other appropriate statements in support of their respective positions.

(b) The Under Secretary shall issue a decision based solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(c) If the Under Secretary modifies or reverses the initial hearing decision of the Examiner, he or she shall specify such findings of fact and conclusions of law as are different from those of the Examiner.

§ 0.737–10 Administrative sanctions.

The Examiner (or the Under Secretary in any matter in which exceptions are filed or which is decided in accordance with §0.737–4(b)) may take appropriate action in the case of any individual found in violation of 18 U.S.C. 207(a), (b) or (c) or of the regulations at 5 CFR part 737 upon final administrative decisions by:

(a) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to the Department of Labor on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communications; or

(b) Taking other appropriate disciplinary action.

§ 0.737–11 Judicial review.

Any person found to have participated in a violation of 18 U.S.C. 207(a), (b), or (c) or the regulations at 5 CFR part 737 may seek judicial review of the administrative determination in an appropriate United States district court.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.

AUTHORITY: 5 U.S.C. 301; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 *et seq.;* 40 U.S.C. 3145; 40 U.S.C. 3148; Secretary of Labor's Order 01–2014, 79 FR 77527; and the laws referenced by 29 CFR 5.1.

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

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

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 3141 *et seq.*), and any laws now existing or subsequently enacted, which require the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed.

(1) A listing of laws requiring the payment of wages at rates predetermined by the Secretary of Labor under the Davis-Bacon Act can be found at *www.dol.gov/agencies/whd/government-contracts* or its successor website.

(2) Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (15 FR 3176, effective May 24, 1950, reprinted as amended in 5 U.S.C. app. 1 and in 64 Stat. 1267), except for functions assigned to the Office of Administrative Law Judges (*see* part 6 of this subtitle) and appellate functions assigned to the Administrative Review Board (*see* part 7 of this subtitle) or reserved by the Secretary of Labor (*see* Secretary's Order 01–2020 (Feb. 21,

2020)), have been delegated to the Administrator of the Wage and Hour Division and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act and any laws now existing or subsequently enacted providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 49823, Dec. 4, 1985; 88 FR 57722, Aug. 23, 2023]

§ 1.2 Definitions.

Administrator. The term ''Administrator'' means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or authorized representative.

Agency. The term ''agency'' means any Federal, State, or local agency or instrumentality, or other similar entity, that enters into a contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to a project subject to the Davis-Bacon labor standards, as defined in § 5.2 of this subtitle.

(1) *Federal agency*. The term ''Federal agency'' means an agency or instrumentality of the United States or the District of Columbia, as defined in this section, that enters into a contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to a project subject to the Davis-Bacon labor standards.

(2) [Reserved]

Area. The term ''area'' means the city, town, village, county or other civil subdivision of the State in which the work is to be performed.

(1) For highway projects, the area may be State department of transportation highway districts or other similar State geographic subdivisions.

(2) Where a project requires work in multiple counties, the area may include all counties in which the work will be performed.

Department of Labor-approved website for wage determinations (DOL-approved website). The term ''Department of Labor-approved website for wage determinations'' means the government website for both Davis-Bacon Act and Service Contract Act wage determinations. In addition, the DOL-approved website provides compliance assistance information. The term will also apply to any other website or electronic means that the Department of Labor may approve for these purposes.

Employed. Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by assistance from the United States through loan, grant, loan guarantee or insurance, or otherwise, is employed regardless of any contractual relationship alleged to exist between the contractor and such person.

Prevailing wage. The term ''prevailing wage'' means:

(1) The wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question;

(2) If the same wage is not paid to a majority of those employed in the classification, the prevailing wage will be the wage paid to the greatest number, *provided* that such greatest number constitutes at least 30 percent of those employed; or

(3) If no wage rate is paid to 30 percent or more of those so employed, the prevailing wage will be the average of the wages paid to those employed in the classification, weighted by the total employed in the classification.

Type of construction (or construction type). The term ''type of construction (or construction type)'' means the general category of construction, as established by the Administrator, for the publication of general wage determinations. Types of construction may include, but are not limited to, building, residential, heavy, and highway. As used in this part, the terms ''type of construction'' and ''construction type'' are synonymous and interchangeable.

United States or the District of Columbia. The term ''United States or the District of Columbia'' means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, and any corporation for which all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[88 FR 57723, Aug. 23, 2023]

§ 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information. In determining the prevailing wages at the time of issuance of a wage determination, the Administrator will be guided by the definition of prevailing wage in §1.2 and will consider the types of information listed in this section.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect the wage rates paid to workers employed in a particular classification in an area, the type or types of construction on which such rate or rates are paid, and whether or not such wage rates were paid on Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements.

