
Chapter 3 DAVIS-BACON WAGE DECISIONS

- 3-1 **Introduction.** The U.S. Department of Labor (DOL) is responsible for determining prevailing wage rates for construction work pursuant to the Davis-Bacon Act and publishes schedules of these wages in Davis-Bacon wage decisions. DOL regulations pertaining to the determination, publication, use and effectiveness of Davis-Bacon wage decisions (also known as wage determinations) are found at 29 CFR Part 1. A copy of these regulations is found at Appendix II-4 in this Handbook.

In this chapter, *DOL* shall mean the Department of Labor, *HQLR* shall mean the HUD Headquarters Office of Labor Relations, *RLRO* shall mean the Regional Labor Relations Officer, *LRS* shall mean the HUD Labor Relations Specialist/staff; *LCA* (Local Contracting Agency) shall mean the appropriate staff of the state, local or tribal agency administering the project. LCA requests and reports for DOL review must be submitted through the LRS *except* that state agencies may submit requests and reports directly to DOL.

- 3-2 **Construction wage rate decisions – definition.** The term “wage decision” includes the original decision and any subsequent decisions modifying, superseding, correcting or otherwise changing the provisions of the original decision. (*Note:* The term “wage decision” shall be used within this chapter to mean the Davis-Bacon wage decision.)

A wage decision is a schedule of construction work classifications and wage rates that represent the *minimum* rates that must be paid to workers employed in those classifications. Wage decisions are established for defined geographic areas, usually by county or group of counties, and for four general characters of construction work. (See also, DOL publication *Davis-Bacon Construction Wage Determinations Manual of Operations* and *All Agency Memoranda Nos. 130 and 131*, and *Labor Relations Letter LR-96-03*.)

- 3-3 **Character of work.** The DOL establishes Davis-Bacon wage decisions for four broad categories (or characters) of construction work:

- A. **Residential.** Residential construction is defined as those projects involving the construction, alteration or repair of single family houses or apartment buildings of no more than four (4) stories in height. The definition includes all incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

 - B. **Building.** Building construction includes apartment buildings exceeding four (4) stories, and all other sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies, including incidental items such as grading, paving and utilities. Examples include high-rise apartment buildings, nursing homes and convalescent facilities, community centers, fire stations, commercial buildings, and dormitories.
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- C. **Highway.** Highway construction includes the initial construction, alteration or repair of roads, streets, highways, alleys, parking areas, sidewalks and other similar projects not incidental* to residential, building or heavy construction.

* For example, the repair of streets and parking areas in a residential area that is performed independent of any other construction work is subject to highway wage rates. However, streets, parking areas and sidewalks installed during the new construction of residential apartments would be considered *incidental* to the residential construction work and would be performed pursuant to the residential wage decision applicable to the project.

- D. **Heavy.** Heavy construction projects are those that are not properly classified as “residential”, “building”, or “highway”. Some examples include antenna towers, canals, drainage and irrigation projects, sanitary and storm sewers, water mains and supply lines (not incidental to other construction), and storage tanks.

3-4 **Types of wage decisions.** In addition to four (4) characters of construction work, wage decisions are issued in two ways: General wage decisions and project wage decisions.

- A. **General wage decisions.** Most Davis-Bacon wage decisions are “General Wage Decisions”, also referred to as “area decisions”. General wage decisions are usually published annually by DOL and may be modified or superseded throughout the year. Updates to wage decisions are typically published on Fridays. The official web site for publications of general wage decisions, modifications and supersedeas wage decisions is: www.wdol.gov (*Wage Determinations On-line*). HUD Labor Relations staff and LCAs may utilize general wage decisions without advance notice or approval from DOL. Most Davis-Bacon wage decisions are available as published general wage decisions.
- B. **Project wage decisions.** If an appropriate wage decision (by location, character of work, and/or specific trade required) is *not* published in the general wage decisions, a “project” wage decision shall be ordered from DOL. Project wage decisions are applicable *only* to the construction work specified on the request to DOL and listed on the front page of the wage decision. Project wage decisions are valid for 180 days from the date of original issuance by DOL. The issuance and expiration dates will be indicated on the front page of the wage decision. Like general wage decisions, project wage decisions may be modified.

