

improve opportunities for stakeholder participation; to improve outreach before surveys; and to improve the quality of the wage determinations that result.

Below are what WHD anticipates will be frequently asked questions about our revised conformance practice, which better reflects our regulatory requirements and was implemented to support improvements in the wage determination process overall. The attached All Agency Memorandum describes the process in detail. Please refer to this memorandum for an explanation of the requirements, and for examples of different scenarios associated with conformance requests. WHD is available to provide further assistance if agencies request additional support under this revised process.

Frequently Asked Questions

Davis-Bacon and Related Acts (DBRA) Conformance Process and Reasonable Relationship Requirement

1. What is a conformance and why is it necessary?

A conformance is the addition of a classification of laborers or mechanics and the corresponding wage rate (hourly rate and fringe benefits) not listed on a DBRA wage determination that is incorporated into a DBRA covered contract. A conformance under the governing regulations at 29 C.F.R., section

mechanics are compensated in accordance with the DBRA. Conformances are not appropriate when the work of the proposed classification is already performed by a classification on the wage determination. Rather, the conformance process has the limited purpose of establishing a new classification when it is necessary to do so because work needed to perform the contract is not performed by an existing classification.

2. Where can the SF-1444 form and prevailing wage decisions be found and where is a conformance request submitted?

The SF-1444 Request for Additional Classification and prevailing wage determinations may be found online at www.wdol.gov. A conformance request must be submitted to the following Department of Labor (DOL) public email box: WHD

contractor (performing the covered work) and is reviewed by the contracting agency before that agency submits it to DOL.

4. What are the criteria that determine the contracting agency approval and submission of a conformance to DOL?

The governing regulations require that the following three criteria be 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.

5. What is being implemented regarding _____ ?

In the past, the Wage and Hour Division (WHD) has generally approved proposed wage rates for a conformed skilled craft, laborer, power equipment operator, and truck driver classification when such rates are not less than the rate for the lowest classification in the respective category on the contract wage determination. In keeping with the remedial purpose of the DBRA and the governing regulations, the wage rate of the lowest skilled craft, laborer, power equipment operator, or truck driver classification on the contract wage determination has no longer been an automatic benchmark when reviewing conformance requests. **When the work is performed by a classification on the wage determination**, the conformance request is **not** required and employees must be paid at the wage rate for the craft performing the work.

6.

WHD has concluded that it better reflects the regulatory requirement proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination to consider the entirety of the rates within the relevant category (skilled classification, laborer, power equipment operator, or truck driver) on the wage determination and to not generally use as a benchmark the lowest rate within that category. The regulation at 29 C.F.R. § 5.5(a)(1)(ii)(A)(3) requires that the proposed wage rate bear a reasonable relationship to the _____ on the wage determination and not to a particular rate or the lowest rate.

A proposed skilled craft classification is compared to skilled classifications in the wage determination; a proposed laborer classification is compared to existing laborer classifications; a proposed power equipment operator classification is compared to existing power equipment operator classifications; and a proposed truck driver classification is compared to existing truck driver classifications.

When considering a conformance request for a skilled classification, WHD generally considers the entirety of the rates for the skilled classifications on the applicable wage determination and looks to where the proposed wage rate falls

within the rates listed on the wage determination. Occasionally, however, a wage determination may contain some wage rates for laborer classifications that are higher than some wage rates for the skilled classifications or power equipment

weighted average wage rates). On such occasions, the contracting officer should look to those skilled If, are lower than the laborer

Additionally, whether the wage rates in the applicable category (skilled craft, laborer, power equipment operator, truck driver) in the wage determination are predominantly union prevailing wage rates or predominantly weighted average prevailing wage rates should be considered when proposing rates for an additional classification. For example, if a wage determination contains predominantly union prevailing wage rates for skilled classifications, it typically would be appropriate to look to the union sector skilled classifications in the wage determination and the rates for those classifications when proposing a wage rate for the additional classification. Conversely, if a wage determination contains predominantly weighted average prevailing wage rates for skilled classifications, it typically would be appropriate to look to the non-union sector skilled classifications in the wage determination and the rates for those classifications when proposing a wage rate for the additional classification. If the wage rates in the applicable category are roughly half union prevailing rates and half weighted average prevailing rates, it would typically be appropriate to look to the lowest union rate and the highest non-union rate (assuming the union rates are higher than the non-union rates) when proposing a wage rate.