(b) The following types of information may be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects, including the names and addresses of contractors, including subcontractors; the locations, approximate costs, dates of construction and types of projects, as well as whether or not the projects are Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements; and the number of workers employed in each classification on each project and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements, for which the Administrator may request that the parties to such agreements submit statements certifying to their scope and application.

(3) Wage rates determined for public construction by State and local officials pursuant to State and local prevailing wage legislation.

(4) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to §5.5(a)(1)(iii) of this subtitle.

(5) For Federal-aid highway projects under 23 U.S.C. 113, information obtained from the highway department(s) of the State(s) in which the project is to be performed. For such projects, the Administrator must consult the relevant State highway department and give due regard to the information thus obtained.

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in paragraph (b) of this section, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in light of the definition of prevailing wage in §1.2.

(d) In compiling wage rate data for building and residential wage determinations, the Administrator will not use data from Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements unless it is determined that there is insufficient wage data to determine the prevailing wages in the absence of such data. Data from Federal or federally assisted projects will be used in compiling wage rate data for heavy and highway wage determinations.

(e) In determining the prevailing wage, the Administrator may treat variable wage rates paid by a contractor or contractors to workers within the same classification as the same wage where the pay rates are functionally equivalent, as explained by one or more collective bargaining agreements or written policies otherwise maintained by a contractor or contractors.

(f) If the Administrator determines that there is insufficient wage survey data to determine the prevailing wage for a classification for which conformance requests are regularly submitted pursuant to §5.5(a)(1)(iii) of this subtitle, the Administrator may list the classification and wage and fringe benefit rates for the classification on the wage determination, provided that:

(1) The work performed by the classification is not performed by a classification in the wage determination;

(2) The classification is used in the area by the construction industry; and

(3) The wage rate for the classification bears a reasonable relationship to the wage rates contained in the wage determination.

(g) Under the circumstances described in paragraph (h) of this section, the Administrator may make a wage determination by adopting, with or without modification, one or more prevailing wage rates determined for public construction by State and/or local officials. Provided that the conditions in paragraph (h) are met, the Administrator may do so even if the methods and criteria used by State or local officials differ in some respects from those that the Administrator would otherwise use under the Davis-Bacon Act and the regulations in this part. Such differences may include, but are not limited to, a definition of prevailing wage under a State or local prevailing wage law or regulation that differs from the definition in §1.2, a geographic area or scope that differs from the standards in §1.7, and/or the restrictions on data use in paragraph (d) of this section.

(h) The Administrator may adopt a State or local wage rate as described in paragraph (g) of this section if the Administrator, after reviewing the rate and the processes used to derive the rate, determines that:

(1) The State or local government sets wage rates, and collects relevant data, using a survey or other process that is open to full participation by all interested parties;

(2) The wage rate reflects both a basic hourly rate of pay as well as any prevailing fringe benefits, each of which can be calculated separately;

(3) The State or local government classifies laborers and mechanics in a manner that is recognized within the field of construction; and

(4) The State or local government's criteria for setting prevailing wage rates are substantially similar to those the Administrator uses in making wage determinations under this part. This determination will be based on the totality of the circumstances, including, but not limited to, the State or local government's definition of prevailing wage; the types of fringe benefits it accepts; the information it solicits from interested parties; its classification of construction projects, laborers, and mechanics; and its method for determining the appropriate geographic area(s).

(i) In order to adopt wage rates of a State or local government entity pursuant to paragraphs (g) and (h) of this section, the Administrator must obtain the wage rates and any relevant supporting documentation and data from the State or local government entity. Such information may be submitted via email to *dba.statelocalwagerates@dol.gov*, via mail to U.S. Department of Labor, Wage and Hour Division, Branch of Wage Surveys, 200 Constitution Avenue NW, Washington, DC 20210, or through other means directed by the Administrator.

(j) Nothing in paragraphs (g), (h), and (i) of this section precludes the Administrator from otherwise considering State or local prevailing wage rates, consistent with paragraph (b)(3) of this section, or from giving due regard to information obtained from State highway departments, consistent with paragraph (b)(4) of this section, as part of the Administrator's process of making prevailing wage determinations under this part.

[88 FR 57723, Aug. 23, 2023]

§ 1.4 Report of agency construction programs.