Note: A project wage decision may be applicable even though a general wage determination is published which covers the geographic location and character of work involved. For example: A project involves only roof replacement on a 4-story apartment building and the only classification needed for the work is

a Roofer. A general wage decision is published for residential construction in the county where the project is located; however, the general wage decision does not include a Roofer classification and wage rate. In this case, the general wage decision is not relevant to the roof replacement and a project wage decision must be ordered from DOL.

3-5 **Obtaining wage decisions.** General wage decisions and modifications are available to LRSs and LCAs through www.wdol.gov. This is the *only* on-line location endorsed by DOL. Project wage decisions must be ordered on a case-by-case basis from DOL (see paragraph B, below).

- A. **General wage decisions** are available on-line at www.wdol.gov. Note that this web site carries current wage decisions/modifications and an archive of previous general wage decisions/modifications beginning February 2000.
- B. **As project wage decisions are needed,** the LRS shall submit a completed SF-308, *Request for Determination and Response to Request*, to DOL National Office, allowing approximately 30 days for receipt of the project wage decision from DOL.

3-6 **Selecting the correct wage decision.** Wage decisions are selected and assigned to specific contracts or projects by the responsible contract officer. For HUD-administered projects (e.g., FHA-insured multifamily development), the responsible contract officer is the LRS. In addition, the LRS provides technical support and oversight to LCAs administering HUD programs in selecting and assigning the appropriate wage decision. In general, the appropriate wage decision is the *one* wage decision that is applicable to the geographic location and overall character of work to be performed. (See also *Labor Relations Letter LR-96-03, Application of Department of Labor guidance concerning "projects of a similar character"*.)

- A. **Geographic location.** Wage decisions are issued by county or groups of counties. The appropriate geographic location is generally the county in which the project/construction work will be physically located.
- B. **Character of work.** The overall character of work is determined based upon the principal purpose(s) of the project and the end result of the construction activity. DOL guidance (All Agency Memo 130) states that a "project" is classified as belonging in *one* of the four categories of construction and that a "project" consists of *all construction necessary to complete a facility*. The four categories of construction are discussed in section 3-3 of this guide. "Overall character" considers the principal purposes of the construction in conjunction with any incidental items to identify the *one* category of construction that corresponds best to the project. In certain cases, a single project may contain separate and distinguishable components that fall into different categories of construction and are not incidental.

1. **Incidental** items are elements of a project whose function is to support the principal purposes and do not change the overall character of work. Examples of incidental items include parking areas and sidewalks installed to support residential or building projects. While parking areas and sidewalks, in and of themselves, constitute “highway” construction, these elements installed in conjunction with a residential or building project are considered to be incidental to the principal purpose of the construction and are subject to the same wage decision that applies to the principal purpose.
2. **Substantial** is defined by DOL in terms of relative cost: more than 20% of the total project cost, and/or in terms of absolute cost: \$1 million or more. A project that contains substantial components that fall into different categories of construction may require that separate wage decisions be assigned to substantial components. (See paragraph 3-6(E), below.)
3. **End result** refers to the outcome of the construction activity that determines the character of work. This generally is a factor only in rehabilitation projects. For example, if an existing 4-story office building is being rehabilitated and the end result will be an apartment building, the character of work is *residential*. Conversely, if a single-family home is being renovated and the end result is a community center, the character of work is *building*.

- C. **Considerations for residential construction.** Residential construction is defined as projects involving the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

The primary component, which determines the character of work, is the housing. Elements such as site work, parking areas, etc., are incidental items and are included within the definition of residential construction. Generally, any housing development (four stories or less) is classified as “residential.” This classification is not altered by the cost of incidental items, even if such costs reach the threshold guides (above) for “substantial.” Except in the most extraordinary circumstances, such as where local industry practice clearly demonstrates otherwise, only residential wage decisions shall be assigned for housing development projects of four stories or less. The Regional Labor Relations Office (RLRO) shall consult with HQLR in advance where the use of multiple wage decisions is contemplated for a housing development project. (See also *Labor Relations Letter LR-96-03*.)