7. What is the process for determining whether a proposed wage rate

The process of determining whether a proposed conformed wage rate bears a reasonable relationship to the wage rates in the wage determination is illustrated in the examples set forth below.

8. How is a c

determine if

Ironworker (Ornamental, Reinforcing, And Structural)	union	\$31.35	\$20.10	\$51.45
Drywall Finisher/Taper	union	\$22.78	\$8.88	\$31.66
Glazier	union	\$17.46	\$7.12	\$24.58
Floor Layer: Carpet and Vinyl	union	\$15.50	\$4.22	\$19.72
Plasterer	union	\$25.43	\$11.97	\$37.40
Plumber	union	\$34.86	\$16.19	\$51.05
Roofer (Including Tearoff)	union	\$23.10	\$9.95	\$33.05
Sheet Metal Worker	union	\$27.51	\$16.90	\$44.41

Any of the following rates or a wage rate within the range of these rates would determination²:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Wage Rate
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Determine if the wage determination is predominantly union
The first three classifications are union. The last three classifications are

The proposed total wage rate was not approved at \$20.82 for the Carpenter classification because the total requested wage rate (\$20.82) was considered to not bear a reasonable relationship to the relevant wage rates in the wage

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or a wage rate within the range of these rates would be approved:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Wage Rate
Telecommunications Technician	union	\$29.75	\$19.03	\$48.78
Plasterer	union	\$34.03	\$14.67	\$48.70
Cement Mason/Concrete Finisher	union	\$37.90	\$20.38	\$58.28
Electrician	su	\$24.75	\$10.00	\$34.75

Power Equipment Operator Example I

Excavator	su	\$15.39	\$0.00	\$15.39
Front End Loader	su	\$15.86	\$3.59	\$19.45

Determine if the wage determination is predominantly union

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General				
Demolition	su	\$15.20	\$0.00	\$15.20
Landscape & Irrigation	su	\$17.64	\$0.25	\$17.89
Mason Tender - Cement/Concrete	su	\$14.13	\$3.21	\$17.34
Power Tool Operator	su	\$14.42	\$4.35	\$18.77
Tile Finisher	su	\$14.02	\$0.00	\$14.02

Determine if the laborers on the wage determination are predominantly union majority wage rates or There is an equal mix of union and laborer classifications which do not cover the work to be performed by the classification being requested. The proposed wage rate was approved because the rate requested (\$18.15) was considered reasonable when compared to all laborer wage rate on the wage determination and because it was higher than the common or general laborer rate. The common or general laborer rate is typically the lowest approvable rate for laborer classifications.

Truck Driver Example

A truck driver classification , proposed hourly rate of \$15.94 plus \$4.16 in fringe benefits and was approved.

The following truck driver classifications are on the wage determination:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Rate
2 or 3 Axle Dump or Flatrack	su	\$16.27	\$3.30	\$19.57
5 Axle Dump or Flatrack	su	\$13.97	\$2.89	\$16.86
6 Axle Dump or Flatrack (<16 cu yd)	su	\$17.79	\$6.42	\$24.21
Belly Dump	su	\$14.67	\$0.00	\$14.67
Oil Tanker Bootman	su	\$22.03	\$0.00	\$22.03
Self-Propelled Street Sweeper	su	\$13.11	\$5.48	\$18.59
Water Truck: 2500 < 3900 gallons	su	\$18.14	\$4.55	\$22.69

Water Truck: 3900 gallons and over	su	\$15.92	\$3.33	\$19.25
Water Truck: under 2500 gallons	su	\$15.94	\$4.16	\$20.10

First determine if the truck drivers on the wage determination are predominantly union majority wage rates or All truck driver classifications in this case are
The proposed wage rate of \$20.10 was approved because it was considered reasonable in accordance with the governing regulations.

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Classification Sector