On an annual basis, each Federal agency using wage determinations under the Davis-Bacon Act or any of the laws referenced by § 5.1 of this subtitle, must furnish the Administrator with a report that contains a general outline of its proposed construction programs for the upcoming 3 fiscal years based on information in the Federal agency's possession at the time it furnishes its report. This report must include a list of proposed projects (including those for which options to extend the contract term of an existing construction contract are expected during the period covered by the report); the estimated start date of construction; the anticipated type or types of construction; the estimated cost of construction; the location or locations of construction; and any other project-specific information that the Administrator requests. The report must also include notification of any significant changes to previously reported construction programs, such as the delay or cancellation of previously reported projects. Reports must be submitted no later than April 10 of each year by email to *DavisBaconFedPlan@dol.gov*, and must include the name, telephone number, and email address of the official responsible for coordinating the submission.

[88 FR 57724, Aug. 23, 2023]

§ 1.5 Publication of general wage determinations and procedure for requesting project wage determinations.

(a) *General wage determinations.* A ''general wage determination'' contains, among other information, a list of wage and fringe benefit rates determined to be prevailing for various classifications of laborers or mechanics for specified type(s) of construction in a given area. The Department of Labor publishes ''general wage determinations'' under the Davis-Bacon Act on the DOL-approved website.

(b) *Project wage determinations.* (1) A ''project wage determination'' is specific to a particular project. An agency may request a ''project wage determination'' for an individual project under any of the following circumstances:

(i) The project involves work in more than one county and will employ workers who may work in more than one county;

(ii) There is no general wage determination in effect for the relevant area and type(s) of construction for an upcoming project, or

(iii) All or virtually all of 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 contract award (or bid opening, in contracts entered into using sealed bidding procedures) has not yet taken place.

(2) To request a project wage determination, the agency must submit Standard Form (SF) 308, Request for Wage Determination and Response to Request, to the Department of Labor, either by mailing the form to U.S. Department of Labor, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, DC 20210, or by submitting the form through other means directed by the Administrator.

(3) In completing Form SF–308, the agency must include the following information:

(i) A sufficiently detailed description of the work to indicate the type(s) of construction involved, as well as any additional description or separate attachment, if necessary, for identification of the type(s) of work to be performed. If the project involves multiple types of construction, the requesting agency must attach information indicating the expected cost breakdown by type of construction.

(ii) The location (city, county, state, zip code) or locations in which the proposed project is located.

(iii) The classifications needed for the project. The agency must identify only those classifications that will be needed in the performance of the work. Inserting a note such as ''entire schedule'' or ''all applicable classifications'' is not sufficient. Additional classifications needed that are not on the form may be typed in the blank spaces or on a separate list and attached to the form.

(iv) Any other information requested in Form SF–308.

(4) A request for a project wage determination must be accompanied by any pertinent wage information that may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency must also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

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

[88 FR 57724, Aug. 23, 2023]

§ 1.6 Use and effectiveness of wage determinations.

(a) *Application, validity, and expiration of wage determinations*—(1) *Application of incorporated wage determinations.* Once a wage determination is incorporated into a contract (or once construction has started when there is no contract award), the wage determination generally applies for the duration of the contract or project, except as specified in this section.

(2) *General wage determinations.* (i) ''General wage determinations'' published on the DOL-approved website contain no expiration date. Once issued, a general wage determination remains valid until revised, superseded, or canceled.

(ii) If there is a current general wage determination applicable to a project, an agency may use it without notifying the Administrator, *Provided* that questions concerning its use are referred to the Administrator in accordance with paragraph (b) of this section.

(iii) When a wage determination is revised, superseded, or canceled, it becomes inactive. Inactive wage determinations may be accessed on the DOL-approved website for informational purposes only. Contracting officers may not use such an inactive wage determination in a contract action unless the inactive wage determination is the appropriate wage determination that must be incorporated to give retroactive effect to the post-award incorporation of a contract clause under §5.6(a)(1)(ii) of this subtitle or a wage determination under paragraph (f) of this section. Under such circumstances, the agency must provide prior notice to the Administrator of its intent to incorporate an inactive wage determination and may not incorporate it if the Administrator instructs otherwise.

(3) *Project wage determinations.* (i) ''Project wage determinations'' initially issued will be effective for 180 calendar days from the date of such determinations. If a project wage determination is not incorporated into a contract (or, if there is no contract award, if construction has not started) in the period of its effectiveness it is void.

(ii) Accordingly, if it appears that a project wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency must request a new project wage determination sufficiently in advance of the bid opening to assure receipt prior thereto.