1. **First story (floor).**
 - a. A lowermost story is considered a first story (floor) if it is:

- (1) Primarily above exterior grade on one or more sides; and,
 - (2) Contains at least 50% living accommodations or related nonresidential uses (e.g., laundry space, recreation/hobby rooms, commercial use, and/or corridor space).
- b. A lowermost story is considered a first story (floor) without regard to a percentage test if it is primarily above ground on two or more sides.
 - c. A lowermost story is considered a first story (floor) if it contains the main entrance to the building.
 - d. A lowermost story is considered a first story (floor) without regard to exterior grade if it is used for apartment space in a way substantially similar to the upper floors.
2. **Basement.** Stories below grade used for storage, parking mechanical systems/equipment, etc., are considered basement stories which are not used in determining the building's height.
 3. **Attic.** An attic is an unfinished space located immediately below the roof. Such space is not used in determining a building's height even if used for storage purposes.
 4. **Half-story.** A half-story over the building's fourth story would preclude a residential classification. A half-story is a story finished as living accommodations located wholly or partially within the roof frame with floor space at least half as large as the story below. (Space with less than five (5) feet clear headroom shall not be considered as floor area.)
 5. **Top story.** The top story, not finished for living accommodations, between the uppermost floor and the ceiling or the roof above, with floor space as large as the story below, is considered a story for purposes of determining a building's height.
 6. **Housing unit requirements.** Each housing unit must be fully and independently functional; each housing unit must have its own kitchen and bathroom. A building wage decision is applicable if the project design fails to meet these criteria. For example, certain assisted living facilities may not meet these criteria.

Note: Single room occupancy (SRO) projects are *exempt* from these criteria. SRO projects are not required to have a kitchen and bath in each housing unit. (*Dutch Hotel (SRO) Kitchen, WAB No. 90-29, March 22, 1991.*)

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- D. Mixed-use projects.** Some projects may contain elements of different construction characters that are separate in function and are not incidental to each other. For example, a 3-story building and a 5-story building in a multifamily project each has an independent purpose and function and is not incidental to the other. In such cases, it is appropriate to identify more than one character of work and to assign multiple wage decisions, i.e., a wage decision(s) covering each character of work involved.
- E. Multiple wage decisions.** “Multiple wage decisions” refers to the practice of assigning more than one Davis-Bacon wage decision for a single project. Multiple wage decisions may be required when the project contains separate and distinguishable components that fall into different categories of construction and the components are *not* incidental to each other (e.g., mixed-use projects) *and/or* are so substantial in cost or scope that separate wage decisions for the components are warranted.
- F. Davis-Bacon compliance on projects with multiple wage decisions.** The developer/prime contractor must ensure that all laborers and mechanics receive no less than the applicable wage rate based upon the classification of work performed and the wage decision assigned to the “character” of the construction work performed. Compliance may be established in the following manners:
1. **Pay the highest of all wage rates.** The developer/prime contractor may establish compliance by ensuring the payment of the highest wage rate on all applicable wage decisions for each work classification. *Or,*
 2. **Utilize wage rates on all wage decisions.** The developer/prime contractor may utilize the wage rates contained in all of the wage decisions assigned provided that the following conditions for multiple wage decisions are met:
 - a. The project/contract specifications must clearly delineate the portions of the project/contract subject to each wage decision assigned.
 - b. All assigned wage decisions must be posted at the job site with an explanation as to where each wage decision applies.
 - c. The developer/prime contractor must establish adequate controls to ensure that all laborers and mechanics are paid in accordance with the wage decisions assigned.
 - d. All employers (prime contractor, subcontractors, lower-tier subcontractors) must prepare and maintain accurate employee time and payroll records to demonstrate compliance with all wage decisions assigned to the project/contract.
 - e. Use of the wage rates contained in multiple wage decisions is contingent upon the agreement and compliance with these conditions.
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- 3-7 **Modifications.** General wage decisions and project wage decisions may be modified from time to time to keep them current, correct errors and for other purposes. Modifications may be limited to one or more particular work classifications and wage rates. Modifications are effective to a project if received by the agency (HUD) or if notice of the modification is published (at www.wdol.gov) prior to the lock-in date. Modifications expire on the date of expiration for the wage decision to which the modification applies. For example, a modification to a project wage decision will expire on the same date as the original project wage decision. A modification to a general wage determination will remain in effect until superseded by a subsequent modification, or the original general wage decision is superseded or cancelled.
- 3-8 **Supersedeas wage decisions.** A supersedeas wage decision completely replaces the original wage decision. The most common supersedeas wage decisions are those published annually to replace the prior year's general wage decisions and frequently involve no changes to the work classifications or wage rates. However, supersedeas wage decisions may involve changes in a large number of job classifications and/or wage rates. Supersedeas wage decisions are effective to projects in the same manner as modifications.
- 3-9 **Letters of inadvertence.** Letters of inadvertence are issued by DOL to correct errors in the written text of a wage decision such as clerical errors made in processing the schedule of wage rates. The corrections issued in a letter of inadvertence shall be included in any bid documents, contract specifications, and/or in any on-going contract retroactively to the start of construction.
- 3-10 **Use and effectiveness of wage decisions.** General and project wage decisions, whichever are applicable, become effective or "lock-in" for a particular contract or project at a specific point, in most cases, not later than the date construction starts. Once a wage decision is "locked-in" for a specific contract or project, subsequent modifications or supersedeas wage decisions are not effective for that contract/project. However, prior to the "lock-in" date, modifications and supersedeas wage decisions shall be considered for effectiveness. Project wage decisions shall be monitored to ensure that the "lock-in" date occurs before the project wage decision expires. The "lock-in" date is also referred to as the "effective date". (See also DOL Regulations, *29 CFR Part 1, §1.6.*)

