject to CWHSSA).
- CWHSSA requires the payment of time and one-half the basic rate of pay for all hours worked in excess of 40 hours in a week. (The daily overtime requirement under CWHSSA was repealed in 1986.)
- The basic rate of pay under CWHSSA is the individual’s straight time hourly rate and can not be less than the basic hourly rate required in an applicable wage determination. Under the SCA and FLSA, amounts paid as fringe benefits – both contributions to bona fide benefit plans and cash payments made to meet fringe benefit requirements in the wage determination – are excluded in computing overtime obligations under CWHSSA.
- If an employee worked in two or more classifications at different rates during a workweek, the overtime pay may be computed based on the hourly rate in effect for the hours worked beyond 40 hours in the workweek so long as the employee agrees. (The contractor’s records must clearly identify the hours worked in the separate job classifications.) Overtime also may be computed based on the weekly average rate (or regular rate) paid for all hours worked. 29 CFR 778.6, 778.115 and 778.415-419.
- For example, for an employee who worked 44 hours on a covered contract as a janitor, where the wage determination rate for a janitor is \$9.00 (basic hourly rate) plus \$2.15 in fringe benefits per hour per employee, the correct computations under SCA and CWHSSA would be:

$$\begin{array}{rcl}
 40 \text{ hours} \times \$ 2.15 & = & \$ 86.00 \text{ in fringe benefits} \\
 44 \text{ hours} \times \$ 9.00 & = & 396.00 \text{ for prevailing wages} \\
 4 \text{ hours} \times \$ 9.00 \times \frac{1}{2} & = & \underline{\$ 18.00} \text{ for CWHSSA earnings} \\
 & & \underline{\$500.00}
 \end{array}$$

➤ The following examples demonstrate two methods for computing the overtime premium pay under CWHSSA and/or the FLSA for an employee who worked in different job classifications and at different rates of pay in the same workweek.

➤➤ An employee is hired to perform work on a covered service contract in two job classifications: painter and electrician. The wage determination rate for an electrician is \$12.00 (basic hourly rate). The wage determination rate for a painter is \$10.00 (basic hourly rate).

Method 1: Computation of the overtime premium based on the “rate in effect” when the overtime hours were worked. (See section 7(g) of the FLSA.)

	S	M	T	W	T	F	S
Painter hours		8	8	8			
Electrician hours					8	8	4

In this example the overtime hours occurred on Saturday. The overtime **premium** could be computed based as follows:

$$\frac{1}{2}(\$12.00) \times 4 = \$24$$

Method 2: Computation of the overtime **premium** based on the “regular rate” for the workweek.

Step 1: Determine the straight time wages due, excluding fringe benefits:

24 hours at the painter’s rate of \$10.00	=	\$240.00
20 hours at the electrician’s rate of \$12.00	=	<u>240.00</u>
Total straight time wages	=	\$480.00

Step 2: Calculate the “regular rate”:

$$\$480.00/44 \text{ hours worked} = \$10.91 \text{ “regular rate”}$$

Step 3: Compute the overtime premium due:

$$\frac{1}{2}(\$10.91) \times 4 \text{ overtime hours worked} = \$21.82$$

➤ Note: In some cases, a question arises over whether a cash payment made to a laborer or mechanic is paid in lieu of a fringe benefit contribution or

whether it is simply part of the individual's normal straight time wages. Where the amount in question has been part of the employee's straight time wage paid on commercial work, the cash payment is not excludable in computing the overtime pay obligation.

CWHSSA Liquidated Damages

- Liquidated damages are computed at \$10.00 per day per CWHSSA violation.
 - As a matter of administrative policy, liquidated damages are not computed for employees whose CWHSSA back wages are less than \$20.
 - The contractor should be advised of the potential liquidated damages and the possibility of their assessment by the contracting agency.

Although the investigator is required in all violation cases to compute liquidated damages, the decision on whether to assess the damages is made by the federal contracting agency. (Liquidated damages in excess of \$500 may be waived or adjusted only with the concurrence of Wage and Hour.)

- Example:

	M	T	W	T	F	S	S	<u>TOTALS</u>
REGULAR TIME	10	12	13	9	8	3	0	55

In the above example, no overtime premium was paid. The 15 weekly overtime hours were worked on three calendar days, Thursday, Friday and Saturday. Thus, \$30.00 in CWHSSA liquidated damages would be computed, and may be assessed.

Determining Compliance with the FLSA on SCA contracts

- Along with the SCA prevailing wage and fringe benefit requirements, FLSA minimum wage and overtime pay requirements often apply to SCA contracts.
- Section 2(b) of the SCA requires payment of the FLSA minimum wage to service employees performing work on service contracts valued at \$2,500 or less (to which no SCA prevailing wage determinations apply).
- As discussed in the "Compliance Principles" section of this reference book, pursuant to 29 CFR 4.6(o)(1), Section 14(c) of the FLSA and related regulations, the employer may apply to Wage and Hour for a certificate allowing payment of special minimum wage(s) to certain workers with disabilities on SCA covered contracts (as well as where FLSA requirements apply).

Determining Compliance with the Overtime Provisions of the FLSA

- While CWHSSA overtime pay requirements apply only to contracts exceeding \$100,000, on which laborers and mechanics (including guards and watchmen) are employed, FLSA overtime pay requirements may not only to such contracts, but also to SCA contracts that do not exceed \$100,000.
- Also, employees working on SCA contracts who are not laborers, mechanics, guards or watchmen may be subject to the overtime requirements of the Fair Labor Standards Act.
- The FLSA requires the payment of an overtime premium to non-exempt employees at a rate not less than one and one half times the “regular rate” of pay for all hours worked in excess of 40 hours per week. This requirement often applies simultaneously with CWHSSA coverage for service employees working on SCA contracts (as well as to other workers on SCA contracts).
 - The FLSA regulations concerning overtime pay are in 29 CFR 778.
 - Bona fide fringe benefit payments – including cash equivalents – paid in accord with an applicable SCA wage determination, are not part of the regular rate for the purpose of computing overtime pay under the FLSA. 29 CFR 778.7. (See also 29 CFR 4.177(e).)
 - Under the FLSA, the criteria for fringe benefit plan contributions to be excluded from computation of the “regular rate” of pay for overtime purposes are set forth in 29 CFR 778.215.
- The SCA regulations discuss overtime pay for employees on SCA contracts at 29 CFR 4.180-4.182.

Final conference

- When all the fact-finding steps have been completed, the investigator will ask to meet with the employer and/or a representative of the firm who has authority to reach decisions and commit the employer to corrective actions if violations have occurred. The employer will be told whether violations have occurred and, if so, what they are and how to correct them. If back wages are owed to employees because of minimum wage or overtime violations, the investigator will request payment of back wages and may ask the employer to compute the amounts due.
- The contractor will have an opportunity to respond to the alleged violations and/or provide an explanation as to why the violations occurred.

- Employers may be represented by their accountants or attorneys at any point during this process. When the investigator has advised the employer of his/her findings, the employer or representative may present additional facts for consideration if violations were disclosed.
- Although the investigator must advise the contractor of any potential CWHSSA liquidated damages assessment, the initial decision to assess liquidated damages for CWHSSA violations will be made by the contracting agency.

Withholding

- If the contractor refuses to pay the back wages computed, the SCA contract clauses authorize the withholding of accrued payments due on the contract or any other contract between the contractor and the federal government, to the extent necessary to satisfy the alleged back wage findings.
 - If a subcontractor fails to make restitution of the back wage liability found due, the prime contractor should be advised of the findings and requested to pay the back wages. Section 3(a) of SCA and 29 CFR 4.187(c).
 - There is no right of individual action (suit) to recover back wages under the SCA.
 - Withholding action may be necessary to protect the employees' interests. The investigator may advise a contractor that contract funds can be withheld in a refusal-to-pay situation, however, the investigator does not have the authority to initiate a withholding action.
 - In most cases, Wage and Hour provides written notice to contractors regarding proposed withholding requests and provides the contractor an opportunity to submit their views on whether a violation occurred.
 - Wage claims have priority over contracting agency procurement costs, Internal Revenue Service tax liens, and assignees. 29 CFR 4.187(b).
 - In the case of requirements-type contracts, it is the contracting agency and not the using agency that is responsible for withholding. 29 CFR 4.187.
- A contract may also be terminated because of violations, and the contractor may be held liable for additional contract completion costs to the government.
- The government may also institute court action against the contractor or its surety to recover any wage and fringe benefits underpayments.

Debarment

- 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 Secretary of Labor otherwise recommends relief from debarment because of “unusual circumstances.”
- The term “unusual circumstances” was added by the 1972 amendments to SCA and removed prior discretionary authority regarding the initiation of debarment. This is much stricter than the debarment criteria used previously and the criteria applicable to DBRA.
- Although Congress did not define the term “unusual circumstances”, this terminology has been defined in the Department of Labor regulations at 29 CFR 4.188(b)(3). Congress did indicate, however, that the mere payment of back wages and the promise of future compliance are insufficient to preclude debarment. Also, a history of recurring violations of identical nature prevents the finding of "unusual circumstances."
- The investigator should advise the contractor of the debarment sanctions under SCA; and if it appears that the debarment criteria have been met, the contractor should be advised at the final conference of the possibility of debarment sanctions.

THE HEARING PROCESS AND APPEAL RIGHTS

(29 CFR 6)

- In accordance with section 4(a) of SCA, the Secretary of Labor is authorized to hold hearings and make decisions based upon findings of fact as deemed necessary to enforce the provisions of SCA.
- In situations where the contractor refuses to agree to future compliance, fails to make back wage restitution, or debarment action is indicated, investigation files are referred by Wage and Hour to the Regional Solicitor for preparation for an administrative hearing before a Department of Labor Administrative Law Judge (ALJ).
- Employees do not have private rights of action under SCA to institute suits on their own behalf to collect unpaid wages.
- After review and concurrence by the Regional Solicitor's Office, a complaint is filed with the Office of the Chief Administrative Law Judge requesting that a hearing be held. The contractor is served a copy of this Complaint.
- The Office of the Chief Administrative Law Judge is responsible for the scheduling of the administrative hearing. The hearing is normally held in the city closest to the location of the contractor.
- During this period, the Regional Solicitor's Office may continue to contact the firm, attempting to settle the matter without the need for a hearing; and funds will continue to be withheld from the contractor to cover the alleged back wage liability.
- When the ALJ renders a decision regarding the issues in a case (such as the amount of the alleged back wage liability and/or debarment), any aggrieved party may petition the Administrative Review Board (ARB) within 40 days for review of the decision. 29 CFR 8.

DAVIS-BACON SURVEYS

OVERVIEW OF DAVIS-BACON SURVEY PROCESS

KEY CLASSES

IMPACT OF PARTICIPATION ON A SURVEY

SURVEY PLANNING PROCEDURE

SURVEY CONDUCT

CERTIFIED PAYROLLS

OVERVIEW OF DAVIS-BACON SURVEY PROCESS

Each state is surveyed every three years

- All construction types are surveyed.
- This survey plan is distributed to the interested parties through the Wage and Hour Division's website at the following address:

<http://www.dol.gov/esa/programs/dbra/surveys.htm>

Initiating and conducting the survey:

- When a survey is started, the interested parties and identified contractors are contacted by letter which requests their participation through the submission of wage data.
- Contractors are identified initially from construction information provided on F.W. Dodge reports.
- Wage and fringe benefit data are collected from construction contractors and other interested parties on WD-10 survey forms including an electronic version (<https://www.dol-esa-gov/wd10>).
- Wage data submissions are verified as to area, time frame, construction type, and timeliness; data are compiled and analyzed.
- Third party verification, contractor verification, on-site verification are conducted.
- Surveys can take from 4 to 8 months to complete once initiated.

Importance of participation by interested parties:

- Accurate and comprehensive wage determinations are dependent upon interested party participation in the survey process.
- Survey participation by federal procurement agencies is sometimes required to issue a new wage schedule.

KEY CLASSES

The following key classes are those normally necessary to each of the four types of construction. Adequate survey data to establish rates for at least half the key classes for a given type of construction is required to support issuance of a new wage determination.

BUILDING	RESIDENTIAL
<ol style="list-style-type: none"> 1. Heat and frost insulators 2. Bricklayers 3. Boilermakers 4. Carpenters 5. Cement masons 6. Electricians 7. Iron workers 8. Laborers - common 9. Painters 10. Pipefitters 11. Plumbers 12. Power equipment operators (operating engineers) 13. Roofers 14. Sheet metal workers 15. Tile setters 16. Truck drivers 	<ol style="list-style-type: none"> 1. Bricklayers 2. Carpenters 3. Cement masons 4. Electricians 5. Iron workers 6. Laborers - common 7. Painters 8. Plumbers 9. Power equipment operators (operating engineers) 10. Roofers 11. Sheet metal workers 12. Truck drivers
HEAVY & HIGHWAY	
<ol style="list-style-type: none"> 1. Carpenters 2. Cement masons 3. Electricians 4. Iron workers 5. Laborers - common 6. Painters 7. Power equipment operators (operating engineers) 8. Truck drivers 	

IMPACT OF PARTICIPATION ON A SURVEY

- Accuracy of wage determinations developed from survey data are dependent upon interested party participation.
- Complete wage determinations are dependent upon survey participation and construction activities.
- Prevailing wage determinations based upon survey data merely mirror the data that are submitted.
- Federal agencies may also play a key role in survey success by encouraging the full participation of those being surveyed.
- Survey participation by federal procurement agencies is sometimes required to issue a new wage schedule.

SURVEY PLANNING PROCEDURE

- Each state is surveyed every three years.
- All construction types are surveyed.

SURVEY CONDUCT

- National and local interested parties are notified of the survey, its boundaries, time frame, and cutoff date.
- Letters are sent to general contractors requesting wage data and lists of subcontractors to be contacted for wage data.
- Follow-up for non-response is done.
- Contractors are called to obtain missing data and/or to clarify wage data submissions.
- Wage data submissions are verified as to area, time frame, construction type, and timeliness.
- Data are analyzed and “area practice” issues presented by the data are resolved. (“Area practice” issues arise in the survey process when multiple classifications perform the same work.)
- Third party verification, contractor verification, on-site verification are conducted.
- The wage data are tabulated in a computer program and prevailing wage rates and fringe benefits are calculated. If a majority of the workers in a classification were paid the same, such as if a majority were paid the union rate negotiated for certain work under a collective bargaining agreement in the area, that rate will be determined to be the prevailing wage for the classification. If the data does not show such a majority for a given classification, the average of the wages paid, weighted by the total employed in that classification, will be determined to be the prevailing wage for the classification. 29 CFR 1.2(a).
- These wage rates are tested for adequacy.
- Wage determinations are developed and issued where data adequacy tests have been met. Data from metropolitan counties cannot be used in determining wages for non-metropolitan areas; and vice versa. 29 CFR 1.7(b).
- Individual surveys can take 4 to 8 months.
- Accuracy of wage determinations developed from survey data are dependent upon interested party participation.
- Complete wage determinations are dependent upon survey participation and construction activities.

CERTIFIED PAYROLLS

- Data from projects to which Davis-Bacon prevailing wage requirements applied may be needed to supplement wage data from private projects to allow for development of a wage determination. 29 CFR 1.3(d).
 - Data from all projects, including those on which Davis-Bacon prevailing wage requirements applied, are used in determining the prevailing wages for heavy construction and for highway construction.
 - In determining the prevailing wages for building construction and for residential construction, where the data submitted in response to a survey, excluding data from projects to which Davis-Bacon prevailing wage requirements applied, provides an adequate basis for determining the prevailing wages in an area (normally a county), prevailing wages will be determined without such data.
- Federal agencies may be requested to provide data from certified payrolls to supplement data submitted from other sources, where appropriate. Where that occurs:
 - It is not necessary to send a copy of every certified payroll submitted for a particular project.
 - Only copies of those certified payrolls showing the peak employment of a worker classification on a particular project by a particular contractor need be furnished.
 - Ideally, the information would be transcribed to a WD-10 form for submission, see the “green book” entitled “Davis-Bacon Determination of Prevailing Wage Rates.” (This booklet provides a walk-through for filling out the WD-10 data collection form, and may be distributed to contractors who desire detailed guidance on participating in Davis-Bacon surveys.)
 - The WD-10 form presents the wage data in a manner that is friendly with the Wage and Hour Division’s survey computer program.
 - The use of certified payroll data may materially affect the resulting wage determination.

**DAVIS-BACON
WAGE DETERMINATIONS**

**DAVIS-BACON ACT, AS AMENDED, AUGUST 30, 1935
(EXCERPT FROM SECTION 1)**

**PHYSICAL INCLUSION OF DAVIS-BACON WAGE DETERMI-
NATION(S) IN BID SPECIFICATIONS AND CONTRACT**

**MAJOR CONSIDERATIONS IN SELECTING THE PROPER
WAGE DETERMINATION(S) FOR INCORPORATION
INTO A CONTRACT TO WHICH DAVIS-BACON LABOR
STANDARDS REQUIREMENTS APPLY:**

LOCATION — TYPE OF CONSTRUCTION — CURRENT WD(S)

**TYPE OF CONSTRUCTION — “PROJECTS OF A SIMILAR
CHARACTER”**

**APPLICATION OF MULTIPLE WAGE SCHEDULES FOR PROJECTS
THAT INVOLVE MORE THAN ONE TYPE OF CONSTRUCTION
VERSUS INCIDENTAL CONSTRUCTION OF ANOTHER TYPE**

**GENERAL AREA WAGE DETERMINATIONS,
PROJECT WAGE DETERMINATIONS,
MODIFICATIONS AND SUPERSEDEAS ACTIONS**

CURRENT WAGE DETERMINATION(S)

EXTENSIONS AND CLERICAL ERROR CORRECTIONS

USING THE GENERAL WAGE DETERMINATIONS

**STATE LISTINGS FOR SEVEN VOLUMES OF GENERAL WAGE
DETERMINATIONS IN HARD-COPY VERSION (ALSO AVAILABLE
ELECTRONICALLY AT: <http://www.access.gpo.gov/davisbacon>)**

HOW TO LOCATE GENERAL WAGE DETERMINATIONS

HOW TO INTERPRET GENERAL WAGE DETERMINATIONS; AND

**HOW TO FIND THE WAGE RATE FOR A PARTICULAR CLASSIFICATION
AND UNDERSTAND THE BASIS FOR THE WAGE RATE**

DAVIS-BACON ACT, AS AMENDED, AUGUST 30, 1935
(Excerpt from Section 1)

“The advertised specifications for every [covered] contract in excess of \$2,000 ... shall contain

a provision stating the minimum wages to be paid various classes of laborers and mechanics

which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics

employed on projects of a character similar to the contract work

in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there....”

