

*sent 6/1/83*

**DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

DATE: JUN 6 1983

WASHINGTON, D.C. 20591

IN REPLY  
REFER TO: APP-510

SUBJECT: Program Guidance Letter No. 11



FROM: Manager, Grants-in-Aid Division, APP-500

TO: All Regions and AAC-960  
Attn: Manager, Airports Division

11.1 Changes in Department of Labor Regulations - Ben Castellano  
(426-3857).

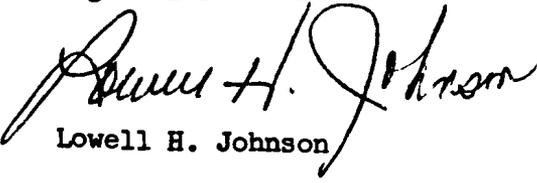
On August 4, 1981, Department of Labor (DOL) published a proposal in the Federal Register to make revisions to 29 CFR Part 1, Procedure for Predetermination of Wage Rates under the Davis Bacon and Related Acts, and 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction. On May 28, 1982, these regulations were published as a final rule with a scheduled effective date of July 27, 1982. However, on July 22, the U.S. District Court for the District of Columbia issued a preliminary injunction enjoining implementation of certain provisions of the regulations.

On April 29, 1983, DOL issued as a final rule changes which were excluded by the Court and which are effective June 28, 1983. The major changes are recapped below. Additionally, the clauses to be included in the contracts in 29 CFR Part 5.5(a) have changed compared to the previous version.

- a. The current 30 percent rule is eliminated. In the event that less than 50 percent of the workers receive a single wage rate, the prevailing wage shall be the weighted average of all wage rates paid to workers in the classification. (29 CFR 1.2(a)(1).)
- b. The expiration date of project wage determinations is extended from 120 days to 180 calendar days from the date of such determination. (29 CFR Part 1.6(a)(1).)
- c. Modifications of both project and general wage determinations received by the agency less than 10 days before the opening of bids will be effective unless the agency finds that there is not reasonable time before bid opening to notify bidders. (29 CFR Part 1.6(c)(2)(1)(A) and 1.6(c)(3)(1)).
- d. If a project under a general wage determination has not been awarded 90 days after bid opening, any modification to the wage determination prior to the award of the contract shall be effective unless the agency requests and obtains an extension of the 90-day period. (29 CFR Part 1.6(c)(3)(iv).)

- e. Wage determinations and wage rate schedules may be corrected after contract award. (29 CFR Part 1.6(e), (f), and (g)).
- f. The definition of "site of the work" has been changed and excludes facilities, including batch plant, whose continuance in operation is determined without regard to a particular Federally assisted project. (29 FR Part 5.2(1)).
- g. DOL has allowed withholding on all Federal or Federally assisted contracts held by the same contractor. If the funds remaining on a contract under which DBRA or CWHSSA violations are alleged to have occurred are insufficient to cover the amount of back wages due, the contracting agency can withhold or cause to be withheld such additional funds as may be necessary from any other Federal or Federally assisted contract subject to the DBRA or CWHSSA prevailing wage requirements which is held by the same prime contractor. (29 CFR Part 5.5(a)(2)).
- h. Unless otherwise specified in the apprenticeship or training program, such employees must be paid the full amount of fringe benefits for the corresponding journeyman classification as listed on the wage determination unless DOL determines that a different practice prevails. This section also allows contractors to follow the ratios and wage rates (percentages) for approved apprentice and training programs in their "home" area rather than requiring contractors to observe the ratios and wage rates in the area where the construction project is performed. (29 CFR Part 5.5(a)(4)(i) and (ii).)
- i. Disputes arising out of the labor standards provisions of the contract are not subject to the general disputes clause of the contract, but rather to the procedures in 29 CFR Parts 5, 6, and 7. (29 CFR Part 5.5(a)(9).)
- j. Contractors are required to certify that they are not ineligible to be awarded a contract because of debarment under section 3(a) of the DBRA or 29 CFR Part 5.12(a)(1). Also, they are prohibited from awarding subcontracts to debarred firms. (29 CFR Part 5.5(a)(10).)

Since all regions receive copies of the Federal Register (Friday, April 29) and due to the length of the regulations, copies should be obtained from regional sources.

  
Lowell H. Johnson