(iii) However, when due to unavoidable circumstances a project wage determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937), the head of the agency or the agency head's designee may request the Administrator to extend the expiration date of the project wage determination in the bid specifications instead of issuing a new project wage determination. Such request must be supported by a written finding, which must include a brief statement of factual support, that the extension of the expiration date of the project wage determination is necessary and proper in the public interest to prevent injustice or undue hardship

or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(b) *Identifying and incorporating appropriate wage determinations.* (1) Contracting agencies are responsible for making the initial determination of the appropriate wage determination(s) for a project and for ensuring that the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications and that inapplicable wage determinations are not incorporated. When a contract involves construction in more than one area, and no multi-county project wage determination has been obtained, the solicitation and contract must incorporate the applicable wage determination for each area. When a contract involves more than one type of construction, the solicitation and contract must incorporate the applicable wage determination for each type of construction involved that is anticipated to be substantial. The contracting agency is responsible for designating the specific work to which each incorporated wage determination applies.

(2) The contractor or subcontractor has an affirmative obligation to ensure that its pay practices are in compliance with the Davis-Bacon Act labor standards.

(3) Any question regarding application of wage rate schedules or wage determinations must be referred to the Administrator for resolution. The Administrator should consider any relevant factors when resolving such questions, including, but not limited to, relevant area practice information.

(c) *Revisions to wage determinations.* (1) General and project wage determinations may be revised from time to time to keep them current. A revised wage determination replaces the previous wage determination. ''Revisions,'' as used in this section, refers both to modifications of some or all of the rates in a wage determination, such as periodic updates to reflect current rates, and to instances where a wage determination is re-issued entirely, such as after a new wage survey is conducted. Revisions include adjustments to non-collectively bargained prevailing wage and fringe benefit rates on general wage determinations, with the adjustments based on U.S. Bureau of Labor Statistics Employment Cost Index (ECI) data or its successor data. Such rates may be adjusted based on ECI data no more frequently than once every 3 years, and no sooner than 3 years after the date of the rate's publication. Such periodic revisions to wage determinations are distinguished from the circumstances described in paragraphs (d), (e), and (f) of this section.

(2)(i) Whether a revised wage determination is effective with respect to a particular contract or project generally depends on the date on which the revised wage determination is issued. The date on which a revised wage determination is ''issued,'' as used in this section, means the date that a revised general wage determination is published on the DOL-approved website or the date that the contracting agency receives actual written notice of a revised project wage determination.

(ii) If a revised wage determination is issued before contract award (or the start of construction when there is no award), it is effective with respect to the project, except as follows:

(A) For contracts entered into pursuant to sealed bidding procedures, a revised wage determination issued at least 10 calendar days before the opening of bids is effective with respect to the solicitation and contract. If a revised wage determination is issued less than 10 calendar days before the opening of bids, it is effective with respect to the solicitation and contract unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the revision and a report of the finding is inserted in the contract file. A copy of such report must be made available to the Administrator upon request. No such report is required if the revision is issued after bid opening.

(B) In the case of projects assisted under the National Housing Act, a revised wage determination is effective with respect to the project if it is issued prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, a revised wage determination is effective with respect to the project if it is issued prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(D) If, in the case of a contract entered into pursuant to sealed bidding procedures under paragraph (c)(2)(ii)(A) of this section the contract has not been awarded within 90 days after bid opening, or if, in the case of projects assisted under the National Housing Act or receiving housing assistance payments section 8 of the U.S. Housing Act of 1937 under paragraph (c)(2)(ii)(B) or (C) of this section, construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any revised general wage determination issued prior to award of the contract or the beginning of construction, as appropriate, is effective with respect to that contract unless the head of the agency or the agency head's designee requests and obtains an extension of the 90-day period from the Administrator. Such request must be supported by a written finding, which includes a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(iii) If a revised wage determination is issued after contract award (or after the beginning of construction where there is no contract award), it is not effective with respect to that project, except under the following circumstances:

(A) Where a contract or order is changed to include additional, substantial construction, alteration, and/or repair work not within the scope of work of the original contract or order, or to require the contractor to perform work for an additional time period not originally obligated, including where an option to extend the term of a contract is exercised, the contracting agency must include the most recent revision of any wage determination(s) at the time the contract is changed or the option is exercised. This does not apply where the contractor is simply given additional time to complete its original commitment or where the additional construction, alteration, and/or repair work in the modification is merely incidental.