General and project wage decisions shall be effective (locked-in) on the date the contract is awarded, or the date construction starts, whichever may occur first, except as follows:

- A. **Contracts entered into pursuant to competitive bidding.** General wage decisions shall be locked-in on the date bids are opened *provided* that the contract is awarded within 90 days after bid opening. If the contract is awarded more than 90 days after bid opening, a general wage decision must be updated as of the date of award unless an extension is obtained (see

paragraph D, below). A project wage decision shall be locked-in at contract award. Modifications to a general or project wage decision published at www.wdol.gov or received by HUD prior to the lock-in date shall be effective with respect to the contract/project.

Exception for competitive bid procedures ONLY: A modification to a general or project wage decision published/received less than 10 days before bid opening may be disregarded if it is found that there is not a reasonable amount of time to notify prospective bidders of the modification before bid opening. A record of such finding must be made to the contract/project file.

- B. Projects assisted under the National Housing Act (e.g., FHA-insured).** A general wage decision shall be locked-in on the date the mortgage is initially endorsed *provided* that construction starts within 90 days after initial endorsement. If construction starts more than 90 days after initial endorsement, the general wage decision must be updated as of the construction start date unless an extension is obtained (see paragraphs D and F, below). A project wage decision shall be locked-in at initial endorsement or start of construction, whichever occurs first. Modifications published/received prior to the lock-in date shall be effective with respect to that project.
- C. Projects to receive Section 8 rental payments assistance under the U.S. Housing Act of 1937.** A general wage decision shall be locked-in on the date of the agreement to enter into a housing assistance payments contract (AHAP) or project rental assistance agreement (APRAC) or analogous instrument is executed *provided* that construction starts within 90 days after such execution. If construction starts more than 90 days after execution of the AHAP/APRAC, the general wage decision must be updated as of the construction start date unless an extension is obtained (see paragraph D, below). A project wage decision shall be “locked-in” on the date the AHAP or APRAC, or analogous instrument is executed or the start of construction, whichever occurs first. Modifications published/received prior to the lock-in date shall be effective with respect to that project.
- D. Request for extension for general wage decisions.** In those cases where the 90-day time limitation for contract award (paragraph 3-10(A)) or construction start (paragraphs 3-10(B) or (C)) has been exceeded, HUD may request an extension to the effective date of the prior wage decision from DOL. The request must be supported by a statement of the factual circumstances and a finding that the extension is necessary and proper in the public interest to prevent injustice or undue hardship. Such requests shall be prepared by the LRS and submitted through the RLRO to HQLR. HQLR shall consider the request and, if warranted, shall transmit the request to DOL for the consideration of the Wage and Hour Administrator. (See also DOL Regulations 29 CFR Part 1, §1.6(c)(3)(iv).)