PHYSICAL INCLUSION OF DAVIS-BACON WAGE DETERMINATION(S) IN BID SPECIFICATIONS AND CONTRACT

The Department of Labor regulations, at 29 CFR Part 1, establish the procedures for predetermining the **wage rates required to be included in bid specifications/contracts** for construction projects to which the Davis-Bacon and related Acts apply. (See excerpt, above, from the Davis-Bacon Act.) The Federal Acquisition Regulations (FAR) also discuss the application of proper wage determinations in 48 CFR Subpart 22.4 -- "Labor Standards for Contracts Involving Construction."

It is important for the actual wage determination(s) to be physically included in the bid specifications/contract. Contractors need to see the minimum wages they will be required to pay while they develop their cost estimates for work to be performed.

It is generally the responsibility of the **federal agency** that funds or financially assists Davis-Bacon covered construction:

- To **ensure that the proper Davis-Bacon wage determination(s) is/are applied** to such construction contract(s). (See 29 CFR 1.5, and 1.6(b)),
- To **advise contractors which schedule of prevailing wages applies to various construction items** if a contract includes multiple wage schedules.
- To be able/ready to advise contractors regarding the duties performed by the various crafts in the wage determination, if they inquire. If two or more classifications in the applicable wage determination may perform the work in question, an area practice survey may be required. Where the classifications are from a single segment of the industry (union or non-union), data needs to be collected only from that segment of the construction industry (for the type of construction involved). Where union and non-union-based classifications are involved, the data should be obtained from both segments. (See the "area practice" section of the materials under the "DBRA Enforcement" tab, below, for a detailed discussion of area practice surveys.)

Questions and disputes regarding the application of the proper Davis-Bacon wage determination(s) to covered construction projects should be referred to the Wage and Hour Division, Branch of Construction Wage Determinations.

It can be disruptive and costly for an agency to correct a situation where a covered contract is awarded without a wage determination, or with the wrong wage determination (i.e., a wage determination that by its terms or according to the requirements of 29 CFR

Part 1, further discussed below clearly does not apply to the contract). When this happens, **corrective action** is required:

“The agency shall 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.” (29 CFR 1.6(f)).

MAJOR CONSIDERATIONS IN SELECTING THE PROPER WAGE DETERMINATION(S) FOR INCORPORATION IN A CONTRACT TO WHICH DAVIS-BACON LABOR STANDARDS REQUIREMENTS APPLY

As stated in the Davis-Bacon Act (see excerpt quoted on page 1, above), the Act requires the Secretary of Labor to determine prevailing wage rates for inclusion in covered contracts based upon those paid to “...corresponding classes of laborers and mechanics employed on **projects of a character similar to the contract work to be performed** in the city, town, village, or other **civil subdivision of the State in which the work is to be performed**, or in the District of Columbia if the work is to be performed there....”

A “wage determination” is the listing of wage rates and fringe benefit rates for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the Department of Labor has determined to be prevailing in a given area for a particular type of construction.

Consider these three basic factors in selecting Davis-Bacon wage determinations:

THE LOCATION WHERE THE CONSTRUCTION PROJECT WILL BE PERFORMED: It is a longstanding practice that Davis-Bacon wage determinations are made on a county-by-county basis. Identify the **State and county** where the construction work will be performed.

In some cases a project may be located in **more than one county and/or State**. In such cases include the proper wage determinations for each county/State where work is to be performed under the contract. The bid specifications must also include instructions specifying the contract work to which each wage determination applies.

TYPE OF CONSTRUCTION: As a matter of longstanding policy, the Department of Labor has distinguished four general types of construction for purposes of making prevailing wage determinations: building construction, residential construction, heavy construction, and highway construction. All Agency Memoranda Nos. 130 and 131 provide guidance in the application of this policy. (See Reference Materials, and also discussion with examples, below.)

CURRENT WAGE DETERMINATION(S): See the discussion, below, of agency obligations to incorporate current wage determinations.

TYPE OF CONSTRUCTION -- “PROJECTS OF A SIMILAR CHARACTER”

As a matter of longstanding policy, the Department of Labor has distinguished four general types of construction for purposes of making prevailing wage determinations: building construction, residential construction, heavy construction, and highway construction. All Agency Memoranda Nos. 130 and 131 provide guidance in the application of this policy.

Generally, for wage determination purposes, a project consists of all construction necessary to complete a facility regardless of the number of contracts involved, so long as all contracts awarded are closely related in purpose, time, and place.

All Agency Memorandum No. 130 -- “Application Of The Standard Of Comparison 'Projects of a Character Similar' Under the Davis-Bacon And Related Acts” provides general descriptions of each general type of construction and includes lists of examples in each general category. In brief:

Building Construction includes the construction, rehabilitation and repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies.

Residential Construction includes the construction, rehabilitation, and repair of single family houses, townhouses, and apartment buildings of no more than four (4) stories in height.

Highway Construction includes the construction, alteration or repair of roads, streets, highways, runways, parking areas and most other paving work not incidental to building or heavy construction.

Heavy Construction is a “catch-all” category which includes those projects which cannot be classified as Building, Residential or Highway. Heavy construction is often further distinguished on the basis of the characteristics of particular projects, such as dredging, water and sewer line, dams, major bridges and flood control projects.

Any questions or disputes regarding the appropriate classification of a project with regard to type of construction should be referred to the Wage and Hour Division for resolution prior to bid opening (or receipt of best and final offers). A request for a ruling should include a complete description of the project and other relevant information, such as wage payment data from similar construction projects in the local area, documentation of the views of parties in dispute, and other material interested parties wish to have considered. This may be appropriate where questions arise concerning the proper categorization of an entire project or particular portions of a project. (See discussion, below, of when multiple wage schedules should be applied, as compared to when lesser portions of a project will be considered incidental to the main type of construction to be performed.)

**APPLICATION OF MULTIPLE WAGE SCHEDULES FOR PROJECTS
THAT INVOLVE MORE THAN ONE TYPE OF CONSTRUCTION
VERSUS INCIDENTAL CONSTRUCTION OF ANOTHER TYPE**

All Agency Memorandum No. 131 provides further guidance, particularly on the application of multiple wage determinations for projects that involve more than one type of construction.

- Where a project includes construction items that in themselves would be classified differently with regard to type of construction, **multiple classification as to type of construction may be justified if such items are a substantial part of the project.**
- The application of wage schedules/determinations for more than one type of construction is appropriate if such items that fall in a separate type of construction will comprise at least 20% of the total project cost and/or \$1 million dollars cost.
- Generally, if such items that in themselves would be classified as a separate type of construction will be less than 20% of the total project cost and will cost less than \$1 million dollars, they are considered **incidental** to the primary type of construction involved on the project, and a separate wage determination is not applicable, unless there is an established local area practice to the contrary.
- Where multiple wage determinations are incorporated into the bid specifications/contract it is very important also to **provide instructions specifying the contract work to which each wage determination applies.**
 - Such instructions are needed, not only when the wage determinations for different types of construction (and/or locations) are in separate “Wage Decisions” but also where wage determinations for various types of construction (and/or counties) have been consolidated into a single “Wage Decision.” (This has often been done for administrative convenience in issuing wage determinations.)
 - Because of the complexities in the application of multiple schedules, the contracting agency should consult with the Wage and Hour Division, Branch of Construction Wage Determinations to resolve any questions.

GENERAL AREA WAGE DETERMINATIONS, PROJECT WAGE DETERMINATIONS, MODIFICATIONS AND SUPERSEDEAS ACTIONS

The Wage and Hour Division issues two types of Davis-Bacon wage determinations: general determinations, also known as area determinations, and project determinations.

The term “wage determination” is defined as including not only the original decision but any subsequent decisions modifying, superseding, correcting, or otherwise changing the rates and/or scope of the original decision.

GENERAL WAGE DETERMINATIONS:

- General wage determinations have been issued and are now in effect for most counties for each general type of construction, nationwide. (Note that in many areas separate schedules have also been issued for sewer and water line construction, for dredging, and for certain other types of projects which would otherwise be categorized as “heavy” construction.)
- General wage determinations are issued in the publication *General Wage Determinations Issued Under The Davis-Bacon And Related Acts*.
- Each year a new **annual edition** of this publication is issued in the month of February. Each annual edition supersedes general wage determinations issued previously, and new wage decision numbers reflect the new edition year. (The 2002 edition was issued March 1, 2002).
- Throughout the year, **weekly updates** are issued to subscribers. Each week (normally on Friday) a Notice is published in the *Federal Register* that lists the general wage determinations being issued, modified, or withdrawn.
- The *General Wage Determinations Issued Under The Davis-Bacon And Related Acts*, including the weekly updates, is available either on-line or in hard-copy.
 - An electronic on-line service is available by subscription through the Fed-World Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce. Further information concerning subscriptions to this service is available from NTIS at 1-800-363-2068.
 - An electronic on-line service is available for no fee through the Government Printing Office: <http://www.access.gpo.gov/davisbacon>.

- The hard-copy subscriptions are available through the Government Printing Office, Superintendent of Documents. The hard-copy (GPO) version is available in seven volumes (see chart, on page 14, below), and may be ordered for any or all of the seven volumes. Inquiries regarding price and availability may be directed to the Superintendent of Documents Order Desk at 202-512-1800. New subscribers will receive the current year's annual edition and all weekly updates for that calendar year regardless of when the order is placed. Complaints concerning non-receipt or errors in the filling of subscriptions may be directed to the Superintendent of Documents at 202-512-1806.

For those not wishing to subscribe, the publication is available at each of the 50 Regional Government Depository Libraries and many of the other 1,400 Government Depository Libraries across the Nation. However, please note that it is important to use the *Federal Register* notices to determine the most up-to-date wage determination for any particular location and type of construction, as individual libraries often may not yet have the most recent issuance(s).

PROJECT WAGE DETERMINATIONS:

Project Wage Determinations are obtained on a case-by-case basis for individual projects where:

- There is no general wage determination in effect for a county/type of construction needed for an upcoming project, or
- Virtually all the work on a contract will be performed by a classification that is not listed in the general wage determination that would otherwise apply **and** bid opening/award has not yet taken place.

A **Standard Form 308 (SF-308)** "Request for Determination and Response to Request" should be used by the agency (normally a federal agency) to request a project wage determination.

- SF-308's can be obtained on our website at:
<http://www.dol.gov/esa/programs/dbra/sf308.htm>.
 (A copy is included in the reference materials attached to this guidance material.)
- If the project involves multiple types of construction, the requesting agency should attach information indicating the expected cost breakdown by type of construction.
- The completed SF-308 should be sent to:

**U.S. DEPARTMENT OF LABOR
DAVIS-BACON RESOURCE BOOK 11/2002**

DB WAGE DETERMINATIONS

U.S. Department of Labor, Employment Standards Administration,
Wage and Hour Division, Branch of Construction Wage Determinations,
Washington, D.C. 20210

- The time required for processing requests for a wage determination varies according to the facts and circumstances in each case. An agency should anticipate that such processing will take at least 30 days.

Project decisions are applicable **only to the particular project** for which they are issued and are **effective for 180 days**. If a project decision 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, the agency should request a new project wage determination sufficiently in advance of the bid opening to assure receipt prior thereto.
- However, when due to unavoidable circumstances a project wage determination expires before award but after bid opening (or other date specified in 29 CFR 1.6(a)(1) for certain HUD programs), an extension of the project wage determination expiration date may be requested from and granted by the Wage and Hour Administrator if certain conditions are met. (See “Wage Determination Extensions,” below.)

“**Special**” Project Wage Determinations are issued for retroactive application to covered contracts let without a Davis-Bacon wage determination, or with a wage determination which by its terms or the provisions of 29 CFR Part 1 clearly does not apply to the contract -- for example, if a wage determination for the wrong county or an out-of-date wage decision has been included in an awarded contract, and there was no general wage determination in effect for the given county and type of construction at the time of contract award.

MODIFICATIONS AND SUPERSEDEAS ACTIONS:

Both general wage determinations and project wage determinations may be modified or superseded from time to time.

- Wage determinations are normally updated either:
 - to apply the results of a new survey, or
 - to update union rates to reflect collectively bargained changes in wage and fringe benefit rates (escalators) for classifications for which negotiated rates have been determined to be prevailing (for a given type of construction in the given geographic area).

- Each new annual edition of the *General Wage Determinations* publication contains “supersedeas wage decisions” that replace the prior general wage decisions, and carry wage decision numbers that reflect the new year. These supersedeas decisions show the date of issuance with a modification number listed as “Modification No. 0.”
- Subsequent modifications to each general wage determination list the record of all modifications issued to date for that determination within the given year's edition, and the dates of issuance. Each modification to a general wage determination replaces the entire general wage determination that it modifies.

CURRENT WAGE DETERMINATION(S)

It is the **responsibility of the federal agency** to assure that the appropriate **up-to-date** wage determination is included in the bid/RFP documents, and that **modifications** are included up to the time of award, or other applicable wage determination lock-in date.

Section 1.6 of Regulations, 29 CFR Part 1 sets forth, in detail, the requirements regarding inclusion of **up-to-date** wage determinations in bid/contract documents:

- As a general rule, which particularly affects negotiated contracts (RFP's), the most up-to-date wage determination(s) issued at the time of **contract award** must be incorporated into Davis-Bacon covered contracts.
- In the case of contracts entered into pursuant to competitive bidding procedures, an exception provides that wage determination updates issued less than **10 days** before the opening of bids shall be effective unless there is not a reasonable time still available before bid opening to notify bidders of the up-date, and a report of the finding to that effect is inserted in the contract file.

➤➤ However:

Where a **general wage decision** applies, if the contract is not awarded within **90 days** after bid opening, modifications to the wage determination(s) must be incorporated into the contract up to award, unless the contracting/assisting agency requests and obtains an extension of the 90-day period.

Similarly, if, due to unavoidable circumstances, a **project wage decision** expires between bid opening and contract award, a new wage decision must be obtained, unless an extension is granted.

➤➤ Note:

Specific requirements that involve dates other than bid opening apply for projects assisted under the National Housing Act and for projects that are to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937.

- “Modifications” to Davis-Bacon wage determinations and supersedeas wage determinations issued after award of a contract do not apply to the contract.
 - A Davis-Bacon wage determination that is appropriately applied to a covered contract normally establishes the minimum wage rates and fringe benefits which must be paid for the entire term of the contract.

- After bid opening/award of a contract, properly applied Davis-Bacon wage determinations will not be modified, except rarely, where a correction of an inadvertent clerical error is issued.

- **In pre-bid conferences, contractors should be advised/encouraged to review the Davis-Bacon wage determinations in the bid documents, and to raise any questions/complaints they have during the advertising period.** Often, out-of-date rates, errors, and wrong assumptions regarding the application of Davis-Bacon wage determinations can be corrected prior to bid opening/award, which, if not corrected then, and brought to light later will be deemed **untimely complaints**. (For example, see United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 469, WAB Case No. 90-40, dated March 29, 1991, which is included at the end of the material under the “DB Wage Determinations” tab for your convenient reference.)

WAGE DETERMINATION EXTENSIONS AND CLERICAL ERROR CORRECTIONS

EXTENSIONS:

Bid/contract documents must be amended to include modifications to a general wage determination (or if a project wage determination expires, to include a new project wage determination), unless an extension is requested from and granted by the Wage and Hour Administrator, if after bid opening:

- In the case of a general wage determination, award does not take place within 90 days after the bid opening, or
- In the case of a project wage determination, the determination expires prior to award.

A request for an extension must be supported by a written finding, including 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. (An example is where a public commission must review bid documents after bid opening and before award, and the prospective bidders have agreed to continue their bids in effect during the review period.)

CORRECTION OF INADVERTENT CLERICAL ERRORS:

Upon his or her own initiative, or at the request of an agency, the Administrator of the Wage and Hour Division may correct any wage determination if she/he finds that the determination contains an inadvertent clerical error. Such corrections shall be included in any on-going contracts containing the wage determination in question, retroactively to the start of construction, and also in any bid specifications containing the wage determination (for example, after bid opening). (29 CFR 1.6(d)).

USING THE GENERAL WAGE DETERMINATIONS

STATE LISTINGS FOR SEVEN VOLUMES OF GENERAL WAGE DETERMINATIONS IN HARD-COPY VERSION

The hard-copy version of the *General Wage Determinations* publication is divided geographically into seven volumes, each including wage determinations for a regional area of several States. The State composition of each volume is as follows:

Volume I	Volume II	Volume III	Volume IV
Connecticut	District of	Alabama	Illinois
Guam	Columbia	Florida	Indiana
Massachusetts	Delaware	Georgia	Michigan
Maine	Maryland	Kentucky	Minnesota
New Hampshire	Pennsylvania	Mississippi	Ohio
New Jersey	Virginia	North Carolina	Wisconsin
New York	West Virginia	South Carolina	
Puerto Rico		Tennessee	
Rhode Island			
Virgin Islands			
Vermont			
Volume V	Volume VI	Volume VII	
Arkansas	Alaska	Washington	Arizona
Iowa	Colorado	Montana	California
Kansas	Idaho	North	Hawaii
Louisiana	Oregon	Dakota	Mariana Islands
Missouri	South Dakota	Utah	Nevada
Nebraska		Wyoming	
New Mexico			
Oklahoma			
Texas			

HOW TO LOCATE GENERAL WAGE DETERMINATIONS

HOW TO FIND THE WAGE DETERMINATION YOU NEED:

- For the electronic version, to find the wage determination(s) needed for the given location(s) and type(s) of construction use either the electronic or the boolean searches on the database. (For information concerning search services available with subscriptions to the electronic version of Davis-Bacon wage determinations through NTIS is available at 1-800-363-2068.)
- For the hard-copy, the Government Printing Office (GPO) version of the general wage determinations, determine which volume of the publication includes wage determinations for the State where the contract work will be performed:
 - Consult the previous page in this package, or the listing of States in the introductory material to the most recent annual edition, the section entitled “How *General Wage Determinations* is Distributed” to determine which volume of the publication includes the State of interest.
 - In the proper volume, locate the State and county in the “Listing of General Wage Determinations by Location, Type of Construction, and Number,” which follows this guide to locating and interpreting general wage determinations.
 - Find the wage determination number listed to the right of the relevant county and under the appropriate type of construction. (If there is no general wage determination listed for a particular area and type of construction, project wage determinations will be issued at the request of contracting/assisting agencies. See discussion of project wage determinations, above.)
 - Obtain the wage determination of interest from the State-by-State compilation of general wage determinations published in the relevant volume of the current edition of the *General Wage Determinations*.
 - The general wage determinations are arranged in alphabetic order by State abbreviation, and then in numerical order within each State. For example, the first wage determination in Volume I is for Connecticut, Wage Decision No. CT020001; the next is No. CT020002, etc. After the Connecticut wage determinations, Wage Decision Nos. MA020001, MA020002, etc., for the State of Massachusetts are provided, and so on for Maine (ME), New Hampshire (NH), New Jersey (NJ), etc.
- Each modification issued replaces the entire general wage determination that it modifies. To be sure that you have the most recently issued modification or

supersedes to a Davis-Bacon wage determination, you may refer to the *Federal Register*, where each week (normally on Friday, except when a holiday delays issuance) a “Notice” lists Davis-Bacon wage determinations, supersedes actions, modifications, withdrawals and corrections being issued.