(B) Some contracts call for construction, alteration, and/or repair work over a period of time that is not tied to the completion of any particular project. Examples of such contracts include, but are not limited to, indefinite-delivery-indefinite-quantity construction contracts to perform any necessary repairs to a Federal facility over a period of time; long-term operations-and-maintenance contracts that may include construction, alteration, and/or repair work covered by Davis-Bacon labor standards; or schedule contracts or blanket purchase agreements in which a contractor agrees to provide certain construction work at agreed-upon prices to Federal agencies. These types of contracts often involve a general commitment to perform necessary construction as the need arises, but do not necessarily specify the exact construction to be performed. For the types of contracts described here, the contracting agency must incorporate into the contract the most recent revision(s) of any applicable wage determination(s) on each anniversary date of the contract's award (or each anniversary date of the beginning of construction when there is no award) unless the agency has sought and received prior written approval from the Department for an alternative process. The Department may grant such an exception when it is necessary and proper in the public interest or to prevent injustice and undue hardship. Such revised wage determination(s) will apply to any construction work that begins

or is obligated under such a contract during the 12 months following that anniversary date until such construction work is completed, even if the completion of that work extends beyond the twelve-month period. Where such contracts have task orders, purchase orders, or other similar contract instruments awarded under the master contract, the master contract must specify that the applicable updated wage determination must be included in such task orders, purchase orders, or other similar contract instrument, and the ordering agency must so incorporate the applicable updated wage determinations into their orders. Once the applicable updated wage determination revision has been incorporated into such task orders, purchase orders, or other similar contract instruments, that wage determination revision remains applicable for the duration of such order, unless the order is changed to include additional, substantial construction, alteration, and/or repair work not within the scope of work, when the wage determination must be updated as set forth in paragraph (c)(2)(iii)(A) of this section, or the order itself includes the exercise of options. Where such orders do include the exercise of options, updated applicable wage determination revision, as incorporated into the master contract must be included when an option is exercised on such an order.

(C) For contracts to which both paragraphs (c)(2)(iii)(A) and (B) of this section apply, updated wage determinations must be incorporated pursuant to the requirements of both paragraphs. For example, if a contract calls for construction, alteration, and/or repair work over a period of time that is not tied to the completion of any particular project and also has an option provision to extend the contract's term, the most recent revision(s) of any applicable wage determination(s) must be incorporated any time an option is exercised, as described in paragraph (c)(2)(iii)(A) of this section, and on the contract anniversary date, as described in paragraph (c)(2)(iii)(B) of this section. However, when a contract has been changed as described in paragraph (c)(2)(iii)(A) of this section, including by the exercise of an option, the date of that modification will be considered the contract anniversary date for the purpose of annually updating the wage determination(s) in accordance with paragraph (c)(2)(iii)(B) of this section for that year and any subsequent years of contract performance.

(d) *Corrections for clerical errors.* Upon the Administrator's own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (a) or (c) of this section, whenever the Administrator finds that it contains clerical errors. Such corrections must be included in any solicitations, bidding documents, or ongoing contracts containing the wage determination in question, and such inclusion, and application of the correction(s), must be retroactive to the start of construction if construction has begun.

(e) *Pre-award determinations that a wage determination may not be used.* A wage determination may not be used for a contract, without regard to whether bid opening (or initial endorsement or the signing of a housing assistance payments contract) has occurred, if, prior to the award of a contract (or the start of construction under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award), the Administrator provides written notice that:

(1) The wrong wage determination or the wrong schedule was included in the bidding documents or solicitation; or

(2) A wage determination included in the bidding documents or solicitation was withdrawn by the Department of Labor as a result of a decision by the Administrative Review Board.

(f) *Post-award determinations and procedures.* (1) If a contract subject to the labor standards provisions of the laws referenced by §5.1 of this subtitle is entered into without the correct wage determination(s), the agency must, upon the request of the Administrator or upon its own initiative, incorporate the correct wage determination into the contract or require its incorporation. Where the agency is not entering directly into such a contract but instead is providing Federal financial assistance, the agency must ensure that the

recipient or sub-recipient of the Federal assistance similarly incorporates the correct wage determination(s) into its contracts.

(2) The Administrator may require the agency to incorporate a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may require the application of the correct wage determination to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination.

(3) Under any of the circumstances described in paragraphs (f)(1) and (2) of this section, the agency must either terminate and resolicit the contract with the correct wage determination or incorporate the correct wage determination into the contract (or ensure it is so incorporated) through supplemental agreement, change order, or any other authority that may be needed. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:

(i) Unless the Administrator directs otherwise, the incorporation of the correct wage determination(s) must be retroactive to the date of contract award or start of construction if there is no award.