- E. **Special instructions concerning expiration of project wage decisions.** A project wage decision is void if it is not locked-in before the expiration date. HUD may request an extension when it appears that a project wage decision may expire after the bid opening date but before contract award. The LRS shall follow the instructions at 3-10(D), above, in submitting such a request. (See also DOL Regulations *29 CFR Part 1, §1.6(a)(1).*)
- F. **Special instructions concerning FHA-insured, Section 202 and Section 811 projects.** When a modification or supersedeas decision is published or received by HUD before initial endorsement or initial closing but *after* the issuance of the firm commitment by HUD *and* less than 90-days has transpired between firm commitment and the prospective initial endorsement/closing date, HUD may request a variance in the application of DOL regulations at 29 CFR Part 1, §1.6 such that the project may proceed with the wage decision as it was published on the date of firm commitment issuance. The LRS shall follow the instructions at 3-10(D), above, in submitting a request for variance. (See also DOL Regulations *29 CFR Part 5, §5.14.*)

- 3-11 **Retroactive wage decisions.** If HUD funding or assistance under a statute requiring the payment of Davis-Bacon wage rates is approved *after* contract award (or start of construction where there is no contract award), the LRS/LCA shall identify and obtain the Davis-Bacon wage decision in effect as of the contract award/construction start date. The applicable wage decision shall be incorporated into the contract specifications *retroactively* to the start of construction. (See also DOL Regulations *29 CFR Part 1, §1.6(g).*)

Exception. The DOL Wage and Hour Administrator may issue a wage decision to be effective on the date of approval of HUD funding or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent an injustice or undue hardship. *And*, provided further that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or start of construction, as appropriate. Such requests shall be prepared and submitted in the same manner, including appropriate supporting statements of fact and reasoning, as described at 3-10(D), above.

- 3-12 **Incorporation of wage decision and labor standards provisions in bid specifications and contracts.** The applicable Davis-Bacon wage decision, including modifications, and the applicable Federal labor standards provisions must be made a part of the bid documents (if any) and/or contract specifications for any construction work subject to Davis-Bacon prevailing wage requirements. (See also DOL Regulations, *29 CFR Part 5, §5.5(a).*)

- A. **Incorporation in contracts and subcontracts.** Every ensuing construction contract, subcontract and any lower-tier subcontracts must include the

applicable Davis-Bacon wage decision and its modifications, and the Federal labor standards provisions. The prime contractor is responsible for ensuring the incorporation of the wage decision and labor standards provisions in all subcontracts.

- B. Contract labor standards provisions.** HUD has four forms containing Davis-Bacon labor standards provisions applicable to various HUD programs. These are applicable as follows:
1. **HUD-2554, Supplementary Conditions of the Contract for Construction** - HUD-administered projects including FHA-insured multifamily development, Section 202/811 and Section 8 projects.
 2. **HUD-4010, Federal Labor Standards Provisions** – CPD programs including CDBG, Section 108, EDI/BEDI, and HOME
 3. **HUD-5370, General Conditions of the Contract for Construction** - Public Housing programs (may also be used for Indian housing programs)
 4. **HUD-5370-EZ, General Conditions for Small Construction/Development Contracts** - Public Housing programs (may also be used for Indian housing programs)

These forms are available at HUDClips and multiple copies are available through the HUD Customer Service Center.

- C. Acceptable methods of incorporation.** The applicable wage decision and Federal labor standards provisions may be incorporated into bid specifications and contracts by one or more the following methods. (See also *Labor Relations Letter LR-2006-02.*)
1. **Incorporation by “hard-copy”.** The applicable HUD form and wage decision may be physically bound/attached to the contract (and bid specifications, if applicable) as issued by HUD (HUD forms) or DOL (Davis-Bacon wage decisions).
 2. **Incorporation into other documents.** The clauses/text of the applicable HUD form and wage decision may be incorporated into other documents (e.g., into a program participant’s own forms) that are bound/attached to the contract (and bid documents, if applicable) or incorporated by reference (see paragraph 3, below). The program participant is responsible for the accuracy of the content. In all cases, the requirements imposed by the applicable HUD form and wage decision remain in force.