HOW TO INTERPRET GENERAL WAGE DETERMINATIONS

A. WAGE DETERMINATIONS ARE STRUCTURED ACCORDING TO THE FOLLOWING FORMAT:

Each wage determination begins with a **cover sheet** that defines its applicability. Included on this sheet are:

- The decision number.
- The number of the decision superseded, if applicable.
- State(s) covered.
- Type of construction (building, heavy, highway, and/or residential).
- County(ies) or city(ies) covered.
- Description of the construction to which the wage determination applies and/or construction excluded from its application.
- Record of modifications, including the initial publication date, modification numbers and dates.

Page numbering is internal to each wage determination. For example, NE02005 - 1; NE020005 - 2; NE020005 - 3 are the page numbers for General Wage Determination No. NE020005.

In the body of each wage determination is the **listing of classifications (laborers and mechanics) and accompanying basic hourly wage rates and fringe benefit rates** that have been determined to be prevailing for the specified type(s) of construction in the geographic area(s) covered by the wage determination. Classification listings may also include classification groupings, fringe benefit footnotes, descriptions of the geographic areas to which subclassifications and different wage rates apply, and/or certain classification definitions. (See below for how to know the source of a rate.)

In wage determination modifications, an **asterisk (“*”)** is used to indicate that the item marked is changed by that modification.

The wage determination appeals process is explained at the end of the wage determination. The explanation includes a description of the criteria for appeal and where to file the appeal. (See DB Appeals tab below.)

The last page of each wage determination ends with “**END OF DECISION**” centered above the last page number for the determination. Users can refer to the page number at the bottom of that page to check back to be sure that they have all the preceding pages of the determination.

B. HOW TO FIND THE WAGE RATE FOR A PARTICULAR CLASSIFICATION AND UNDERSTAND THE BASIS FOR THE WAGE RATE:

Review the wage determination in light of the following information:

1. The body of each wage determination lists the classifications and wage rates that have been found prevailing for the cited type(s) of construction in the area covered by the wage determination.

The classifications are listed in alphabetical order of “**identifiers**” that indicate whether particular rates are union or non-union rates.

Many wage determinations contain only non-union wage rates, some contain only union-negotiated wage rates, and others contain both union and non-union wage rates that have been found prevailing in the area for the type of construction covered by the wage determination.

2. Above each classification (or group of classifications) listed, an alphanumeric “**identifier**” and date provide information about the source of the classification(s) and wage rate(s) listed for it. (SU means the rates listed under that identifier were derived from survey data and are not union rates, although the survey data on which they are based may include both union and non-union data.)
 - a. The identifier is SUAR0037A. **SU** indicates rates that are **not union** rates; AR = Arkansas; 0037A is a sequential number and character used in producing the wage determination. Dates before 1993 that appear with such “SU” identifiers were generated in producing the wage determinations and are not meaningful to users. However, a 1993 or later date will indicate that the classification(s) and wage rate(s) under that identifier were issued in the general wage determination on that date and reflect the results of a survey.
 - b. Any identifier beginning with characters **other than SU** is used where **union** classification(s) and wage rate(s) have been found prevailing.
 - In each such identifier, the first four letters indicate the international union (see listing, below) for the local union that negotiated the wage rates listed under that identifier. Then, there is a four-digit number that indicates the local union number. For example, the identifier is ELEV0101A. ELEV = Elevator Constructors; 0101 = the local union

number (district council number where applicable); and “A” = a character used internally in processing the wage determination. The date shown is the effective date of the most current negotiated rate entered into the automated system that generates general wage determinations.

- Special identifiers are necessary for two trades because the same local union number(s) is accompanied by different wage rates in different states. Bricklayers local union numbers are not unique nationwide, but are unique within each State. Similarly, Sprinkler Fitters Local Union No. 699 has negotiated different wage rates in each State within its territorial jurisdiction. Therefore, the identifiers for the Bricklayers unions are in the format “BR + state abbreviation,” (referenced below as BRXX), and the identifier “SF + state abbreviation” is used for Sprinkler Fitter Local No. 669's rates.
- It is common for many local unions to negotiate wage rates for more than one classification. Where this is done, all the classifications for which that union's wage rates are determined to be prevailing will appear under the identifier for that union.

For example, the same union may negotiate wage and fringe benefits for painters and glaziers. In such a case, the wage rate for the glazier, as well as that for the painter will be found under a classifier beginning with “PAIN.” Similarly, users may need to look under an identifier beginning with “CARP” to find not only rates for carpenters, but also those for millwrights, piledrivermen and (marine) divers.

3. Following are the **identifier codes** used to reference the various craft unions. Examples of classifications for which their local unions commonly negotiate wage and fringe benefit rates are shown in parentheses.

ASBE = International Association of Heat and Frost Insulators and Asbestos Workers

BOIL = International Brotherhood of Boiler Makers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers

BRXX = International Union of Bricklayers, and Allied Craftsmen
 (bricklayers, cement masons, stone masons,
 tile, marble and terrazzo workers)

CARP = United Brotherhood of Carpenters and Joiners of America
 (carpenters, millwrights, piledrivermen,
 soft floor layers, divers)

ELEC = International Brotherhood of Electrical Workers

(electricians, communication systems installers,
and other low voltage specialty workers)

ELEV = International Union of Elevator Constructors

ENGI = International Union of Operating Engineers
(operators of various types of power equipment)

IRON = International Association of Bridge, Structural and Ornamental Iron
Workers

LABO = Laborers' International Union of North America

PAIN = International Brotherhood of Painters and Allied Trades
(painters, drywall finishers, glaziers, soft floor layers)

PLAS = Operative Plasterers' and Cement Masons' International Association
of the United States and Canada
(cement masons, plasterers)

PLUM = United Association of Journeymen and Apprentices of the Plumbing
and Pipe Fitting Industry of the United States and Canada
(plumbers, pipefitters, steamfitters, sprinkler fitters)

ROOF = United Union of Roofers, Waterproofers and Allied Workers

SHEE = Sheet Metal Workers International Association

SU... = As discussed above, the "SU..." identifier is for rates derived from survey data where the union rate(s) were not determined to be prevailing for the classification(s) listed. (The data reported for such a classification and used in computing the prevailing rate may have included both union and non-union wage data.) Note that various classifications, for which non-union rates have been determined to be prevailing, may be listed in alphabetical order under this identifier, which the computer places into the wage determination in alphabetical order, as listed here.

TEAM = International Brotherhood of Teamsters

**DAVIS-BACON
ADDITIONAL CLASSIFICATIONS
PROCESS**

CONTRACT CLAUSE STIPULATED AT 29 CFR 5.5(a)(ii)

(Reiterated in the FAR at 48 CFR 52.222-6)

**GETTING CLASSIFICATIONS ADDED FOR DAVIS-BACON JOBS
STEPS TO TAKE – CONTRACTING AGENCY**

CONFORMANCE CHECKLIST FOR CONTRACTING AGENCIES

APPRENTICES, TRAINEES, HELPERS, AND WELDERS

FOREMEN, TECHNICAL AND SUPERVISORY EMPLOYEES

**APPLYING THE CRITERIA FOR APPROVAL OF ADDITIONAL
CLASSIFICATIONS AND WAGE RATES**

**SPECIALTY CLASSES OFTEN REQUESTED THAT SHOULD NOT
BE APPROVED IF THE DUTIES ARE PERFORMED BY
GENERAL CRAFTS IN THE CONTRACT WAGE
DETERMINATION**

CONTRACT CLAUSE STIPULATED AT 29 CFR 5.5(a)(ii)

(Reiterated in the FAR at 48 CFR 52.222-6)

- (A) **The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:**
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report . . . shall be sent by the contracting officer to the . . . Administrator of the Wage and Hour Division, . . . Department of Labor, . . . [for approval, modification or disapproval with respect to each proposed classification and wage rate].
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator. . . .
- (D) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.”

GETTING CLASSIFICATIONS ADDED FOR DAVIS-BACON JOBS STEPS TO TAKE – CONTRACTING AGENCY

PRE-BID/PRE-AWARD:

1. LOOK AT THE WAGE DETERMINATION:

- Compare classifications on the wage determination with anticipated work to be performed to identify missing classes that may be needed.
- If virtually all the work is to be performed by a missing classification, use Standard Form 308 to request an appropriate predetermined wage rate for incorporation in the bid specifications.

2. TELL CONTRACTORS ABOUT THE POSSIBLE NEED TO REQUEST ADDITIONAL CLASSES AND RATES AFTER AWARD:

- Ensure that Davis-Bacon clauses are in the solicitation, including the conformance criteria.
- During pre-bid/pre-award conferences discuss criteria to alert contractors on how requests for additional classifications and wage rates will be evaluated.
- In response to phone inquiries regarding missing classifications, refer to the conformance criteria in the contract clause.
- Call Wage-Hour for guidance where questions/disputes arise regarding proper application of Davis-Bacon wage determinations to specific upcoming projects.

AFTER-AWARD:

3. IDENTIFY ADDITIONAL CLASSES THAT MAY BE NEEDED:

- In pre-construction conference:
 - Discuss the wage determination and conformance criteria.
- Review certified payrolls:
 - Look for classes not listed on the wage determination.
- Conduct on-site inspections/employee interviews: Identify additional classes.
- Consider subcontractor inquiries about missing classifications/rates.
- Consider complaints by employees/unions/competitors.

4. WORK WITH THE CONTRACTORS AND OTHER AFFECTED PARTIES TO HELP DEVELOP THE CONFORMANCE REQUEST:

- Provide request form (SF-1444 or similar) to the contractor immediately.
- Consider the views of affected parties:
 - Prime contractor
 - Subcontractor (if applicable)
 - Employee(s) (if known)
 - Union representative (if the employees are represented by a union)
- Review contractor request for additional classes and rates in light of the criteria for conformance with the contract wage determination.
 - Work to be performed is not performed by a classification already listed on the applicable wage determination.
 - Rate bears a reasonable relationship to other rates in the wage determination.
 - See separate detailed guidance on applying the criteria for the approval of additional classifications and wage rates, on pages 9-19, below.
- Determine whether affected parties are in agreement or have dispute(s).
- Attempt to resolve disputes in accordance with conformance criteria, if possible.
- Develop agency recommendation and documentation of disputes (if any).

5. SUBMIT CONFORMANCE REQUEST FOR DOL REVIEW AND RULING:

- Submit completed SF-1444 (or similar form or letter providing the information that the SF-1444 would provide).
- Attach related documentation and agency recommendation.
- Attach copy of contract wage determination(s), to expedite processing.

6. COMMUNICATE WITH DOL AFTER SUBMITTING CONFORMANCE REQUEST, AS APPROPRIATE:

- Lack of a DOL response within 30 days does not mean that the request has been approved.

- Call DOL at (202) 693-0087 (or the analyst listed on page 4 or 5 in the staff listing in this reference book) to get status of request. (For the telephone extension to use for inquiries concerning the State where the construction project is located, see list of Construction Wage Determinations staff).
 - Respond to DOL requests for additional information needed to process the request as promptly as possible.
7. COMMUNICATE DOL DETERMINATION TO THE CONTRACTOR AND OTHER INTERESTED PARTIES:
- The DOL determination should be provided to interested parties (for example, the general/prime contractor, subcontractors, employees, employee representative(s), any of whom may have an interest in a possible appeal of the ruling.)
8. ADVISE THE CONTRACTOR AND OTHER INTERESTED PARTIES OF THE RECONSIDERATION AND APPEAL PROCESS:
- Disputes concerning application of a determination regarding a request for additional classifications and wage rates may be brought to the Wage and Hour Administrator under the 29 CFR 5.5(a)(9) (FAR 52.222-14) for a ruling pursuant to 29 CFR 5.13. A final ruling of the Administrator may be appealed by an interested party pursuant to the provisions of 29 CFR Part 7.

CONFORMANCE CHECKLIST FOR CONTRACTING AGENCIES

Agency officials should provide the following information when requesting additional classifications and wage rates:

- ___ 1. The Contract Number, Project Number or HUD Identifying Number.
- ___ 2. The bid opening date (if advertised).
- ___ 3. The award date of the contract.
- ___ 4. The date the contract work started (if started).
- ___ 5. Prime/General contractor.
- ___ 6. Subcontractor (if any).
- ___ 7. The project location: city, county, and State.
- ___ 8. Brief description of project work.
- ___ 9. Contract Wage Decision No(s).
 - ___ Modification No. (for each if multiple decisions).
 - ___ Date of modification (for each if multiple decisions).
- ___ 10. Proposed classification(s); description of duties if other than a basic trade.
(Note: See separate instructions for apprentices, trainees, helpers, welders, foremen, technical workers and supervisory employees.)
- ___ 11. Proposed rates:
 - ___ > basic hourly rate(s).
 - ___ > fringe benefits (if any).
- ___ 12. Documentation that the interested parties are in agreement or their views regarding dispute:
 - ___ > Contractor(s) request letters or signatures on SF 1444 or other form.
 - ___ > Employees' agreement or views (if the employees are known) or representative signature. (If the contractor is party to a collective bargaining agreement, the union representative may sign for the employees or the collective bargaining agreement may be submitted.)
 - ___ > Contracting officer/agency signature.

- _____ > If there are parties in disagreement, documentation of their views should be attached.

- _____ 13. Agency recommendation.

- _____ 14. Agency contact person's name, address and phone number (clearly legible please).

All proposed additional classification/conformance actions must be submitted to Wage and Hour for review. Wage and Hour may approve, modify, or disapprove any proposed additional classifications.

APPRENTICES, TRAINEES, HELPERS, AND WELDERS

Apprentices and trainees:

- Additional classifications and wage rates are not needed for bona fide apprentices and trainees working on Davis-Bacon covered contracts. Rates for apprentices and trainees are not listed on Davis-Bacon wage determinations. Apprentices or trainees are permitted to work at less than the wage rates listed in the contract wage determination for the work they perform only if they meet the requirements of 29 CFR Part 5, section 5.5(a)(4), such as being registered or certified in an appropriate apprenticeship or training program. (See FAR at 48 CFR 22.401 Definitions, "Laborers or mechanics," paragraphs (1) and (2), and 48 CFR 52.222-6.)

Helpers:

- Generally, helpers may not be approved unless the duties performed are clearly defined and distinct from those of the journeyman classification and from the laborer, the use of such helpers is an established prevailing practice, and the term "helper" is not synonymous with "trainee" in an informal training program.

Welders:

- Additional classifications are not generally needed for welders. Welding is commonly considered incidental to the work of employees for whom classifications are issued. Thus, it is appropriate for welders to be classified in the same classification as the employees who are performing the duties to which the welding work is incidental (for example, ironworkers, plumbers, sheet metal workers, etc.). However, welders may sometimes represent a separate subclassification.

FOREMEN, TECHNICAL AND SUPERVISORY EMPLOYEES

An individual employed in a bona fide executive, administrative or professional capacity, as defined in Regulations, 29 CFR Part 541, is not a “laborer” or “mechanic” as these terms are defined under the Davis-Bacon Act.

- However, if a supervisory employee who is not exempt from coverage under that regulation spends more than an incidental amount of work as a laborer or mechanic, the hours spent in these activities would be subject to the Davis-Bacon labor standards. (See Regulations, 29 CFR Part 5, section 5.2(m)).

For example, if a working foreman spends more than 20 percent of the time performing laborer or mechanic duties at the job site, the hours spent in these activities should be paid at least the hourly rate specified in the contract wage determination for the appropriate laborer or mechanic classification(s).

APPLYING THE CRITERIA FOR APPROVAL OF ADDITIONAL CLASSIFICATIONS AND WAGE RATES

This is the detailed process for determining whether a request for an additional classification and wage rate can be approved. See contract clause, page 1, paragraph (A)(1), (2), and (3), above.

To the extent that the contracting officer/agency follows this process, **DOL processing of requests for approval of conformance actions can be expedited, and complications minimized** in the event of reconsideration and appeal actions. Where this process is not followed by the contracting agency, delays can be anticipated in Department of Labor processing of the additional classification requests, and reconsideration and appeals of such cases may occur.

Note: For guidance regarding helpers, apprentices, trainees, welders, working foremen, technical and supervisory employees, see separate guidance, above.

Step 1: Is the requested classification already listed in the contract wage determination for the appropriate county and type of construction?

If so, the classification and rate listed in the wage determination apply.

Step 2: Can a classification in the contract wage determination – for the appropriate county and type of construction – perform the work?

See chart, pp. 18-19, below, that lists some of the additional classes, often requested, that are commonly performed by general classifications that may already be listed in the applicable wage determination.

Note: If multiple wage schedules are included in the contract, reference is to work performed by classification(s) already in the wage schedule that applies to the portion of the project for which the additional classification is requested.

Step 3: If yes, is the wage determination classification that may apply a union or non-union rate?

(A) **If** the classification in the applicable wage determination lists a union rate (the identifier above the classification will indicate the union source of the rate), then only information from the union segment of the industry for the type of construction in the area is relevant to determining whether the requested classification should be denied.

(B) **If** the classification in the applicable wage determination lists a non-union rate (indicated by a “SU....” identifier above the relevant classification listing), then a non-union rate has been determined to be prevailing for the given type of construction in the area, and **only** the practices of non-union contractors in the area may be used as a basis for determining whether the requested classification should be denied.

Step 4: Is there evidence that the duties in question were performed by employees in that sector of the construction industry on **similar construction** in the area **prior to award of this contract**? (See Fry Brothers Corp., WAB Case No. 76-6 dated June 14, 1977 and American Building Automation, ARB Case No. 00-067, dated March 30, 2001 (and cases cited therein); reference case nos. 1 and 4, below.)

For example:

- If, for a building construction project, the contract wage determination contains a union rate for the classification that may perform the duties in question, is there any evidence that union contractor employees performed the same duties on building construction in the county during the year prior to award of this contract?
- If, on a highway construction project, the contract wage determination contains a non-union rate for a classification that may encompass the duties in question, is there evidence that non-union contractor employees performed the duties in question on a highway construction project in the area during the year prior to award of the contract?

Step 5: If there is such evidence, the request for the additional classification must be denied, as a classification already in the contract wage determination performs the work for which the additional classification was requested.

Example A - The wage determination classification/rate are union:

- **If** the classification in the wage determination that may perform the duties in question is a **union rate**, **and if** union worker(s) can be shown to have **performed** the duties in question on similar construction in the same area prior to award of the contract in question, **then** in light of the first criterion for approval of an additional classification, the request for the additional classification must be denied.

NOTE:

A claim that the applicable union agreement applies to such work is normally not an adequate basis for denying the additional classification request. **Specific information identifying project(s) on which the union workers performed such work and identifying the contractor who employed them on such project(s)**, is needed to establish that the work in question was performed by a classification in the contract wage determination.

Such data is evidence of a local area practice that the union classification listed in the wage determination had been used to perform the duties in question (it need not be a prevailing practice). If there is evidence that the duties have been performed using the union classification in the wage determination, then the work in question must be classified in accordance with the union classification in the contract wage determination, and at least the rate specified there, including fringe benefits, shall be paid to all workers performing work in the classification under the contract from the first day on which work has been performed in the classification.