(ii) If incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.

(iii) Before the agency requires incorporation upon its own initiative, it must provide notice to the Administrator of the proposed action.

(iv) The contractor must be compensated for any increases in wages resulting from incorporation of a missing wage determination.

(v) If a recipient or sub-recipient of Federal assistance under any of the applicable laws referenced by §5.1 of this subtitle refuses to incorporate the wage determination as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required wage determination into its contract, and must promptly refer the dispute to the Administrator for further proceedings under §5.13 of this subtitle.

(vi) Before terminating a contract pursuant to this section, the agency must withhold or cross-withhold sufficient funds to remedy any back-wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.

(4) Under any of the above circumstances, notwithstanding the requirement to incorporate the correct wage determination(s) within 30 days, the correct wage determination(s) will be effective by operation of law, retroactive to the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award), in accordance with §5.5(e) of this subtitle.

(g) *Approval of Davis-Bacon Related Act Federal funding or assistance after contract award.* If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the applicable wage determination must be incorporated based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award), as appropriate, and must be incorporated in the contract specifications retroactively to

that date, *Provided* that upon the request of the head of the Federal agency providing the Federal funding or assistance, in individual cases the Administrator may direct incorporation of the wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *Provided further* that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

[88 FR 57725, Aug. 23, 2023]

§ 1.7 Scope of consideration.

(a) In making a wage determination, the ''area'' from which wage data will be drawn will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than 1 year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.

(b) If sufficient current wage data is not available from projects within the county to make a wage determination, wages paid on similar construction in surrounding counties may be considered.

(c) If sufficient current wage data is not available in surrounding counties, the Administrator may consider wage data from similar construction in comparable counties or groups of counties in the State, and, if necessary, overall statewide data.

(d) If sufficient current statewide wage data is not available, wages paid on projects completed more than 1 year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

(e) The use of ''helpers and apprentices'' is permitted in accordance with part 5 of this subtitle.

[88 FR 57728, Aug. 23, 2023]

§ 1.8 Reconsideration by the Administrator.

(a) Any interested party may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination.

(b) Such a request for reconsideration must be in writing, accompanied by a full statement of the interested party's views and any supporting wage data or other pertinent information. Requests must be submitted via email to *dba.reconsideration@dol.gov*; by mail to Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210; or through other means directed by the Administrator. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30-day period that additional time is necessary.

(c) If the decision for which reconsideration is sought was made by an authorized representative of the Administrator of the Wage and Hour Division, the interested party seeking reconsideration may request further reconsideration by the Administrator of the Wage and Hour Division. Such a request must be submitted within 30 days from the date the decision is issued; this time may be extended for good cause at the discretion of the Administrator upon a request by the interested party. The procedures in paragraph (b) of this section apply to any such reconsideration requests.

[88 FR 57728, Aug. 23, 2023]

§ 1.9 Review by Administrative Review Board.

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

§ 1.10 Severability.

The provisions of this part are separate and severable and operate independently from one another. If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or

stayed pending further agency action, the provision is to be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is one of utter invalidity or unenforceability, in which event the provision is severable from this part and will not affect the remaining provisions.

[88 FR 57728, Aug. 23, 2023]

PART 2—GENERAL REGULATIONS

Subpart A—General

Subpart B—Audiovisual Coverage of Administrative Hearings

Subpart C—Employees Served With Subpoenas

Subpart D—Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

AUTHORITY: 5 U.S.C. 301; E.O. 13198, 66 FR 8497, 3 CFR, 2001 Comp., p. 750; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

Subpart A—General

SOURCE: 32 FR 11035, July 28, 1967, unless otherwise noted.

§ 2.1 Employees attached to regional offices.

No person who has been an employee of the Department and attached to a Regional office of any bureau, board, division, or other agency thereof, shall be permitted to practice, appear, or act as attorney, agent, or representative before the Department or any branch or agent thereof in connection with any case or administrative proceeding which was pending before such Regional office during the time of his employment with the Department, unless he shall first obtain the written consent thereto of the Secretary of Labor or his duly authorized representative.

§ 2.2 Employees attached to Washington office.

No person who has been an employee of the Department and attached to the Washington office of any bureau, board, division, or other agency thereof, shall be permitted to practice, appear, or act as attorney, agent, or representative before the Department or