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3. **Incorporation by reference.** The applicable HUD form and wage decision, or other documents containing the HUD form clauses/wage decision, may be incorporated into the contract and any bid specifications by reference. The reference must be specific as to the exact form or clauses that are incorporated, and where the form or clauses may be accessed or obtained (e.g., HUDClips, agency web site). Davis-Bacon wage decisions may be incorporated by reference to www.wdol.gov and to the specific number, modification number, and date of the applicable wage decision. Hard-copies of any referenced form, clauses, and/or Davis-Bacon wage decision must be provided upon request.
- 3-13 **Use of the wrong wage decision/failure to include a wage decision.** The use of the wrong wage decision and/or labor standards provisions in the bid documents/contract specifications, or the failure to include the required wage decision and appropriate labor standards provisions does not relieve the prime contractor from potential liabilities for compliance and enforcement actions related to meeting the obligations of the proper wage decision and labor standards. Any such error must be promptly rectified. (See also DOL Regulations *29 CFR Part 1, 1.6(f).*)
- A. **Correcting the wage decision.** If the wrong wage decision or no wage decision was included in the contract specifications, the contract shall either be terminated and resolicited with the correct wage decision, or the correct wage decision shall be incorporated into the existing contract through supplemental agreement or change order, and the contractor shall be compensated for any increases in wages resulting from such change. The LRS or LCA shall issue the correct wage decision applicable to the contract/project based upon the appropriate “lock-in” date. A corrective wage decision incorporated into an existing contract shall be effective retroactively to the start of construction.
- 3-14 **Project Wage Rate Sheet.** Some general wage decisions cover large areas (e.g., several counties or different characters of construction) and may contain wage rates that do not apply to the contract/project to which the wage decision applies. Such wage decisions can be difficult to decipher and confusing to contractors and subcontractors, and to the laborers and mechanics who would review the wage decision to determine whether they are being paid correctly. For ease of reference for the LRS/ LCA, the prime contractor and any subcontractors, and the laborers and mechanics, the LRS/LCA shall prepare a *Project Wage Rate Sheet* (form HUD-4720) which shall reflect the most commonly used work classifications and wage rates as they are contained in the wage decision applicable to the project. The Project Wage Rate Sheet shall be provided to the prime contractor who shall be informed that the Project Wage Rate Sheet does not in any way replace the wage decision, but is provided as a convenience. In the event of any conflict between the Project Wage Rate Sheet and the wage decision, the wage decision shall prevail.
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- 3-15 **Posting of the wage decision.** A copy of the applicable wage decision and any additional classifications shall be posted by the prime contractor at the site of work in a prominent place accessible to the workers, and protected from “wear and tear” (e.g., wind, rain, vandalism, etc.). A copy of the poster, WH-1321, *Employee Rights under the Davis-Bacon Act*, with the name, address, and telephone number of the LRS/LCA or other responsible contract officer shall also be posted at the job site with the applicable wage decision. A Project Wage Rate Sheet may be posted at the job site with the poster and wage decision so that the construction workers may more readily determine the wage rate(s) to which they are entitled.
- 3-16 **Review for missing work classifications and wage rates.** The LRS/LCA shall review the applicable wage decision to determine whether all work classifications required for the construction work are contained in the classifications and wage rates listed within the applicable wage decision. The prime contractor is also responsible for identifying whether any classifications that are required for the project are included in the wage decision. The LRS/LCA shall notify the prime contractor of any missing work classifications; likewise, the prime contractor shall inform the LRS/LCA of any missing work classifications it may detect during its review. The LRS/LCA shall provide instructions and assistance to the prime contractor concerning requests for additional classifications and wage rates.
- 3-17 **Additional work classifications and wage rates.** Whenever it is found that a work classification required for the contract/project is lacking from the wage decision, the responsible employer(s) (e.g., the prime contractor and/or subcontractors that will employ workers in such classification) shall request an additional work classification and propose a wage rate for such classification. The request shall be made through the LCA/LRS. In every case, the LRS must submit the request to DOL for a final decision. The LRS/LCA shall assist the employer in the preparation of the request, if necessary, and provide guidance as to the policies and procedures involved

Note: Additional work classifications and wage rates may be requested *only* after the wage decision effective (“lock-in”) date. (See DOL Regulations *29 CFR Part 5, §5.5(a)(1)(ii).*)

- A. Additional work classification and wage rate parameters.** Additional work classifications and wage rates may be approved by the LRS where:
1. The requested work classification is used in the area of the project by the construction industry;
 2. The work that will be performed by the requested work classification is not performed by a work classification that is already contained within the applicable wage decision;
 3. The proposed wage rate for the requested work classification bears a reasonable relationship to the wage rates on the wage decision; and

4. The workers that will be employed in the requested work classification (if it is known who the workers are/will be), or the workers' representatives, agree with the proposed wage rate.