If there is no evidence that the duties in question were performed by the classification in the contract wage determination, move to step 6, below.

Example B - The wage determination classification/rate are non-union:

- **If a non-union rate is listed for the classification in the contract wage determination that may perform the duties in question (for the given type of construction and county), this indicates that a non-union rate has been determined to be prevailing for the given type of construction in the area, and the practice of union contractors in the area may not be used as a basis for denying the request for the additional classification. Information from non-union contractors is relevant.**

Step 6: If the duties of the proposed classification are not performed by a classification on the wage determination, it must then be determined whether or not the rate requested **bears a reasonable relationship** to the wage rates already in the applicable contract wage determination schedule **for the given county and type of construction.**

- (A) Generally, requests for additional classifications at wage rates below the unskilled laborer wage rate should not be approved.
- (B) Skilled craft classifications should not be approved at wage rates below those already listed for other skilled crafts (excluding laborers, truck drivers, and power equipment operators – see Tower Construction, WAB Case No 94-17, dated February 28, 1995; reference case no. 2, below).
- (C) Rates for additional laborer, truck driver, and power equipment operator classes should normally be compared with other laborers, truck drivers, and power equipment operators, respectively. (See Tower Construction, WAB Case No 94-17, dated February 28, 1995; reference case no. 2, below.)
- (D) If the contract wage determination includes rates for skilled craft(s) below the unskilled laborer rate, the relation of the requested rate to rates listed for related crafts may be relevant. (See M Z. Contractors Co., Inc., WAB Case No. 92-06, dated August 25, 1992, and Swanson's Glass, WAB Case No. 89-30, dated April 20, 1989; reference case nos. 3 and 5, below).

REFERENCE CASE NO. 1

Fry Brothers Corp., WAB Case No. 76-6 (June 14, 1977)

Pursuant to the Wage Appeals Board decision in Fry Brothers Corp., WAB Case No. 76-6 dated June 14, 1977, the proper classification for work performed on a particular Davis-Bacon covered project by laborers and mechanics is that classification used by firms whose wage rates were found to be prevailing in the area and incorporated in the applicable wage determination. Accordingly, in view of the Fry Brothers Corp. decision, the classification practices utilized in the appropriate sector for such construction projects in the area in question must be used to determine the proper classification for work on this project.

Note: The above synopsis is provided for information purposes only. The full text of the decision can be obtained from the DOL's Administrative Review Board or accessed at:

<http://www.oalj.dol.gov/libdba.htm>

REFERENCE CASE NO. 2

Tower Construction, WAB Case No 94-17, dated February 28, 1995

In this case, the Wage Appeals Board confirmed the Administrator's ruling concerning the appropriate rate to be approved for certain additional classifications, in accordance with the "reasonable relationship" requirement – the third criterion for conformability.

The additional classifications requested by the contractor in this case were: acoustical ceiling installer, painter, soft floor layer and drywall finisher, all of which are skilled construction trades. The Administrator ruled that the lowest approvable rate was the rate listed in the contract wage determination for the lowest skilled classification – excluding consideration of the rates listed for power equipment operators, laborers and truck drivers. The Board ruled as follows:

“We have long recognized as reasonable, in the ordinary circumstance, Wage and Hour's policy of conforming rates for missing skilled classifications to a level no less than the lowest rate for a skilled classification in the wage determination. ... In administering the conformance process Wage and Hour further groups classifications within the broad category of power equipment operators and distinguishes them from other skilled classifications since the operators are a 'separate and distinct subgroup of construction worker classifications.' ... Thus, when conforming omitted power equipment operator rates, Wage and Hour only looks to listed equipment operator rates for determining a reasonable relationship. Conversely, omitted skilled classifications are not conformed at operator rates. The unique skills and duties of power equipment operators are sufficiently distinguishable from the skills of mechanics in skilled construction trades, such that the Administrator's rejection of the equipment operator rates was well within the discretion granted her under the regulation. ...

The Board further noted that the contract wage determination in this case also listed a truck driver classification and noted that truck driver skills are more akin to those of power equipment operators, that the truck driver rate was below that listed for an unskilled laborer, and that the Administrator also excluded that truck driver rate from consideration in determining the appropriate conformed rate for the skilled crafts in question. The Board concluded that:

“where a rate within the clearly distinct equipment operator group is the 'floor' for a wage determination, it is reasonable to exclude those rates from consideration and conform missing skilled classifications to the next higher level for a skilled trade.”

In this case, the Board also reiterated important positions it had stated in prior rulings, to the effect that:

“a party seeking conformed classifications and rates 'may not rely on a wage determination granted to another party regardless of the similarity of the work in question.' Inland Waters Pollution Control, Inc., WAB Case No. 94-12 (Sept. 30, 1994 slip op. at pp. 7-8.”

and further that:

“a contractor could not prospectively rely on Wage and Hour's prior approval of rates for application to a contract performed at the same location. E&M Sales, Inc., WAB Case No. 91-17 (Oct. 4, 1991).”

Note: The above synopsis is provided for information purposes only. The full text of the decision can be obtained from the DOL's Administrative Review Board or accessed at:

<http://www.oalj.dol.gov/libdba.htm>

REFERENCE CASE NO. 3

M.Z. Contractors Co., Inc., WAB Case No. 92-06 (August 25, 1992)

The Wage Appeals Board remanded this matter to the Wage and Hour Division for further proceedings after the Acting Administrator had approved the addition (conformance) of an “insulator” classification, for pipe insulation work, at a wage rate equal to the rate listed on the wage determination for “laborers.” The Wage-Hour approval was in accordance with the policy of approving conformance of a proposed rate for a skilled classification of worker so long as the proposed rate was equal to or exceeded the lowest rate for a skilled classification already contained in the contract wage determination. (The painters' rate in the wage determination was lower than the laborers' rate). The Board approved this general Wage-Hour policy “as applied in the ordinary circumstances,” but rejected its application to the present case where almost all the skilled classifications in the determination had wage rates substantially higher than the laborers' rate. The Board indicated it was appropriate for Wage-Hour to select in this case the particular method to determine what conformed rate would meet the regulation's requirement of bearing a reasonable relationship to the wage rates contained in the wage determination.

Note: The above synopsis is provided for information purposes only. The full text of the decision can be obtained from the DOL's Administrative Review Board or accessed at:

<http://www.oalj.dol.gov/libdba.htm>

REFERENCE CASE NO. 4

American Building Automation, ARB Case No. 00-067, dated March 30, 2001

In this case, the Administrative Review Board (ARB) concluded that the Administrator properly denied a request for the addition of a “Building Automation and Controls Technician” (BACT) classification. The Administrator determined that the work of the proposed BACT classification was performed by another classification already found within the wage determination, and the ARB affirmed the Administrator’s denial of the conformance request supported by the record.

The subcontractor who requested that classification asserted that the work involved did not fall squarely within any single trade classification in the wage determination and that such workers had to be knowledgeable in all of the traditional trades, including electrical, mechanical, telecommunications and networks. The Davis-Bacon wage determination in the contract in question included a union wage rate for the plumber classification. Believing that the work to be performed by the proposed BACT classification might fall within the work performed by employees classified as plumbers, Wage and Hour inquired into trade jurisdiction practices under the collective bargaining agreement negotiated by the Plumbers’ local union. The union provided a copy of its collective bargaining agreement and documentation of several construction projects where this work had been performed by workers classified and paid as plumbers. Based on this data, the Administrator determined that the first criterion for establishing a new classification under the conformance process was not satisfied.

In its decision affirming the Administrator’s determination, the ARB noted that “[a] conformance request does not call for a *de novo* evaluation of prevailing local practices or wage rates, questions that might be appropriately raised in a pre-award request for review and reconsideration of a wage determination under 29 CFR §1.8” and that:

“[I]t is well-established that in a conformance situation the Division is not required to determine that a classification in the wage determination actually is the prevailing craft for the tasks in question, only that there is evidence to establish that the classification actually performs the disputed tasks in the locality. [Prior ARB decision and cases cited therein referenced]”

Note: The above synopsis is provided for information purposes only. The full text of the decision can be obtained from the DOL’s Administrative Review Board or accessed at:

<http://www.oalj.dol.gov/libdba.htm>

REFERENCE CASE NO. 5

Swanson's Glass, WAB Case No. 89-20, dated April 29, 1991

In this case, the Wage Appeals Board (WAB) affirmed the Administrator's denial of a request for the addition of a glazier classification on the ground that the contractor's proposed rate did not bear a reasonable relationship to the rates on the wage determination. The proposed wage rate was substantially lower than the wage rate for roofers – the lowest paid skilled classification on the applicable wage determination, and also substantially lower than the hourly rate in the wage determination for laborers.

The WAB further characterized the petitioner's argument that the proposed glazier wage rate was "in conformity with the prevailing wage rate for glaziers for this locality" as essentially challenging the applicable wage determination, and emphasized that "the Board has consistently ruled that in order for a challenge to a wage determination to be timely, the challenge must be made prior to contract award (or start of construction if there is no contract award)."

The contractor's contention that the contracting officer approved its proposed rate was also rejected. The WAB noted that the conformance regulations do not give the contracting officer final approval, and even if the contracting agency had described its actions as authoritative approval, erroneous contracting agency advice does not bar the DOL from requiring payment of the appropriate rate.

In this case, the Board also states that Wage and Hour's failure to deny the requested classification within the 30 day timeframe contemplated by the regulations is not determinative, as that regulation is not jurisdictional, the conformance regulations do not specify that the failure of the Administrator to act within 30 days is effectively the Administrator's approval or acquiescence in the proposed classification or wage rate, and the 30-day time period referenced in Section 5.5(a)(1)(ii)(B) does not provide a basis to presume that in the absence of a response from the Administrator, the requested classification and wage rate had been approved.

Note: The above synopsis is provided for information purposes only. The full text of the decision can be obtained from the DOL's Administrative Review Board or accessed at:

<http://www.oalj.dol.gov/libdba.htm>

**SOME SPECIALTY CLASSES OFTEN REQUESTED THAT
SHOULD NOT BE APPROVED IF THE DUTIES
ARE PERFORMED BY GENERAL CRAFTS
IN THE CONTRACT WAGE DETERMINATION**

<p align="center">SPECIALTY (Often requested by contractors)</p>	<p align="center">GENERAL CRAFT (may perform the specialty duties)</p>
Drywall (sheetrock) installers	Carpenters
Drywall finishers/tapers	Painters
Alarm installers Sound and communication workers/installers Electronic technicians Lightning protection installers Low voltage installers	Electricians
HVAC mechanics (heating, ventilation and air conditioning mechanics) Refrigeration mechanics/workers Furnace installers Burner repairmen	Sheet metal workers Plumbers Pipe fitters/steam fitters Electricians
Pipe wrappers/insulators Mechanical (system) insulators	Asbestos workers/ heat & frost insulators
Batt insulation installers Blown insulation installers	Carpenters Laborers
Asbestos removal from pipes and Boilers that will be reinsulated	Asbestos/workers heat and frost insulators
Asbestos removal – except from pipes and boilers that will be reinsulated	Laborers
Metal building assemblers/builders/erectors	Iron workers Laborers Sheet metal workers Carpenters
Fence erectors	Ironworkers Laborer

SPECIALTY (Often requested by contractors)	GENERAL CRAFT (may perform the specialty duties)
Rebar workers Rodman (performing rebar work) Steel setters Steel or iron tiers	Ironworkers (reinforcing) Cement workers Laborers
TV-grout operators	Power equipment operators Laborers Truck drivers

APPEALS

REGARDING DAVIS-BACON

WAGE DETERMINATIONS AND CONFORMANCE ACTIONS

**APPEALS REGARDING DAVIS-BACON WAGE
DETERMINATIONS & CONFORMANCE ACTIONS**

REGULATIONS, 29 CFR PART 7, EXCERPTS

APPEALS REGARDING DAVIS-BACON WAGE DETERMINATIONS & CONFORMANCE ACTIONS

1. Has DOL made an **initial decision** in the matter? This can be:

- An existing published wage determination
- A survey underlying a wage determination
- A letter stating a DOL position
- A conformance ruling

If the answer is no, then there is no appropriate action to appeal.

- On survey-related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted. The Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in steps 2 and 3, below, should be followed.

2. If the answer is yes, then an interested party may request **review and reconsideration** from the Wage and Hour Administrator. 29 CFR 1.8 & 29 CFR 5.13. Write to:

U.S. Department of Labor
Wage & Hour Administrator
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3. If the decision of the Administrator is not favorable, an interested party may appeal directly to the Department's **Administrative Review Board**. See 29 CFR Part 7.
4. All decisions by the Administrative Review Board are final.
5. The Administrative Review Board's telephone number is (202) 693-6200, and their website is at <http://www.dol.gov/arb/>. Decisions of the Administrative Review Board (and the former Wage Appeals Board) are available in the **OALJ Law Library's "DBA/SCA Collections"** at: <http://www.oalj.dol.gov/libdba.htm>.

REGULATIONS, 29 CFR PART 7, EXCERPTS

“Section 7.2 Who may file petitions for review [of wage determinations].

(a) Any interested person who is seeking a modification or other change in a wage determination under Part 1 ... and **who has requested the administrative officer authorized to make such modification or other change under Part 1** and the request has been denied, after appropriate reconsideration shall have a right to petition for review of the action taken by that officer.

(b) For purpose of this section, the term “**interested person**” is considered to include, without limitation:

(1) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any laborers or mechanic, or any labor organization which represents a laborer or mechanic, who is likely to be employed or seek employment under a contract containing a particular wage determination, and, (2) Any Federal, State, or local agency concerned with the administration of a proposed contract or contract containing a particular wage determination issued pursuant to the Davis-Bacon Act or any of its related statutes.”

“Section 7.9 Review of decisions in other proceedings.

(a) Any interested person who is seeking a modification or other change in a wage determination under Part 1 of this subtitle and **who has requested the administrative officer authorized to make such modification or other change under Part 1 and the request has been denied, after appropriate reconsideration** shall have a right to petition for review of the action taken by that officer.

(b) For purpose of this section, the term “**interested person**” is considered to include, without limitation:

(1) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any laborer or mechanic, or any labor organization which represents a laborer or mechanic, who is likely to be employed or seek employment under a contract containing a particular wage determination, and (2) Any Federal, State, or local agency concerned with the administration of a proposed contract or contract containing a particular wage determination issued pursuant to the Davis-Bacon Act or any of its related statutes.”

(Emphases added)

**DBA/DBRA
COMPLIANCE
PRINCIPLES**

LABORERS AND MECHANICS

SITE OF THE WORK

TRUCK DRIVERS

APPRENTICES AND TRAINEES

HELPERS

AREA PRACTICE

FRINGE BENEFITS

DBA/DBRA

Coverage and Compliance Principles

This section helps to provide the framework for answering questions such as the following:

- To whom do the Davis-Bacon prevailing wage requirements apply?
- Was each laborer and mechanic paid proper predetermined prevailing wage and fringe benefits for the classification of work performed?
- Did employees receive one and one-half their basic rates of pay for hours worked on the contract over 40 per week?
- Were laborers and mechanics employed on the site of the work correctly classified?
- Did the contractors use a disproportionate number of laborers and/or apprentices or trainees?
- Did the firm make contributions to bona fide fringe benefit plans that were creditable toward meeting the prevailing rate requirements?

LABORERS AND MECHANICS

Definition (29 CFR 5.2(m))

- The term “**laborer and mechanic**” includes those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial duties.

The term includes:

- Apprentices
- Trainees
- Helpers

For overtime coverage under CWHSSA, also:

- Watchmen and guards

Note: Although guards and watchmen are not considered laborers or mechanics under DBA/DBRA, they are so considered under CWHSSA by virtue of its express statutory language.

- The term laborer or mechanic does not include workers whose duties are primarily administrative, executive, or clerical, rather than manual.
- Categories of workers considered not to be laborers or mechanics when, in the course of their duties, they perform no manual or physical work on the construction project are:
 - Architects and engineers
 - Timekeepers
 - Inspectors

Coverage of laborers and mechanics

- The DBA requires the payment of the applicable prevailing wage rates to all laborers and mechanics “regardless of any contractual relationship which may be alleged to exist.”

- Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541 are not deemed to be laborers or mechanics.
- Non-exempt working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the exemption criteria of 29 CFR 541, are laborers and mechanics for the time so spent. The working foreman is due the rate listed in the contract wage determination for the hours spent as a laborer or mechanic.
- Owners of subcontractor firms who are themselves performing the work of laborers and mechanics are entitled to the applicable prevailing wage rate for the classification of work performed. If the subcontract price covers the applicable prevailing wage rate for the number of hours worked as a laborer or mechanic on the DBA/DBRA job, the Department of Labor (DOL) considers the owner/subcontractor to have been paid in compliance. The agency to which the certified payrolls are to be forwarded on any given project may provide more specific guidance concerning the proper reporting by owners of subcontractor firms on the certified payrolls.

SITE OF THE WORK

Definition (29 CFR 5.2(l))

- **5.2(l)(1)** - “Site of the work” is the physical place or places where the building or work called for in the contract will remain, and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.

For example:

- If a small office building is being erected, the “site of work” will normally include no more than the building itself and its grounds.
 - In the case of larger contracts, such as for airports, highways, or dams, the “site of work” is necessarily more extensive and may include the whole area in which the construction activity will take place.
 - Where a very large segment of the dam is constructed up-river and floated downstream to be affixed onto a support structure, the secondary construction site would be within the meaning of “site of the work” for Davis-Bacon purposes if it was established for and dedicated to the dam construction project.
- **5.2(l)(2)** - Except as provided in paragraph 5.2(l)(3), batch plants, borrow pits, job headquarters, tool yards, etc., are part of the “site”, provided they are dedicated exclusively, or nearly so, to the contract or project, and are adjacent or virtually adjacent to the site of the work as defined in paragraph 5.2(l)(1).
 - **5.2(l)(3)** - Not included in the “site of work” are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal or federally assisted project.

Also excluded from the “site of work” are fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph 5.2(l)(1), even where such operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Labor standards applicability regarding of “site of work”

- DBA applies only to those laborers and mechanics employed by a contractor or subcontractor on the “site of the work”.
- In 2000, DOL revised the two related definitions in the regulations that set forth rules for the administration and enforcement of the Davis-Bacon prevailing wage requirements. Revisions in the regulatory definitions of “site of the work” and “construction, prosecution, completion, or repair” were made to clarify the regulatory requirements in view of three U.S. appellate court decisions, which had concluded that DOL’s application of these related regulatory definitions was at odds with the language of the Davis-Bacon Act that limits coverage to workers employed “directly upon the site of the work,” and to address situations that were not contemplated when the regulations then in effect had been promulgated.