General guide. As a general guide, the wage rate proposed for a trade classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision. "Trade classifications" are generally all work classifications, excluding Laborers, Truck Drivers, and Power Equipment Operators. Additional classifications proposed for Power Equipment Operators must specify the type(s) of power equipment involved and the proposed wage rate(s) must be at least as much as the lowest wage rate for any Power Equipment Operator that appears on the wage decision.

- B. **Making the request.** Although a request for additional work classification and wage rate may be prompted following an LRS/LCA review, the proposal must originate with the prime contractor/employer that will utilize the work classification. The prime contractor/employer must submit the request in writing. A basic request must identify the contract/project involved, the work classification requested and the wage rate, including any bona-fide fringe benefits, proposed. In some cases, it may be necessary for the prime contractor/employer to describe the work that the requested work classification would perform. The prime contractor/employer may use HUD Form 4230-A, *Report of Additional Classification and Rate*, to submit the request.
 - C. **LRS/LCA review of request.** The LRS/LCA shall review the prime contractor's/employer's request to determine whether the request satisfies the approval criteria at 3-17(A). The LRS/LCA shall contact the prime contractor/employer if clarification or additional information is needed to complete the review.
 1. **Requests based upon collective bargaining agreements.** Some employers may submit additional work classification requests based upon work classifications and wage rates contained in collective bargaining (union) agreements. The LRS/LCA shall consider whether the agreement is applicable to the contract/project in terms of the agreement's geographic area, the type of work both in terms of applicability to construction and to the character of work involved (e.g., residential, building, heavy or highway), and whether the agreement is/was in effect at the time the wage decision became effective.
 2. **Approving the request, reporting to DOL.** If the LRS/LCA review finds that the requested work classifications and wage rates meet the
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criteria at 3-17(A), the LRS/LCA shall prepare a *Report of Additional Classification and Rate* (HUD Form 4230-A). The LRS shall submit the report along with a copy of the applicable wage decision to the DOL National Office for final decision.

3. **Disapproving the request, referring for DOL decision.** If the LRS/LCA review finds that the requested work classification and wage rate fails to meet the criteria (3-17(A)), or if the parties do not agree on the proper classification or wage rate for the work described, the LRS/LCA shall prepare a HUD 4230-A and a written report explaining the results of the review and any issues in dispute among the parties, and shall forward these along with a copy of the applicable wage decision to the DOL national office for its decision.
4. **Notification to the prime contractor/employer.** The LRS/LCA shall notify the prime contractor/employer in writing of the results of the HUD review and of the pending DOL action.
5. **DOL decision.** DOL regulations permit 30 days for DOL to respond to the HUD Report of Additional Classification and Rate, or to notify HUD that additional time may be needed. DOL will notify HUD in writing of its decision.
6. **DOL approval.** When DOL approves the requested additional work classification and wage rate, the LRS/LCA shall provide a copy of the approved HUD 4230-A and the DOL notice of approval to the prime contractor/employer with instructions that the additional work classification and wage rate must be posted on the job site with the wage decision.
7. **DOL disapproval.** When DOL disapproves the requested work classification and wage rate, DOL will notify HUD in writing of the reasons why the request cannot be approved. DOL may also indicate what work classifications/wage rates that could be approved for the work involved if a modified request is submitted. The LRS/LCA shall notify the prime contractor/employer of the DOL decision and shall provide a copy of the DOL notice to the prime contractor/employer.
8. **Requests for DOL reconsideration.** HUD, the LCA, the prime contractor/employer, or other interested parties may request reconsideration of the DOL decision on a requested work classification and wage rate.
 - a. Such requests must be made in writing accompanied by a full statement of the interested party's views and any supporting wage data or other pertinent information.

- b.** Requests for reconsideration initiated by or made through HUD, must be submitted to DOL through the respective RLRO and HQLR.

3-18 **Reconsideration on wage decisions.** HUD, the prime contractor/employer, or other interested parties may request reconsideration on any wage decision issued by DOL. Such requests are highly extraordinary and shall not be initiated by the LRS or RLRO without advance consultation with HQLR. (See DOL Regulations, *29 CFR, Part 1, §1.8.*)

- A.** **Content of requests.** Such requests must be made in writing accompanied by a full statement of the interested party's views and any supporting wage data or other pertinent information.
- B.** **Submission requirements.** Requests for reconsideration initiated by or made through HUD, must be submitted to DOL through the respective RLRO and HQLR.

Related Appendices

II-4 DOL Regulations 29 CFR Parts 1 and 5