For a full discussion of the revisions made to the regulatory definition of the “site of the work” in 2000, see the final rule published in the *Federal Register* on December 20, 2000, 65 FR 80268-80278. (See *Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board*, 932 F.2d 985(D.C. Cir 1991) (*Midway*), *Ball, Ball and Brosamer v. Reich* (D.C. Cir. 1994), and *Cavett Company v. U.S. Department of Labor* 101 F.3d 1111 (6th Cir. 1996). The revised regulations took effect on January 19, 2001.

- Contracting agencies should consult the Wage and Hour Division (Wage and Hour) when confronted with “site of work” issues.
- CWHSSA has no site of work limitation. An employee performing part of the contract work under a construction contract at the job site who then continues contract work at a shop or other facility located elsewhere is subject to CWHSSA overtime pay for all the hours worked at both locations and travel time between them. (Different wage rates might be paid, as the Davis-Bacon prevailing wage requirements would apply only to activities performed on “the site of the work”.)

TRUCK DRIVERS

Definition (29 CFR 5.2(j))

- The terms “**construction, prosecution, completion, or repair**” mean all types of work done on a particular building or work at the site thereof (including work at a facility deemed part of the “site of the work”) by laborers and mechanics of a construction contractor or construction subcontractor including without limitation:
 - Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site.
 - Painting and decorating.
 - The manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work.
 - Transportation between the “site of the work” (within the meaning of 29 CFR 5.2(l)) and a facility which is dedicated to the construction of the building or work and deemed a part of the “site of the work” (within the meaning of 29 CFR 5.2(l)).

Coverage of truck drivers

- Truck drivers **are covered** by Davis-Bacon in the following circumstances:
 - Drivers of a contractor or subcontractor for time spent working on the site of the work.
 - Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work, if such time is not *de minimis*.
 - Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site.
 - Truck drivers transporting portion(s) of the building or work between a site established specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the physical place(s) where the building or work called for in the contract(s) will remain.

- Truck drivers are **not covered** in the following instances:
 - Material delivery truck drivers while off “the site of the work”.
 - Drivers of a contractor or subcontractor traveling between a Davis-Bacon job and a commercial supply facility while they are off the “site of the work.”
 - Truck drivers whose time spent on the site of the work is *de minimis*, such as only a few minutes at a time merely to pick up or drop off materials or supplies.
- DOL has an **enforcement position** with respect to bona fide owner-operators of trucks who own and drive their own trucks. Certified payrolls including the names of such owner-operators do not need to show the hours worked or rates paid, only the notation “owner-operator”. This position does not apply to owner-operators of other equipment such as bulldozers, backhoes, cranes, welding machines, etc.

Recent rulemaking regarding material delivery truck drivers

- Three U.S. appellate court decisions in the 1990’s led DOL to reexamine and revise the regulatory definition of “construction, prosecution, completion, or repair” as it applies to transportation. In view of three appellate court decisions that had concluded that DOL’s application of the related regulatory definitions was at odds with the language of the Davis-Bacon Act that limits coverage to workers employed “directly upon the site of the work,” revisions to the regulatory definitions were issued in 2000 to clarify the regulatory requirements.
- The rulemaking in 2000 addressed the application of Davis-Bacon prevailing wage requirements to material delivery truck drivers.
 - The regulatory definition of “construction, ... ” has been changed to provide that the off-site transportation of materials supplies, tools, etc., is not covered unless such transportation occurs between the construction work site and a dedicated facility located “adjacent or virtually adjacent” to the work site.
 - Also, as indicated in the rulemaking, as a practical matter, since generally the great bulk of the time spent by material delivery truck drivers is off-site beyond the scope of Davis-Bacon coverage, while the time spent on-site is relatively brief, DOL chooses to use a rule of reason and will not apply the Act’s prevailing wage requirements with respect to the amount of time spent on-site, unless it is more than “de minimis.” Under this policy, the Department does not

assert coverage for material delivery truck drivers who come onto the site of the work for only a few minutes at a time merely to drop off construction materials.

- For a full discussion of the regulatory changes, see the final rule published in the *Federal Register* on December 20, 2000, 65 FR 80268-80278. A section focused on “Coverage of Transportation – § 5.2(j)” appears on pages 80275-6.)

APPRENTICES AND TRAINEES

Definition (29 CFR 5.2(n))

- **Apprentices** are those persons employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (BAT), or with a state apprenticeship agency recognized by BAT, or persons in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the BAT or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
- **Trainees** are persons registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that administration.
- The Department of Housing and Urban Development has a type of apprenticeship program in housing authorities in large urban areas. The goal is to provide public housing tenants and others who have not had the opportunity to enter apprenticeship programs through the traditional track the advantages of job skills training. The program is called **Step-Up**. Apprentices enrolled in step-up programs must meet the same regulatory criteria as all other apprentices to receive less than the prevailing wage rate.

Coverage of apprentices and trainees

- Apprentices and trainees are two categories of laborers and mechanics on a DBA/DBRA project that are not listed on a wage determination. These classifications are permitted to work on DBA/DBRA covered projects only under very controlled circumstances, as follows.
- Apprentices and trainees may be used on DBA/DBRA covered projects and paid less than the specified journeyman rate for the work performed if:
 1. The apprentice or trainee is **individually registered** in an **approved** apprenticeship or trainee plan.
 - The **apprenticeship program** has to be approved by the Bureau of Apprenticeship and Training (BAT) or by a state apprenticeship agency recognized by BAT.

- The **training program** must be approved by federal BAT, not a state agency.
2. The apprentices/trainees must be paid **the percentage (%) of the basic hourly rate required and/or fringe benefits specified in the approved plan** and in accordance with their level of progression.
 3. The contractor is limited in the number of apprentices/trainees permitted on the DBA/DBRA job site based on the **allowable ratio** of apprentices/trainees to journeymen specified in the approved program.
 - The ratio is determined on a daily, not weekly basis.
 - Wage and Hour no longer allows the use of “fraction thereof” in computing apprenticeship ratios unless specified in the approved apprenticeship program.
 4. **Fringe benefits** should be paid to apprentices/trainees in accordance with the provisions of the apprenticeship/trainee program. If the program is silent on the payment of fringes, the apprentices/trainees are to receive the full amount of the fringe benefits stipulated on the wage decision unless it is determined that a different practice prevails for the applicable apprentice/trainee classification.
 5. For apprentices, the contractor may observe the provisions of his/her approved program outside the area where he/she has a contract – it is portable. On the other hand, trainee programs are not **portable**.
 6. When the contractor has exceeded the allowable ratio of apprentices/trainees, the legal apprentices/trainees are those who **first came to work** at the DBA/DBRA job site. Individuals who are employed in excess of the allowable ratio must be paid the full wage determination rate for the classification of work performed.
 7. The registration requirements do not apply to apprentices and trainees performing on highway construction projects funded by the **Federal-Aid Highway Act** and enrolled in programs certified by the U.S. Department of Transportation.

HELPERS

Definition (29 CRR 5.2(n)(4))

- A distinct classification of “helper” will be issued in Davis-Bacon wage determinations only where all of the following conditions are met:
 - The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;
 - The use of such helpers is an established prevailing practice in the area; and
 - The helper is not employed as a trainee in an informal training program.

A “helper” classification will be added to wage determinations pursuant to §5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

Note: Helpers may be employed on a DBA/DBRA covered construction project only if the helper classification is listed in the Davis-Bacon wage determination in the contract or the classification is added with approval by DOL. Helper classes are issued or approved only where they are within the scope of the definition stated above.

Recent rulemaking regarding “helpers” on DBA/DBRA covered work

- On November 20, 2000, DOL amended regulatory provisions concerning helpers that had been suspended since 1993, issuing revised regulations with respect to the use of helpers on DBA/DBRA covered projects. (See the *Federal Register* Notice published on November 20, 2000, 65 FR 69674-69693.)
- DOL regulations that were in effect during early 1991 and much of 1992 and 1993, had defined “**helpers**” as semi-skilled workers who worked under the direction of and assisted journeymen who, under the journeymen's supervision and direction, could perform a variety of duties including those requiring them to use the tools of the trade, and whose duties could vary according to area practice. Effective on October 21, 1993, the regulations implementing that definition of helpers were formally suspended. (See the *Federal Register* Notices published on November 5, 1993 and December 30, 1996.)
- The regulatory changes issued on November 20, 2000 amended the regulations to incorporate Wage and Hour's longstanding policy of recognizing helper

classifications and wage rates only where certain specified conditions are met. (This final rulemaking superseded the previous rulemaking regarding helpers, concluding consideration of the previously suspended regulations.)

- The definition of a “helper” in 29 CFR 5.2(n)(4) that had been suspended since 1993 was revised to set forth the circumstances in which helpers are recognized on Davis-Bacon wage determinations and additional classification (conformance) requests, and
 - The Davis-Bacon contract clause that states the criteria for approval of conformance requests were revised by deleting references to helpers that had been suspended since 1993.
- In issuing the final rule published on November 20, 2000, the Department pointed out that:
- It is not intended that a helper classification never be issued on a Davis-Bacon wage determination simply because some workers in another classification occasionally perform the work in question,
 - The Department intends to issue helper classifications where the duties in question are not routinely performed by another classification on the wage determination and it is the prevailing practice in the area for helpers/tenders to perform the work in question, provided the other criteria of the regulation are met.
 - However, consistent with the Department’s practice on approval of additional classifications under the conformance procedures at 29 CFR 5.5(a)(1)(ii)(A), the Department will not approve an additional classification of helper if the helper performs any tasks that are performed by other classifications on the wage determination.

AREA PRACTICE

To determine the proper classification for work performed on a Davis-Bacon covered project, it may be necessary to examine local **area practice**.

- Under the DBA, there are not standard classification definitions. (This differs from SCA classifications, which are defined in the SCA Directory of Classifications.)

Note: While the Dictionary of Occupational Titles, published by the Department's Employment and Training Administration, may be used as reference material, it cannot be relied on for making employee classification determinations.

- The Wage Appeals Board ruled in *Fry Brothers Corp.* (WAB Case No. 76-6, 6/14/77) that the proper classification of work performed by laborers and mechanics is that classification used by firms whose wage rates were found to be prevailing in the area and incorporated in the applicable wage determination.
- Questions as to the proper classification for the work performed by a laborer or mechanic are resolved by making an area practice survey.

Basic Principles/Preliminary Steps for Conducting Surveys to Determine Prevailing Local Area Practice

- Refer to the wage determination in the DB/DBRA covered contract.
- Determine what classifications may perform the work duties in question.
- Examine the "identifiers" for each classification to determine whether the rates in the wage determination for each such classification reflect union negotiated or non-union wages.
 - Non-union rates in a Davis-Bacon wage determination are normally listed in a wage rate block that has an "SU" identifier, and appear in alphabetical order in the list of classifications in the wage determination. See the Wage Determinations tab for further information.
 - Union rates are listed under identifiers that refer to the union whose rates are reflected in a given wage rate block in the Davis-Bacon wage determination. A list of identifiers used to designate various craft unions appears in the "Wage Determinations" section of this book; usually the local union number follows that designation.

- In accord with Fry Brothers Corp., information to be considered in the area practice survey is from firms whose wage rates were found to be prevailing in the area and incorporated in the applicable wage determination.
 - If, in the applicable wage determination, the rates listed for all the classifications that may perform the work in question are non-union rates, the dispute will be resolved by examining the practice(s) of non-union contractors in classifying workers performing the duties in question in the area.
 - If, in the applicable wage determination, the rates listed for all the classifications that may perform the work in question are union rates, the dispute will be resolved by examining the practice(s) of union contractors in classifying workers performing the duties in question in the area.
 - If a combination of union and non-union rates are listed in the wage determination for classifications that may have performed the work in the area, the dispute will be resolved based on the combined information from
 - union contractors for the classification(s) for which union rate(s) are listed
 - and
 - non-union contractors for the classification(s) for which non-union rate(s) are listed.
- Proper classification of the laborers or mechanics performing the work in question will be resolved by examining the classification practice(s) of contractors who performed the work in question on
 - similar construction projects (building construction, residential construction, highway construction, heavy construction)
 - in progress in the same area (normally the same county)
 - during the year preceding the contract in question (as discussed below).

Thus, the local area practice survey examines how workers who performed the duties in question were classified when they worked on similar construction projects in the same area as the project in question during the survey timeframe.

- The extent of the information required for making area practice determinations will depend on the facts in each case.

For example:

- If, in gathering preliminary data, all of the parties agree as to the proper classification, the area practice is thus established (i.e., a “**limited**” area practice survey).
- However, if all parties do not agree (i.e., jurisdictional dispute between two unions, or management does not agree with the union, or where non-union rate(s) in the wage determination may apply and the practice among non-union contractors in the area varies), it will be necessary to determine by a “**full**” area practice survey which classification actually performed the work in question.
- The survey will collect information on how workers performing the work in question were classified on similar projects underway in the same locality (normally the county), during the year prior to contract award of the DBA/DBRA contract in question (or, in the case of contracts entered into pursuant to competitive bidding procedures -- as contrasted with negotiation procedures, the year prior to bid opening; in the case of projects assisted under the National Housing Act, beginning of construction or the date the mortgage was initially endorsed, whichever occurred first; or, in the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, beginning of construction or the date the agreement to enter a housing assistance payments contract was executed, whichever was first.)

How to conduct a limited area practice survey to determine the proper classification of work

1. Determine whether the applicable wage determination contains union negotiated or non-union rates, for each classification. (Non-union rates in a Davis-Bacon wage determination are normally listed in a wage rate block that has an “SU” identifier. See the Wage Determinations tab for further information.)

If the applicable wage determination reflects union rates for the classifications involved:

2. Contact the unions that may have jurisdiction over the work in question to determine whether the union workers performed the work on similar projects in the county in the year prior to the wage determination lock-in date (contract award date, or other date, as described above) for the project at issue.

- **Note the following criteria for usable data:**
 - a. **Similar projects** (same type of construction).
 - b. In the **same county** as the project in question.
 - c. Usable time frame is **one year prior to the wage determination lock-in date** for the contract in question, as established by 29 CFR 1.6(c).

If union contractors performed the work, each union should be asked how the individuals who performed the work in question were classified.

If no union workers performed any of the work in question in the county during the survey timeframe, Wage and Hour should be contacted for further guidance.

3. The information provided by the unions should be confirmed with collective bargaining representatives of management, *i.e.*, the contractor representatives.
 - These would include contractors' associations such as:

Local chapters of the Associated General Contractors of America (AGC)

The National Electrical Contractors Association (NECA)

Local contractor associations that bargain with the unions

If all parties agree as to the proper classification for the work in question, the area practice is established.

If a contracting agency encounters a situation where two unions are engaged in a jurisdictional dispute over a specific type of work and both have performed the work in question during the applicable time period, the contracting officer should contact Wage and Hour for further guidance.

If the applicable wage determination reflects non-union rates for the classifications involved:

2. Contact open shop contractors (many are members of the Associated Builders and Contractors of America (ABC)) and ask whether they performed the work in question on similar projects underway in the county during the survey timeframe.
 - If so, these contractors should be asked how the employees who performed this work were classified.

- If all contractors agree, or if a clear majority of the contractors agree, the area practice is established.
- If no open shop contractor performed the work at issue in the county during the survey timeframe, contact Wage and Hour for further guidance.

If the applicable wage determination reflects a mix of union and non-union rates for the classifications involved:

2. Contact the unions, and contact union and open shop contractors (and/or their associations) to determine who performed the work at issue on similar projects during the survey timeframe.
 - If all parties agree, or if a clear majority of the parties agree on the classification, the area practice is established.
 - Wage and Hour should be contacted if no work of the type at issue was performed in the county during the applicable time frame discussed above.

For any type of wage determination (whether based on union rates, non-union rates, or a mixed schedule):

- If the parties contacted in the limited area practice survey **do not** agree (i.e., jurisdictional dispute between the unions, management does not agree with union, or disagreement between the open shop contractors), or if there is no clear majority in agreement, then it is necessary to conduct a **full area practice survey**. When a full area practice survey is needed, the contracting agency should contact the Wage and Hour Regional Wage Specialist for assistance, guidance and coordination in the conduct of the survey.

How to conduct a full area practice survey to determine the proper classification of work

1. Identify similar projects in the same geographical area as the project under investigation (usually the county) which were in progress during the period one year prior to the wage determination lock-in date of the contract involved in the dispute/investigation.
 - If no similar projects were built in the area during that time frame, contact Wage and Hour for advice in expanding the survey's geographic scope and/or its time frame.

2. Identify firms that performed the work in question on these projects and determine those from which data should be collected – according to whether the relevant classifications in question in the wage determination are either non-union rates, union rates, or both. (For example, only non-union wage rates in the wage determination are involved, information from union contractors is not relevant; if only union rates are involved, information from open shop contractors is not relevant.)
3. For each project, obtain data from the week in which the greatest number of employees performed the work in question, and record how many performed such work on each project and how such employees were classified and paid.
4. Compile all relevant information received and total the number of employees who performed the work in question in each classification reported.
 - **The classification which has the clear majority of employees performing the work in question is the proper classification.**
 - If the data does not show that at least 60% of the workers who performed the duties in question were classified in the same classification, contact Wage and Hour for further guidance.

FRINGE BENEFITS

Definition (29 CFR 5.2(p)):

The term “wages” means:

- The basic hourly rate of pay.
- Any contribution irrevocably made by a contractor or subcontractor to a trustee or third party pursuant to a bona fide fringe benefit fund, plan or program.
- The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated to the employees in writing.

The statutory language regarding fringe benefits is in section 1(b)(2)(b) of the Davis Bacon Act, and is reiterated at 29 CFR 5.23.

In practice:

The Davis-Bacon “prevailing wage” is made up of two interchangeable components – a basic hourly wage and fringe benefits. Along with the basic hourly rate listed on the wage determination, a fringe benefit will be listed for any classification for which fringe benefits were found prevailing. The total, including any fringe benefits listed, comprises the “prevailing wage” requirement.

- This obligation may be met by any combination of cash wages and creditable “bona fide” fringe benefits provided by the employer:
 - The total, including any fringe benefits listed for the classification, may be paid entirely as cash wages;
 - Payments made or costs incurred by the contractor for “bona fide” fringe benefits may be creditable towards fulfilling the requirement; or
 - A combination of cash wages paid and “bona fide” fringe benefits may be used together to meet the total required prevailing wage.

Example

A Davis-Bacon wage determination requires:

Basic hourly rate	\$10.00
Fringe benefit	<u>1.00</u>
Total prevailing rate	\$11.00

The contractor can comply by paying:

1. \$11.00 in cash wages;
2. \$10.00 plus \$1.00 in pension contributions or other “bona fide” fringe benefits; or
3. \$9.00 plus \$2.00 in pension contributions or any combination of “bona fide” fringe benefits. In this case, **overtime must be paid at one and one half times the basic hourly rate of \$10.00.**

Note: Under DBA/DBRA (unlike SCA) monetary wages paid in excess of the basic hourly rate may be used as an offset or credit to satisfy fringe benefit obligations, and vice versa. (If fringe benefit contributions are credited towards fulfilling the basic hourly rate requirement in the wage determination, at least the basic hourly rate listed in the contract wage determination must be used in computing overtime pay obligations.)

Application to all hours worked

Under Davis-Bacon, fringe benefits must be paid for **all** hours worked, including the overtime hours. However, the fringe benefit amounts may be excluded from the half-time premium due as overtime compensation.

For example:

An employee worked 44 hours as an electrician. The wage determination rate was \$12.00 (basic hourly rate) plus \$2.50 in fringe benefits. He would be due:

$$\begin{array}{rcl}
 44 \text{ hours} \times \$14.50 & = & \$638.00 - (\text{straight time pay}) \\
 4 \text{ hours} \times \frac{1}{2}(\$12.00) & = & \underline{24.00} - (\text{overtime pay}) \\
 & & \$662.00
 \end{array}$$

Crediting fringe benefit contributions to meet DBA/DBRA requirements:

The Davis-Bacon Act (and 29 CFR 5.23), list fringe benefits to be considered.

Examples:

- > Life insurance
- > Health insurance
- > Pension
- > Vacation
- > Holidays
- > Sick leave

The use of a truck is not a fringe benefit; a Thanksgiving turkey or Christmas bonus is not a fringe benefit. (See *Cody-Zeigler, Inc.*, WAB Case No. 89-19, April 30, 1991.)

No credit may be taken for any benefit required by federal, state or local law, such as:

- > Workers compensation
- > Unemployment compensation
- > Social security contributions
- > Health benefits required under Hawaii state law

Funded fringe benefit plans

- > The contractor's fringe benefit contributions made irrevocably to a trustee or third party pursuant to a fund, plan or program, can be credited toward meeting the prevailing wage requirement, without prior DOL approval. For example:
 - >> Contractor pays for health insurance monthly premiums without employee contributions. (Where payroll deductions for employee contributions are involved, additional rules apply).
 - >> Contractor makes quarterly contributions to retirement plan trust.

- The amount of contributions for fringe benefits must be paid **irrevocably** to the trustee or third party.
- Contributions to fringe benefit plans must be made regularly, not less often than quarterly. (This requirement is specified in the standard Davis-Bacon contract clauses at 29 CFR 5.5(a)(1)(i).
 - Annual contributions into a plan do not meet this requirement. While profit sharing plans are bona fide within the meaning of the Act, profits are not determined until the end of the year. Therefore, the DOL requires contractors to escrow money at least quarterly on the basis of what the profit is expected to be.
- The contractor must make payments or incur costs in the amount specified by the applicable wage decision **with respect to each individual laborer or mechanic**. Thus, the amount contributed for each employee must be determined separately, and credit can be taken accordingly towards the prevailing wage requirement for each individual. (It is not permissible to take credit based on the average premium paid or average contribution made per employee.)
- Credit may not be taken for fringe benefit contributions made on behalf of employees who are not eligible to participate in the plan (e.g., those excluded due to age or part-time employment).
 - Some plans provide that contributions and allocations under the plan will only be made on behalf of participants who are employed on the last day of the plan year. No credit is permitted for such participants for whom no contribution is made or for contributions made for employees whose accounts receive no allocation solely because they are not employed on the last day of the plan year.
 - On the other hand, it is not required that all employees participating in a fringe benefit plan be entitled to receive benefits from the plan at all times. For example, an employee who is eligible to participate in an insurance plan may be prohibited from receiving benefits from the plan during a 30-day waiting period. Contributions made on behalf of these employees would be creditable against the contractor's fringe benefit obligations.
- A pension plan that meets the Employment Retirement Income Security Act (ERISA) requirements may be considered “bona fide” for DBA/DBRA purposes.
- Some pension plans contain “vesting” requirements. Where an employer contributes to the plan, employees may be required to complete a certain length

of service before they have a nonforfeitable right to benefits based on the employer's contributions to the plan. Thus, an employee who leaves employment before completing the specified length of service may forfeit all or part of the accrued benefit. Such forfeitures are permitted, provided the plan is a bona fide plan that meets applicable requirements under ERISA, including minimum vesting requirements. Forfeited Davis-Bacon contributions may not revert to the employer, but should be distributed among the remaining plan participants.

Unfunded plans

- A fringe benefit plan or program under which the cost a contractor may reasonably anticipate in providing benefits that will be paid from the general assets of the contractor (rather than funded by payments to a trustee or third party) is generally referred to as an **unfunded plan**. These generally include:
 - Holiday plans
 - Vacation plans
 - Sick pay plans
- No type of fringe benefit is eligible for consideration as an unfunded plan unless it meets the following criteria:
 1. It can be reasonably anticipated to provide benefits described in the Davis-Bacon Act;
 2. It represents a commitment that can be legally enforced;
 3. It is carried out under a financially responsible plan or program; and
 4. The plan or program has been communicated in writing to the laborers and mechanics affected.
- To insure that such plans are not used to avoid compliance with the Act, the Secretary of Labor directs the contractor to set aside, in an account, sufficient assets to meet the future obligation of the plan.

Annualization

- Davis-Bacon credit for contributions made to fringe benefit plans are allowed based on the effective annual rate of contributions for all hours worked during the year by an employee.
- Examples:
 - For a defined benefit pension plan, or for a defined contribution pension plan which does not provide for immediate or essentially immediate vesting, if a contractor wishes to receive \$2.00 per hour credit for a pension contribution, the contractor must contribute at this same rate for all hours worked during the year. If this is not done, the credit for Davis-Bacon purposes would have to be revised accordingly.
 - If the firm's contribution for the pension benefit was computed to be \$2,000 a year for a particular employee, the employee worked 1,500 hours of the year on a Davis-Bacon covered project and 500 hours of the year on other jobs not covered by the Davis-Bacon provisions, only \$1,500 or \$1.00 per hour would be creditable towards meeting the firm's obligation to pay the prevailing wage on the Davis-Bacon project. (Annual contribution – \$2,000, divided by total hours worked – 1,500 + 500 = 2000; i.e. \$2,000/2000hours = \$1.00 per hour.)
- For contributions made to defined contribution pension plans which provide for immediate participation and immediate or essentially immediate vesting schedules (100% vesting after an employee works 500 or fewer hours), and also certain supplemental unemployment benefit plans, a contractor may take Davis-Bacon credit at the hourly rate specified by the plan. Under such plans, contributions are irrevocably made by the contractor, most, if not all, of the workers will become fully vested in the plan, and the higher contributions made during Davis-Bacon work result in an increase in the value of the individual employee's account. The amount of contributions to such plans should be in conformance with any limitations imposed by the Internal Revenue Code.)
- Example: An employee works as an electrician where the wage determination rate is \$12.00 (basic hourly rate) plus \$2.50 in fringe benefits.
 - Where the employer provides the electrician with medical insurance in the amount of \$200 per month (\$2,400 per year), the employer would divide the total annual cost of the benefit by 2,080 hours (40 hours x 52 weeks) to arrive at the allowable fringe benefit credit.

(\$200 x 12 months) divided by 2080 hours = \$1.15 per hour.

If the employee in this example receives no other "bona fide" fringe benefits, then for each hour worked on a covered contract the individual is

due \$12.00 (basic hourly rate) plus \$1.35 paid as cash (the difference between the \$2.50 per hour fringe benefit required under the applicable wage determination and the credit allowed for the provision of medical insurance.) Thus,

Basic hourly rate	\$12.00	
Medical insurance benefit	1.15	
<u>Additional cash due</u>	<u>1.35</u>	
Total due per hour	\$14.50	(\$12.00 + \$2.50)

INVESTIGATIVE PROCEDURES

UNDER

DBRA/CWHSSA

REORGANIZATION PLAN NO. 14 OF 1950

**DAVIS-BACON LABOR STANDARDS/
CONTRACT STIPULATIONS**

**SPECIFIC STEPS IN CONDUCTING DBRA/CWHSSA
INVESTIGATIONS**

CONCLUSION OF INVESTIGATION

REPORT WRITING

THE HEARING PROCESS

REORGANIZATION PLAN NO. 14 OF 1950

Purpose

- To promote responsibility for uniform and effective DBRA enforcement among federal procuring agencies under Department of Labor (DOL) coordination.

DOL Functions/Responsibilities

- Secretary of Labor – and, by delegation, the Wage and Hour Division (Wage and Hour) – is responsible for:
 1. Determining prevailing wages.
 2. Issuing regulations and standards to be observed by contracting agencies.
- DOL performs an oversight function and has authority to conduct independent investigations.

Contracting Agency Functions/Responsibilities

- Federal agencies that award contracts and provide federal assistance have **day-to-day** enforcement responsibilities. The federal agency responsibilities include activities such as:
 1. Ensuring the incorporation of Davis-Bacon contract stipulations and appropriate wage determinations in Davis-Bacon and related Act (DBRA) covered contracts (and appropriate guidance concerning the application of multiple wage schedules) in accordance with 29 CFR 1.6(b) and 29 CFR 5.6.
 2. Ensuring that the Davis-Bacon poster (WH 1321) and the applicable wage determination(s) and approved conformances are posted at the site of the work. 29 CFR 6.6(a)(1)(i).
 3. Reviewing certified payrolls in a timely manner. 29 CFR 5.6(a)(3)
 4. Conducting employee interviews. 29 CFR 5.6(a)(3)
 5. Conducting investigations, as appropriate, and forwarding refusal to pay and/or debarment consideration cases to Wage and Hour for

- appropriate action. 29 CFR 5.6 and All Agency Memorandum No. 182.
6. Submitting enforcement reports and semi-annual enforcement reports to the DOL. 29 CFR 5.7 and All Agency Memorandum No. 189.
- Contracting agencies cannot contract out responsibility for the enforcement of the DBRA requirements.
 - Federal contracting agencies are responsible for ensuring that grant recipients who have contracting responsibilities properly apply and enforce DBRA.

**DAVIS-BACON LABOR STANDARDS
CONTRACT STIPULATIONS**
(29 CFR 5.5, also reiterated at 48 CFR 52.222-6 through 52.222-15)

Definition 29 CFR 5.2(f)

The term “**labor standards**” means the requirements of:

- The Davis-Bacon Act
- The Contract Work Hours and Safety Standards Act
- The Copeland Act
- The prevailing wage provisions of the Davis-Bacon related Acts
- Regulations, 29 CFR 1, 3 and 5, which govern the administration and enforcement of the DBA and DBRA

29 CFR 5 requires contracting agencies to include in any DBA/DBRA covered construction contract the specified labor standards requirements. Normally these requirements are found in the contract under the heading “**Davis-Bacon Act**” or “**labor standards**” or “**prevailing wage requirements**” or “**federal requirements**” and include:

1. **Minimum wages** - All laborers and mechanics employed or working upon the **site of work** must be paid at least the applicable prevailing wage rate for the classification of work performed as listed in the applicable wage determination or a rate approved in accordance with the “conformance process” set forth at 29 CFR 5.5(a)(1). The laborers and mechanics working on the site of work must be **paid weekly**.
2. **Withholding** - The federal agency or the loan or grant recipient shall upon its own action or upon written request of an authorized representative of the DOL withhold or cause to be withheld from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay the full amount of wages required by the contract. (The processing of monies so withheld is discussed further in the “Withholding” section of this book.)

- 3(a) **Maintaining basic payroll records** - The contractor must maintain basic payroll records during the course of the work and preserve them for three years. Such records shall contain:
- Name of each worker
 - Address
 - Social security number
 - His or her correct classification
 - Hourly rates of wages paid
 - Daily and weekly number of hours worked
 - Deductions made and actual wages paid
 - Contractors employing apprentices or trainees under approved programs must have written evidence of the registration of the apprenticeship program and certification of the trainee program, copies of the individual registration forms of the apprentices and trainees, and written evidence of the applicable ratios and wage rates.
- (b) **Submission of certified payroll records** - The contractor must submit **weekly** a copy of all payrolls to the contracting agency. The payrolls submitted must set out accurately and completely all of the basic payroll information listed above.
- The payroll information may be submitted in any form desired. Optional payroll form WH-347 is available (from the Government Printing Office, (202) 512-1800, and at 48 CFR 53.303-WH-347). The payroll information also is available on Wage and Hour website at:

<http://www.dol.gov/esa/forms/whd/index.htm>
 - The prime contractor is responsible for the submission of the certified payrolls to the contracting agency (including for all subcontractors on the project).
 - Each payroll submitted must be accompanied by a “Statement of Compliance” as required by the Copeland Act and 29 CFR

Part 3. (A form for this purpose is available on the reverse of Optional form WH-347.)

- The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution. Thus, the contractor is put on notice in the contract itself that criminal prosecution could result if falsified payrolls are submitted to the government.
 - The contractor or subcontractor must make the payroll records available for inspection, copying, or transcription by authorized representatives of the contracting agency or the DOL, and must permit such representatives to interview employees during working hours on the job.
 - If the contractor or subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds.
 - Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action.
- 4(a) **Apprentices** - Apprentices are permitted to work at less than the predetermined rate **only** when **all** of the following conditions are met:
- Employed pursuant to and **individually registered** in a bona fide apprenticeship program registered with the U.S. DOL, Bureau of Apprenticeship and Training (BAT), or with a state apprenticeship agency recognized by BAT. (**Note - the program itself must be registered and the apprentice must be individually registered in the program**).
 - The allowable **ratio** of apprentices to journeymen **on the job site** in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program.
 - Labor standards for apprentices also have requirements for how to pay fringe benefits and provide for portability of apprenticeship programs.

- The labor standards specify that if a contractor violates any of the provisions, then the person considered to be an apprentice must receive the full amount of the applicable prevailing wage rate for the classification of work performed.
- (b) **Trainees** - Trainees are permitted to work at less than the predetermined rate only when all of the following conditions are met.
- Employed pursuant to and **individually registered** in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (BAT). (**Note: State agency approval of trainee programs is not recognized for DBRA purposes.**)
 - The **ratio** of trainees to journeymen **on the job site** shall not be greater than permitted under the plan approved by the Employment and Training Administration.
 - Labor standards for trainees also have requirements for how to pay fringe benefits.
 - There is no portability of a trainee program from one locality to another.
5. **Copeland requirements** - All contractors must comply with the Copeland Act requirements and the requirements in 29 CFR Part 3, which prohibits kick-backs and sets forth rules concerning deductions from employees' wages.
6. **Subcontracts** - The labor standards provisions require the contractor to insert the labor standards clauses in any subcontract. This clause further stipulates that the prime contractor shall be responsible for compliance by any subcontractor with the labor standards requirements in the contract. In effect, the prime contractor is ultimately responsible for the payment of the back wages.
- Note:** A definition for subcontractor is not found in the regulations. A subcontractor is any person (other than an employee) or firm who has agreed, either verbally or in writing, to perform any of the work required under the contract.
7. **Contract termination and debarment** - Debarment means that a firm and its responsible officers, and firms in which they have an interest (or substantial interest for related Act cases) are not

permitted to work on covered contracts for three years. If a contractor violates any of the labor standards requirements, the contractor may be terminated from the contract and/or debarred.

8. All **rulings and interpretations** of the DBRA issued in 29 CFR Parts 1, 3 & 5 are incorporated by reference in the contract.
9. **Disputes** under the contract relating to the Davis-Bacon labor standards requirements must be submitted to the DOL for resolution pursuant to the Secretary of Labor's authority under Reorganization Plan No. 14 of 1950, and 29 CFR Parts 5, 6 and 7.
10. **Certification of eligibility** - By entering into the contract, the contractor certifies that no person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded government contracts, i.e., not debarred.
 - This labor standards clause further stipulates that no part of the contract shall be subcontracted to any person or firm debarred.
 - The penalty for making false statements about eligibility for government contract work can be criminal prosecution.

SPECIFIC STEPS IN CONDUCTING DBRA/CWHSSA INVESTIGATIONS

The following guidance is intended to list the various steps that are typically undertaken by contracting agencies and Wage and Hour in conducting a DBRA/CWHSSA investigation.

Preliminary Steps

- Obtain the following information:
 1. Copy of the labor standards clauses in the contract
 2. Copy of the Davis-Bacon wage decision(s) included in the contract, and in the case of multiple schedules, any instructions concerning their application.
 3. Copies of the certified payrolls submitted by the employer under investigation.
 4. Employer identification number.

Initial Employer Contact

- A responsible official of the firm must be contacted at the start of the investigation.
- When investigating a subcontractor, find out what information on labor standards and wage determinations have been provided by the prime contractor to the subcontractor. Ask the subcontractor for a copy of the subcontract, if one exists.
- When a subcontractor is being investigated, the prime contractor must be notified at the beginning of the investigation.
 - The prime contractor can provide information on the subcontractor's performance and may have records relating to the number of employees the subcontractor had on the project, the hours they worked, and the period of time they were on the project. The prime contractor should be asked to provide a copy of the subcontract, if it exists.
 - The prime contractor has responsibility for compliance on the contract and is liable for back wages not paid by the subcontractor,

and may decide to withhold final payment from the subcontractor until the back wage issues are resolved.

- Inform the employer that the purpose is to make an investigation to determine compliance with the pertinent statutes and regulations and outline in general terms the scope of the investigation, including the examination of pertinent records, employee interviews and physical inspection of the project.
- Obtain the exact legal name of the firm and any trade names, the full address, full names of owners or officers and their titles; number of persons employed, name and address of any subcontractors, and such similar information as may be necessary to make and complete the investigation.

Examination of Certified Payrolls

- An examination of the contractor's certified payrolls should be made for accuracy, completeness, and true representation of the facts. The examination should cover the current or most recent payrolls as well as those for selected periods which reflect the practice of the contractor or subcontractor during the life of the contract.
 1. Check for completeness and accuracy of the payrolls as to the names, addresses, job classifications, hourly wage rates, daily and weekly hours worked during the payroll period, gross weekly wages earned, deductions made from wages, and net weekly wages paid the employee. Notice if there are distinctions made among the various classifications.
 2. If the Contract Work Hours and Safety Standards Act is applicable and an employee worked in excess of forty hours in any workweek, determine whether time and a half the employee's regular rate was paid.
 3. Certified payrolls should be examined for discrepancies such as a disproportionate number of laborers, apprentices or helpers on the project.
 4. The wage rates should be compared against those listed on the wage determination. If workers perform work in more than one classification, the payroll records should accurately reflect the time spent working in each. Unlisted classifications should be identified and additional classification procedures initiated, if applicable.
 5. Check for contributions to fringe benefit plans.

Examination of Records

- Examine the current or most recent payroll as well as those for selected periods which reflect the practice of the contractor or subcontractor during the life of the contract. The examination should include a review of a the basic time cards, time sheets, or other work or personnel records of a representative number of employees in each classification. These records should be checked against the certified payrolls in order to disclose any possible discrepancies, or to give reasonable assurance that none exist.
- Examine documents which indicate that the firm has made contributions (or incurred costs) to fringe benefit plans. These documents might include: portions of the pension plan; documentation from the Internal Revenue Service that indicate the plan has been approved by the IRS; and records of contributions made.

Check for Compliance with Apprenticeship/Trainee Requirements

- Apprenticeship/trainee program information should be obtained and examined to verify that the program has been approved by the appropriate authority. If the contractor's evidence is not sufficient, contact the Bureau of Apprenticeship and Training and/or the state apprenticeship council for verification.
- Contracting officers must obtain copies of the individual employees' apprentice/training registration forms for the file, as well as copies of the approved apprenticeship/training program itself.
- The ratio of apprentices to journeyman on the project should not exceed the ratio provided for in the apprenticeship/training plan. The ratio is determined on a daily basis, not weekly.

Determine if a Conformance is Necessary

- Determine if the wage determination contains classifications and wage rates for all the types of work performed on the contract.
 1. If the applicable wage determination does not contain a classification for the work performed, the conformance procedure in 29 CFR 5 must be followed. Contracting agencies cannot arbitrarily determine a rate.
 2. Questions as to whether or not a rate has been conformed should be coordinated with Wage and Hour.

Employee Interviews

- Employee interviews are essential to the completeness of the investigation.
 - They should be sufficient in number to establish the degree of adequacy and accuracy of the records and the nature and extent of any violations.
 - They should also be representative of all classifications of employees on the project under investigation.
 - In doubtful compliance situations interviews with former employees may be appropriate.
 - In cases involving alleged misclassification and/or falsification of payroll records, it is important to account, through the interview process, for as many employees as possible who worked on the contract.
 - Employees should be questioned regarding other employees they worked with and the duties performed by those employees.
- Each employee should be informed that the information given is confidential, and that his/her identity will not be disclosed to the employer without the employee's written permission. (See 29 CFR 5.6(a)(5))
- Place of interview
 - Employees currently employed may be interviewed during working hours on the job, in accordance with 29 CFR 5.5(a)(3)(ii), provided the interview can be properly and privately conducted on the premises.
 - In cases of falsification of records, fear of reprisals or intimidation, it may be more advisable to conduct the interview elsewhere, such as in the employee's home, at the agency's office, or other suitable place where it may be arranged.
 - Employees should not be interviewed in the presence of the employer, another employee, or any other person.
- Telephone Interviews
 - Ordinarily, an interview should be made by telephone only if a personal interview is impracticable. When a telephone interview is used, it is suggested that the contracting officer send the employee

the statement together with a request that the employee read the statement, make and initial any changes, sign and date it and return the statement to the contracting officer. It is suggested that the contracting officer keep a copy of the statement until the original is returned.

- Mail interviews
 - Ordinarily, an interview should be made by mail only if a personal interview is impracticable.
- Preparation of interview statements
 - When a written statement is taken, it should be recorded in the manner stated by the employee; it should be read by him/her, and contain a statement that it has been read and that it is correct. The contracting officer may restate or summarize the employee's remarks, but should do so in the first person and should phrase it in the employee's manner of speaking.
 - The statement should be signed by the employee and the signature, except in mail interviews, should be witnessed by the responsible agency official. In government contract cases, it is preferred that all interviews be signed. Where the statement is not signed, the contracting officer should give, either in the statement or his/her report, the employee's reason for not signing. Any changes in a signed employee statement should be initialed by the employee.
 - Each interview statement should contain the following information:
 1. Place and date of interview.
 2. Name of employer (firm).
 3. Name and permanent address of employee being interviewed.
 4. Employment status (whether present or former employee).
 5. Period(s) of employment
 6. If an apprentice, the age, date of birth, and information concerning his status.
 7. The statement should include specific information regarding:
 - rate(s) of pay and wages received
 - hour for starting/stopping work and daily/weekly hours worked
 - manner in which time and work are recorded
 - job classification(s) and exact work performed
 - In cases alleging misclassification, the interview statement must specifically address the various types of duties performed. It is not sufficient for an employee to

only state he/she was a carpenter. The interview must state the specific carpentry duties, and the tools and materials used. If an employee worked in more than one classification, the employee must be asked how much time he/she spent in each classification.

8. When possible, the interview statement should corroborate statements given by other employees. For example, the employee should be asked to identify other workers who performed the same work.
9. The interview should cover all the allegations of violations (particularly those in a complaint).
10. The interview should also cover any other details necessary to indicate accuracy of the employer's records, statements, or certifications.

➤➤ *All interview statements must be legible.*

Disclosure of information to employees

- The contracting officer should never give his/her opinion as to whether back wages are due. The contracting officer should never tell any employee the amount of back wages computed.

Case Record

- Transcriptions of records and computations of back wages must be made when violations are found.

Discharging DBRA Minimum Wage and Fringe Benefit Obligations

- “Prevailing wage” is made up of two interchangeable components -- basic hourly wages and fringe benefits.
 1. Both may be paid in cash;
 2. Payments can be made or costs incurred for “bona fide” fringe benefits; or
 3. Any combination thereof.
- Monetary wages paid in excess of the DBRA minimum wage may be used as an offset or credit to satisfy fringe benefit obligations, and vice versa. (This differs from SCA.)

Example

The Davis-Bacon wage determination requires:

Basic hourly rate	\$10.00
Fringe benefit	<u>1.00</u>
Total prevailing rate	\$11.00

The contractor can comply by paying:

1. \$11.00 in cash wages;
 2. \$10.00 plus \$1.00 in pension contributions or other “bona fide” fringe benefits; or
 3. \$9.00 plus \$2.00 in pension contributions or any combination of “bona fide” fringe benefits.
- Fringe benefits for DBRA must be paid for all hours worked -- both straight time and overtime hours.
 - Excess payments for overtime may not be offset/credited towards minimum wages due.
 - Excess wages paid for work in one classification may not be offset/credited towards wage deficiencies in another classification. Under DBRA, each classification stands alone.

- >> If the employer paid \$10.00 in cash wages and \$4.50 in fringe benefits:

$$\begin{array}{r}
 44 \text{ hours} \times \$ 4.50 = \$198.00 \text{ in fringe benefits} \\
 44 \text{ hours} \times \$10.00 = \$440.00 \text{ in prevailing wages} \\
 4 \text{ hours} \times \frac{1}{2} \times \$12.00 = \$ 24.00 \text{ in CWHSSA earnings} \\
 \hline
 \$662.00
 \end{array}$$

- >> If the employer paid \$14.00 in cash wages and \$0.50 in fringe benefits:

$$\begin{array}{r}
 44 \text{ hours} \times \$ 0.50 = \$ 22.00 \text{ in fringe benefits} \\
 44 \text{ hours} \times \$14.00 = \$616.00 \text{ in prevailing wages} \\
 4 \text{ hours} \times \frac{1}{2} \times \$12.00 = \$ 24.00 \text{ in CWHSSA earnings} \\
 \hline
 \$662.00
 \end{array}$$

- > The following examples provide two methods for the computation of overtime premium pay required under CWHSSA and/or FLSA for an employee who worked in different job classifications and at different rates of pay in the same work week.

An employee is hired to perform work on a covered construction contract in two job classifications: painter and electrician. The wage determination rate for an electrician is \$12.00 (basic hourly rate) plus \$2.50 in fringe benefits. The wage determination rate for a painter is \$10.00 (basic hourly rate) plus \$3.00 in fringe benefits. The payroll shows that the worker performed painting and electrical duties as follows:

	S	M	T	W	T	F	S
Painter hours		8	8	8			
Electrician hours					8	8	4

Method 1: Computation of the overtime premium based on the “rate in effect” when the overtime hours were worked.

In this example the four overtime hours occurred on a Saturday.

The overtime **premium** could be computed as follows:

$$\frac{1}{2}(\$12.00) \times 4 = \$24$$

Method 2: Computation of the overtime **premium** based on the “regular rate” for the work week.

Step 1: Determine the straight time wages due; excluding fringe benefits

24 hours at the painter’s rate of \$10.00	= \$240.00
20 hours at the electrician’s rate of \$12.00	= <u>240.00</u>
Total straight time wages	= \$480.00

Step 2: Calculate the “regular rate”

$$(\$480.00 / 44 \text{ hours worked}) = \$10.91 \text{ “regular rate”}$$

Step 3: Compute the overtime premium due

$$\frac{1}{2}(\$10.91) \times 4 \text{ overtime hours worked} = \$21.82$$

- Note: In some cases, a question arises over whether a cash payment made to a laborer or mechanic is paid in lieu of a fringe benefit contribution or whether it is simply part of the individual’s normal straight time wages. In the latter situation, the cash payment is not excludable in computing the overtime pay obligation.

CWHSSA Liquidated Damages

- Liquidated damages are computed at \$10.00 per day per employee for CWHSSA violations.
- Although the contracting officer is required in all violation cases to compute liquidated damages, the decision on whether to assess the damages is made by the federal agency. (Liquidated damages in excess of \$500 may be waived or adjusted only with the concurrence of Wage and Hour.) As a matter of administrative policy, liquidated damages are not computed for employees whose CWHSSA back wages are less than \$20.
- The contractor should be advised of the potential liquidated damages, and that they will be advised of the contracting agency’s determination concerning the assessment of liquidated damages.
- Example:

	M	T	W	T	F	S	S	<u>TOTAL</u>
REGULAR TIME	10	12	13	9	8	3	0	55

In the above example, no overtime premium was paid. The 15 weekly overtime hours were worked on three calendar days, Thursday, Friday and Saturday. Thus, \$30.00 in CWHSSA liquidated damages would be computed.

Overtime requirements under the Fair Labor Standards Act, as amended

- Laborers and mechanics performing work subject to the predetermined minimum wages may be subject to overtime compensation provisions of other laws which may apply concurrently to them, including the Fair Labor Standards Act. 29 CFR 778.6.
- As a general standard, Section 7(a) of the Fair Labor Standards Act, as amended, provides that an employer shall not employ any employee to work in excess of 40 hours in a workweek unless such employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which her or she is employed. 29 CFR 778.101.

Unless specifically exempted, an employee who performs work on both federally funded/federally financed projects and commercial work in the same workweek must receive an overtime premium for hours worked in excess of 40 in the workweek. 29 CFR 5.32 and in 29 CFR 778.

CWHSSA requires the payment of an overtime premium only if the laborer or mechanic works in excess of 40 hours in a work week on covered contract(s). Overtime hours worked, which are not subject to CHWSSA, would be subject to the FLSA, unless otherwise exempted. The distinction is relevant in the assessment of liquidated damages as the FLSA does not provided for the assessment of liquidated damages.

- Where questions arise concerning overtime pay obligations under the FLSA, consultation with the local Wage and Hour office is appropriate.

CONCLUSION OF INVESTIGATION

Final Conference Procedure

- Inform the contractor generally of the investigation findings, and indicate that these findings are based solely on the facts and information disclosed by the investigation.
- Detail specifically what must be done to eliminate the violations, if any, and provide any available informational material such as copies of 29 CFR 3 and/or 5.
- Be willing to consider additional evidence from the contractor which may impact on the findings. For example, unresolved conformance request, evidence of fringe benefit plan, inspection reports.
- Request for payment of back wages:
 - The Davis-Bacon Act contains no injunctive action procedures. Therefore, a demand for the payment of the back wages must always be made even if the employer refuses to comply.
 - Contracting officers should accept partial back wage restitution for undisputed issues.
 - Contracting officers should attempt to collect back wages even though the case meets the debarment criteria.
 - If the employer is a subcontractor and refuses to make restitution, the prime contractor must then be requested to make restitution. The prime contractor is ultimately responsible for the payment of the back wages.
- Notify the subcontractor and/or prime contractor of the potential for the assessment of liquidated damages (\$10.00 per day per violation) under CWHSSA, but payment of liquidated damages is **not** requested from the contractor by the contracting officer. The firm(s) should be advised that the contracting agency will make a decision on the assessment of liquidated damages at a later date.
- If there is no agreement to pay back wages, the file must be forwarded to Wage and Hour pursuant to 29 CFR 5.7 for review, collection of back wages, and debarment consideration (see All Agency Memorandum No. 182).

Withholding

- In refusal-to-pay cases under both DBRA and CWHSSA, the contracting agency shall withhold contract funds to cover the back wages due.
- The contracting agency can withhold funds from other contracts subject to DBRA/CWHSSA or any other federal contract held by the same prime contractor where funds remaining on the contract under which the violations occurred are insufficient to cover the back wages due – “cross-withholding”.
- Contracting officers should immediately notify Wage and Hour if they become aware that the prime contractor may be filing bankruptcy.
- In situations where Wage and Hour has instituted withholding actions, the prime contractor will be sent a letter describing the nature of the alleged violations and back wages found due. The prime contractor will be given 15 days to provide written views on the alleged violations. Withholding procedures are discussed further in the “Withholding” section of this reference book.

Debarment

- Debarment occurs when a contractor or subcontractor is declared ineligible (debarred) from receiving federal or federally assisted contracts for **up to 3 years** because it was “in aggravated or willful violation of the labor standards provisions” of any of the related acts, or declared ineligible **for 3 years** because violations of the Davis-Bacon Act were a disregard of the contractor's “obligations to employees and subcontractors”.
- At the conclusion of the investigation the contracting officer may advise the contractor of the potential for debarment where appropriate, **but make no statement** to the contractor about any recommendation concerning debarment.
- In no event should a contractor be left with the impression that payment of back wages eliminates the possibility of debarment.

Debarment Criteria

- Practically, debarment is considered in those cases where the contractor has:
 - Submitted falsified certified payroll records

- Required kickbacks of wages or back wages
- Committed repeat DBRA violations

Contracting Agency

- Investigations which appear to meet the debarment criteria – even in situations where the back wages have been paid – should be forwarded to Wage and Hour pursuant to All Agency Memorandum No. 182.

REPORT WRITING

This is one of the most important aspects of the investigation.

- The report is reviewed at many levels, both inside and outside the contracting agency. For example:
 - Wage and Hour
 - DOL's Office of the Solicitor
 - The contracting agency
 - The Comptroller General.
- Plan the report.
- In the report, refer to exhibits included in the case file -- do not repeat interviews in the reports.
- Avoid the use of abbreviations which may not be understood by other agencies.
- Except under CWHSSA, in most jurisdictions there is no right of individual employee action in government contract statutes. The government acts on the employee's behalf to recover back wages. Refusal-to-pay cases are usually resolved administratively by a hearing before a DOL Administrative Law Judge (ALJ). The ALJ process is time consuming and there is a delay before cases can be scheduled for hearings.

THE HEARING PROCESS

- Refusal-to-pay cases are resolved pursuant to 29 CFR 5.11.
 - If factual issues are in dispute, Wage and Hour notifies the contractors (both prime and sub) in writing of the investigation finding and offers the opportunity to request a hearing before an administrative law judge.
 - If only issues of law are in dispute, Wage and Hour offers the contractors the opportunity to appeal a Wage and Hour ruling before the Department's Administrative Review Board (the Board).
- In both agreement-to-pay and refusal-to-pay cases where the debarment criteria are met, the contractors are offered a hearing before an administrative law judge (ALJ) pursuant to 29 CFR 5.12 on the issue of debarment.
- ALJ decisions may be appealed to the Board.
- The Board hears all appeals of ALJ cases. The Board, which acts on behalf of the Secretary of Labor, consists of three members, who serve at the pleasure of the Secretary. Appeals may be in the form of oral hearings in Washington, D.C., before the Board, or the Board may review the record in a closed session. The Board also acts on petitions for review of rulings issued by the Administrator on coverage, interpretations, and wage determination matters.

WITHHOLDING OF FUNDS

TO ENFORCE COMPLIANCE WITH

DBRA AND SCA LABOR STANDARDS

REQUIREMENTS

WITHHOLDING OF FUNDS

DUE PROCESS

PRIORITY OF WITHHELD FUNDS

DISPOSITION OF WITHHELD FUNDS

WITHHOLDING REQUEST LETTER (DB/DBRA)

WITHHOLDING REQUEST LETTER (SCA)

VERIFICATION OF WITHHOLDING LETTER

WITHHOLDING OF FUNDS

- The labor standards clauses require the proper classification and payment of wages to:
 - Laborers and mechanics on construction projects subject to the Davis-Bacon and related Acts (DBRA),
 - Service employees falling within the scope of the McNamara-O'Hara Service Contract Act (SCA).
- To protect the rights of covered workers, these Acts and related Department of Labor (DOL) regulations provide for remedies when compliance with the prevailing wage requirements is in question. An important element is the withholding of contract funds sufficient to satisfy alleged wage underpayments pending resolution of a wage dispute. The contracting agency may withhold funds on its own initiative or at the direction of DOL.
 - The relevant statutory and regulatory provisions are Section 1 of the Davis-Bacon Act, 29 CFR 5.5(a)(2) and 5.5(b)(3); Section 3(a) of the Service Contract Act, and 29 CFR 4.6(i) and 4.187.
 - The Federal Acquisition Regulations (FAR) also address the withholding of contract funds. (Regarding the Davis-Bacon requirements, see 48 CFR 22.406-9 and 52.222-7; and regarding SCA, see 48 CFR 22.1022 and 52.222-41).
- The withholding of contract funds is a very effective enforcement tool in government contract cases.
 - It assures the availability of monies for the payment of the back wages if a contractor refuses to make restitution when back wages are found due to covered workers.
 - When federal agencies, states and local communities have benefited from the work performed by the contractor's employees, the employees are required by law to be paid the applicable prevailing wage and overtime compensation.
 - The prime contractor is responsible for compliance on the contract, will be liable for payment of the back wages not paid by a subcontractor, and may decide to withhold payments from the subcontractor until the back wage issues are resolved.

- Assuring that the proper wages are received by covered workers on government contracts lies with representatives of the contracting agency and/or DOL.
 - A contracting officer should withhold funds when he/she believes that a back wage violation exists.
 - In addition, contracting officers shall withhold funds upon written request from DOL. Contracting officers should respond immediately confirming that the funds have been withheld.
 - Additionally, if the request has been made by DOL, it is important for the agency to preserve the withheld funds until notified in writing by DOL regarding final disposition of the withheld funds.

- **Davis-Bacon and related Acts:**
 - The contract clause language set forth at 29 CFR 5.5(a)(2) states:

“**Withholding** - The federal agency or the loan or grant recipient shall upon its own action or upon written request of an authorized representative of DOL withhold or cause to be withheld from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay the full amount of wages required by the contract.”

and, further:

“In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, ... all or part of the wages required by the contract, the (Agency) may, after written notices to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.”
 - 29 CFR 5.5(b)(3) is a similar provision concerning the withholding of contract funds in relation to overtime pay obligations and liquidated damages determined to be due because of CWHSSA violations.

- The comparable FAR contract clause language “Withholding of Funds” is at 48 CFR 52.222-7 and “Contract Work Hours and Safety Standards Act – Overtime Compensation” is at 52.222-4. (The FAR guidance for applying the DBA/DBRA contract clauses is at 48 CFR 22.305 and 22.406-9).
- FAR guidance regarding the “Withholding from or suspension of contract payments” at 48 CFR 22.406-9(a) states:
 - “(a) *Withholding from contract payments.* If the contracting officer believes a violation exists (see 22.406-8), or upon request of the Department of Labor, the contracting officer shall withhold from payments due the contractor an amount equal to the estimated wage underpayment as well as any estimated liquidated damages due the United States under the Contract Work Hours and Safety Standards Act. (See 22.302.) ...”
- Continuing, the FAR guidance, at 48 CFR Part 22.406-9(a)(2), states:
 - “(2) If subsequent investigation confirms violations, the contracting officer shall adjust the withholding as necessary. If the withholding was requested by the Department of Labor, the contracting officer shall not reduce or release the withholding without written approval of the Department of Labor.”
- At 48 CFR Part 22.406-9(a)(3) the FAR further states that the withheld funds are to be used to satisfy validated wage underpayments (unless the contractor makes restitution) and assessed liquidated damages. (See also 48 CFR 22.406-9(c), “*Disposition of contract payments withheld or suspended*” and 48 CFR 406.10 “*Disposition of disputes concerning contract labor standards enforcement*”.)
- Cross-withholding provisions under the Davis-Bacon and related Acts give DOL and contracting agencies some recourse in collecting back wages in situations where the contract on which the violations occurred has been paid off by the contracting agency. Where funds remaining on the contract under which the violations occurred are insufficient to cover the back wages due, the contracting agency can withhold funds from other contracts subject to DBA/DBRA/CWHSSA or any other federal contract held by the same prime contractor. (For FAR guidance see 48 CFR 22.406-9(a)(1).)

➤ Service Contract Act

➤➤ DOL regulations that address withholding on SCA contracts are at 29 CFR 4.6(i), 4.187, and 5(b)(3). (The latter, as noted previously, relates to overtime pay obligations and liquidated damages determined to be due because of CWHSSA violations.)

➤➤ The contract clause language set forth at 29 CFR 4.6(i), and in the FAR at 52.222-41, states:

“(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of DOL requests or such sums as the contracting officer decides may be necessary to pay unpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of DOL and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event the Government may enter into other contracts or arrangements for completing the work, charging the contractor in default with any additional cost.”

➤➤ Guidance at 29 CFR 4.187(a) further states:

“The [SCA] ... provides that any violations of any of the contract stipulations required by sections 2(a)(1), 2(a)(2) and 2(b) of the Act shall render the party responsible liable for the amount of any deductions, rebates, refunds, or underpayments (which includes non-payment) of compensation due to any employee engaged in the performance of the contract. So much of the accrued payments due either on the contract or on any other contract (whether subject to the Service Contract Act or not) between the same contractor and the Government may be withheld in a deposit fund as is necessary to pay the employees. ... In order to effectuate the efficient administration of this provision of the Act, such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary or his or her authorized representatives, an Administrative Law Judge, or the Administrative Review Board, and are not paid directly to such employees by the contracting agency without the express prior consent of the Department of Labor.”

>> Further FAR guidance, at 48 CFR 22.1022, states:

“Any violations of the clause at 52.222-41, Service Contract Act of 1965, as amended, renders the responsible contractor liable for the amount of any deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract. The contracting officer may withhold – or, upon written request of the Department of Labor from a level no lower than that of Assistant Regional Administrator, Wage and Hour Division, ... shall withhold – the amount needed to pay such underpaid employees from accrued payments due the contractor on the contract, or on any other prime contract (whether subject to the Service Contract Act or not) with the contractor. The agency shall place the amount withheld in a deposit fund. Such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), an Administrative Law Judge, or the Board of Service Contract Appeals. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.”

DUE PROCESS

- To ensure that contractors and subcontractors receive “due process” prior to the withholding of funds at the direction of the Wage and Hour Division (Wage and Hour), the following steps are included in Wage and Hour’s enforcement procedures.
 - Where a contractor refuses to pay back wages under SCA or DBRA and funds are available for withholding, Wage and Hour will generally send a “due process” letter to the prime contractor. This letter will include:
 - A statement that the final conference was conducted at which time the contractor was provided an opportunity to discuss the alleged violations; or if a final conference was not held, provide the reason(s) why;
 - A brief description of the alleged violations;
 - An affirmation that the contractor received a Summary of Unpaid Wages;
 - A statement that the matter is being forwarded for a decision to a designated Wage and Hour deciding official, who will decide whether withholding action will be taken regarding the back wage findings;
 - A statement that the contractor has fifteen (15) days to provide the deciding official with written views on whether the violations occurred;
 - A statement that any determination regarding the withholding of contract funds will not result in the distribution of the funds to the underpaid workers until such time as the administrative remedies available to the contractor have been completed.
 - If the deciding official determines that withholding action is warranted, a copy of Wage and Hour’s withholding request to the contracting agency and a letter indicating the deciding official’s decision on withholding will be sent to the prime contractor.
- In certain cases, such as missed payrolls, likely bankruptcy filings, or imminent contract close out, it may be necessary to request withholding before the measures described above can be provided. In those cases, the procedures outlined above should be followed after the withholding action; and based on the contractor’s submission, the Wage and Hour deciding official may decide to revoke an earlier withholding request.

PRIORITY OF WITHHELD FUNDS

- DOL's position is that accrued funds withheld for payment of wages may not be used or set aside for other purposes until such time as the prevailing wage issues are resolved. To give contracting agency reprocurement claims priority, for example, would essentially make the employees unfairly pay for the breach of contract between their employer and the Government.
- It is the Department's position that wages due underpaid employees have priority over any competing claims against a contractor, regardless of when the claims were raised. (See 29 CFR 4.187(b).) DOL believes that to hold otherwise would be inequitable and contrary to public policy since the affected employees have already performed work from which the Government has received the benefit.
- Employees' wage claims for underpayment have priority over:
 - (1) An Internal Revenue Service levy for unpaid taxes;
 - (2) Reprocurement costs of the contracting agency after a contractor's default or termination for cause;
 - (3) Any assignee of the contractor ... including assignments made under the Assignment of Claims Act;
 - (4) Any claim by a trustee in bankruptcy.

DISPOSITION OF WITHHELD FUNDS

- Wage and Hour's Regional Offices (RO's) are responsible for directing the processing of back wage disbursements. Following the issuance of administrative law judge decisions including decisions approving settlement agreements, Administrative Review Board decisions, or if a contractor does not request a hearing pursuant to 29 CFR Part 5.11(b), the Wage and Hour RO requests the contracting agency to transfer the withheld funds.
- **Direct Davis-Bacon contracts:**
 - In the case of direct federal DBA contracts, since the Davis-Bacon Act requires the Comptroller General to disburse back wages, the Wage and Hour RO will request the agency to transfer the withheld funds to the General Accounting Office. The following procedure is to be used for the disposition of withheld funds:

All checks for disbursement under the Davis-Bacon Act should be accompanied by a completed Form 1093 and should be made payable to the U.S. General Accounting Office. When transferring funds electronically, the Agency Location Code (ALC) is: 0 5 0 0 0 0 1.
Checks should be mailed to:

U.S. General Accounting Office
CASO, Attn: Barbara Minnis
441 "G" Street, NW, Room 6B40A
Washington D.C. 20548

So that the Office of the General Counsel can readily identify and/or properly establish a case file, the **name of the contractor** (the actual contractor found in violation) and the **contract number** should be shown on the bottom of the check. The contract number is the number for which the contract was written and the work was performed rather than the contract number for which funds may be withheld via a cross-withholding action.
 - In situations where the contracting agency has conducted the Davis-Bacon Act investigation, FAR guidance at 48 CFR 22.406.9(c) provides guidance regarding additional information that is to be reported to the General Accounting Office.
- **Contracts subject to a Davis-Bacon related Act or the Service Contract Act:**
 - Under the McNamara-O'Hara Service Contract Act or the Davis-Bacon "related Acts" (*i.e.*, federal assistance by grants, loans, or loan guarantees rather than a federal DBA contract), the disbursement process is handled by DOL.

When funds are forwarded to DOL for disbursement, so that the receiving DOL office can readily identify and make the appropriate disbursements to the affected employees, please include **the name of the contractor**, and the **contract number for which the work was performed** (rather than the contract number for which the funds may have been withheld via a cross-withholding action) on the check or in a letter transmitting the check. All enclosed information is forwarded to the disbursing office by the bank.

- In the cases where federally assisted contracts subject to the provisions of Davis-Bacon related Acts have been forwarded to Wage and Hour for appropriate legal action, the RO will notify the contracting agency of the final disposition of the investigation and request the agency to transfer the withheld monies directly to DOL's lockbox.
- Below are sample withholding request letters used by Wage and Hour and a sample verification of withholding letter that may be used by agencies to provide Wage and Hour confirmation that the funds have been withheld.

WITHHOLDING REQUEST LETTER (DBRA)

Ms. Contracting Officer
U.S. Federal Agency
Anywhere, USA 00000

Dear Ms. Contracting Officer:

Re: Name of prime contractor
Contract number and location
Our file number: 98-000-00000

Our Wage and Hour District Office has conducted an investigation of the above-referenced contractor under the Davis-Bacon and related Acts (DBRA) and the Contract Work Hours and Safety Standards Act (CWHSSA).

The investigation has disclosed monetary violations resulting from failure to pay the required prevailing wage rates. DBRA back wages due have been computed in the amount of \$_____.

The contractor has not agreed to pay the back wages found due. Therefore, in order to protect the interests of the Federal government and the affected employees, and in accordance with Department of Labor Regulations, 29 CFR 5.5(a)(2), and as provided for in the Federal Acquisition Regulations at 48 CFR 52.222-4(c) and 52.222-7, it is requested that the aforementioned sum be withheld from contract payments due the prime contractor.

<1-Optional> If there are insufficient funds to withhold on this contract, cross-withholding of funds from any current Federal contract with the same prime contractor or from any federally-assisted contract with the same prime contractor which is subject to either Davis-Bacon prevailing wage requirements or Contract Work Hours and Safety Standards Act requirements, respectively, is authorized by the FAR (48 CFR 52.222-7 and/or 52.222-4(c), respectively).

<2-Optional> We request that you advise us immediately if you have any information that the prime contractor has filed bankruptcy proceedings.

Should we succeed in securing direct payments to the employees or should there be any change in the amount noted, we will advise you immediately. Thank you for your continuing cooperation in this matter. If you have any questions, please contact the Wage and Hour Regional Wage Specialist at the above address.

**U.S. DEPARTMENT OF LABOR
PREVAILING WAGE RESOURCE BOOK 11/2002**

*DBA/DBRA/SCA/CWHSSA
WITHHOLDING*

-2-

Please notify us in writing of your actions on this request no later than (date) . A withholding verification form is enclosed for your convenience.

Sincerely,

Regional Administrator
Wage and Hour Division

Enclosure

cc: Name of Prime Contractor

WITHHOLDING REQUEST LETTER (SCA)

Mr. Contracting Officer
U. S. Federal Agency
Anywhere, USA 00000

Dear Mr. Contracting Officer:

Re: Contract No. 0000000

Our Wage and Hour District Office is conducting an investigation of the above-cited contractor under the McNamara-O'Hara Service Contract Act (SCA). The investigation has disclosed substantial monetary violations in the amount of \$_____. We have not reached an agreement for the payment of the back wages found due.

In order to protect the interests of the federal government and the affected employees, we are requesting that \$_____ be withheld from funds due prime contractor pending disposition of our investigation. Our request is made in accordance with Department of Labor Regulations, 29 CFR 4.187 and as provided for in the Federal Acquisition Regulations, 48 CFR 22.1022.

Please confirm when these amounts have been withheld by returning the enclosed "Verification of Withholding" form. Should we succeed in securing direct payment to the employees or should there be any change in the amount noted, we will advise you immediately.

Please contact the Regional Wage Specialist at the above telephone number if you have any questions concerning this request.

Sincerely,

Regional Administrator
Wage and Hour Division

Enclosure

cc: Name of Prime Contractor

VERIFICATION OF WITHHOLDING LETTER

Case Name:

File Number:

VERIFICATION OF WITHHOLDING

This is to verify that \$ _____ has been withheld from funds due (name of contractor) to cover wage underpayments under Contract Number _____ as of (enter date) per section 5.5(a)(2) of Regulations, 29 CFR Part 5.

Contracting Officer

Agency

Telephone Number

STAFF LISTINGS AND WEB CONTACTS

(Revised 11/2002)

For an updated staff listings contact the
Government Contracts Team at
(202) 693-0064

The Wage and Hour Division's homepage is at
<http://www.dol.gov/esa/whd/>

Key personnel in the Wage and Hour Division are listed at:
<http://www.dol.gov/esa/contacts/whd/whdkeyp.htm>

**WAGE AND HOUR NATIONAL OFFICE STAFF
OFFICE OF ENFORCEMENT POLICY
GOVERNMENT CONTRACTS TEAM**

(202) 693-0064
fax: (202) 693-1432

Timothy J. Helm, Team Leader
(tim@fenix2.dol-esa.gov)

Doris Hannah
Wage-Hour Assistant

Julia Stone
Compliance Specialist
Davis-Bacon Act
(dba16@fenix2.dol-esa.gov)

Michelle Bechtoldt
Senior Compliance Specialist
Service Contract Act
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Daniel W. Simms
Compliance Specialist
Service Contract Act
(dws@fenix2.dol-esa.gov)

DIVISION OF WAGE DETERMINATIONS

Bill Gross, Director
(202) 693-0569

Branch of Construction Wage Determinations

(202) 693-0620
fax: (202) 693-1425

Carl Poleskey, Chief
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Section Chief
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John Frank
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Branch of Service Contract Wage Determinations

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Clarence D. Strain
Supervisory Salary and Wage Specialist
cstrain@fenix2.dol-esa.gov

**DEPARTMENT OF LABOR REGIONAL OFFICES
WAGE AND HOUR REGIONAL WAGE SPECIALISTS**

NORTHEAST REGION:

(CT, DC, DE, MD, MA,
ME, NH, NJ, NY, PA,
PR, RI, VA, VT, WV)

George Durbin

(215) 861-5830
fax: (215) 861-5840

SOUTHEAST REGION:

(AL, FL, GA, KY,
MS, NC, SC, TN)

John Bates

(404) 893-4539
fax: (404) 893-4524

MIDWEST REGION:

(IL, IN, IA, KS, MI,
MN, MO, NE, OH, WI)

Steve Hill

(312) 596-7220
fax: (312) 596-7205

SOUTHWEST REGION:

(AR, CO, LA, MT, MN,
ND, OK, SD, TX, UT, WY)

Shirley Ebbesen

(972) 850-2634
fax: (972) 850-2601

WEST REGION:

(AK, AZ, CA, GU,
HI, ID, NV, OR, WA)

Margaret Pringels

(415) 848-6616
fax: (415) 848-6655

Davis-Bacon Wage Determinations Contacts, by State

GWD Volume	State	DB Wage Determinations Analyst (7/02)	Phone Extension (202-693-)
III	Alabama	Thomas Nesmith	0612
VI	Alaska	Gary Lechman	0647
VII	Arizona	Forest Randall	0740
V	Arkansas	Anjanette McMillan	0159
VII	California	Barbara Shaffer	0629
VI	Colorado	Jeff Gaskins	0560
I	Connecticut	Laima Ciguzis	0528
II	Delaware	Natalie Boan	0514
II	District of Columbia	Laima Ciguzis	0528
III	Florida	Cynthia Taylor	0652
III	Georgia	Pat Crepeau	0535
I	Guam	Cynthia Taylor	0652
VII	Hawaii	Laima Ciguzis	0528
VI	Idaho	Barbara Shaffer	0629
IV	Illinois	Thomas Nesmith	0612
IV	Indiana	Melvin Leeper	0598
V	Iowa	Melvin Leeper	0598
V	Kansas	Cynthia Taylor	0652
III	Kentucky	Jeff Gaskins	0560
V	Louisiana	Anjanette McMillan	0159
I	Maine	Melvin Leeper	0598
VII	Mariana Islands	Cynthia Taylor	0652
II	Maryland	Laima Ciguzis	0528
I	Massachusetts	Melvin Leeper	0598
IV	Michigan	Pat Crepeau	0535
IV	Minnesota	Forest Randall	0740
III	Mississippi	Anjanette McMillan	0159
V	Missouri	Laima Ciguzis	0528
VI	Montana	Forest Randall	0740
V	Nebraska	Pat Crepeau	0535
VII	Nevada	Paul Rabinowitz	0692
I	New Hampshire	Thomas Nesmith	0612

**U.S. DEPARTMENT OF LABOR
PREVAILING WAGE RESOURCE BOOKS 11/2002**

*DB/SCA
CONTACTS*

GWD Volume	State	DB Wage Determinations Analyst (7/02)	Phone Extension (202-693-)
I	New Jersey	Thomas Nesmith	0612
V	New Mexico	Jeff Gaskins	0560
I	New York	Melvin Leeper	0598
III	North Carolina	Gary Lechman	0647
VI	North Dakota	Thomas Nesmith	0612
IV	Ohio	Jeff Gaskins	0560
V	Oklahoma	Cynthia Taylor	0652
VI	Oregon	Barbara Shaffer	0629
II	Pennsylvania	Phyllis Yates	1178
I	Puerto Rico	Cynthia Taylor	0652
I	Rhode Island	Pat Crepeau	0535
III	South Carolina	Natalie Boan	0514
VI	South Dakota	Paul Rabinowitz	0692
III	Tennessee	Phyllis Yates	1178
V	Texas	Cynthia Taylor	0652
VI	Utah	Paul Rabinowitz	0692
I	Vermont	Natalie Boan	0514
I	Virgin Islands	Cynthia Taylor	0652
II	Virginia	Laima Ciguzis	0528
VI	Washington	Gary Lechman	0647
II	West Virginia	Phyllis Yates	1178
IV	Wisconsin	Forest Randall	0740
VI	Wyoming	Jeff Gaskins	0560

DEPARTMENT OF LABOR ON THE WEB

Department of Labor Home Page:

<http://www.dol.gov>

The Wage and Hour Division (WHD) is in the Employment Standards Administration (ESA). A variety materials are available on the Wage and Hour Division's homepage:

<http://www.dol.gov/esa/whd/>

These include:

- Posters
- Statutes
- Regulations that apply under laws administered by the Wage and Hour Division:
 See "Code of Federal Regulations (CFR)"
- *Service Contract Act Directory of Occupations*
- Davis-Bacon wage determinations
- Interactive WH-347 Payroll Form and instructions
- And other information related to prevailing wages.

The Administrative Review Board, which was established in 1996, and to which final rulings of the Wage and Hour Division concerning Davis-Bacon and Service Contract Act matters may be appealed, has a website at:

<http://www.dol.gov/arb/welcome.html>

The Department's **Office of Administrative Law Judges (OALJ)** has a library site at which a broader range of rulings may be accessed. To view decisions of the appeals boards that preceded the ARB, as well as additional ARB decisions and ALJ decisions on Service Contract Act and Davis Bacon Act cases go to the **OALJ Law Library's "DBA/SCA Collections"** at:

<http://www.oalj.dol.gov/libdba.htm>