922.406-1 Policy.

This section sets forth additional controls and criteria for the application of the Construction Wage Rate Requirements Statute (40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), formerly known as the Davis-Bacon Act) (Statute) in the Department of Energy's operational or maintenance activities. The policy included in this subpart applies to M&O contracts.

(c) *Categorical exemptions.* The two categories of work discussed in paragraphs (c)

(1) and (2) of this section would normally be covered by the Statute. However, in limited circumstances, these types of work will be classified as non-covered by the Statute. These exceptions are to be narrowly construed and used only when clearly applicable. Any decision on the two categorical exemptions from Statute coverage shall be made by the Head of the Contracting Activity, without power of delegation.

(1) Work for which continuity of operations is mission-essential (*i.e.,* when life, property, or DOE operating requirements are confronted with material risks).

(2) Emergency work to combat the effects of fire, flood, earthquake, military or terrorist attacks, technological emergencies, infectious disease/pandemic influenza threats, equipment failure, accident, or other casualties, and to restart the operational activity following the casualty. This exemption will generally apply only to work directly related to restarting the activity or work.

(d) *Particular exemptions.* Work items meeting one of the following criteria normally will be classified as non-covered by the Statute:

(1) *Individual work items estimated to cost $2,000 or less.* The total dollar amount of a contract is not the determining factor; rather, consider the cost of individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of $2,000, shall be artificially divided into portions less than $2,000 for the purpose of avoiding the application of the Statute.

(2) *General operational and maintenance activities.* Service-type work that is a part of general operational and maintenance activities, including cyclic, routine, and recurring programs, or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and or repair work.

(3) *Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment.* Note: If these activities are a logical part of the construction of a facility, or where there is more than incidental construction work, relative to the overall effort involved, they are Statute covered.

(4) *Experimental development of equipment, processes, or devices, including assembly, fitting, installation, testing, reworking, and disassembly.* This refers to equipment, processes, and devices that are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment may be such that the professional personnel who are responsible for the test or experiment and/or data to be derived therefrom must, by necessity, participate in the assembly and interconnections. The following types of experiments are not Statute covered:

(i) *Set-up of devices and processes associated with the experiment, within established facilities,*

usually require utility connections. Such set-ups are generally not covered by the Statute. (However, set-up requiring structural changes or modifications of basic utility services, as distinguished from connections thereto, is covered by the Statute.)

(ii) *Assembly of piping and equipment, including adaptation and modification within existing hot cell facilities.* Assembly of piping and equipment, including adaptation and modification thereof, within existing hot cell facilities to prove out conceptual designs of chemical processing units or remotely controlled machining equipment.

(iii) *Assembly of materials and equipment for thermonuclear experiments.* Assembly of materials and equipment for particular aspects of thermonuclear experiments to explore feasibility and to study other ramifications of the concept of high energy and to collect data thereon.

(iv) *Assembly, erection, modification, and disassembly of a loop set-up.* A loop facility differs from a loop set-up in that it is of a more permanent character. (Note that preparatory work for a loop set-up or facility requiring structural changes or modifications of basic utility services, as distinguished from connections thereto, is covered by the Statute. Similarly, material and equipment that are installed for a loop set-up that is a permanent part of the facility, or used for a succession of experimental programs are similarly covered by the Statute.)

(v) *Reactor component experiments involving the insertion of experimental components within reactor systems without the use of a loop assembly.* Such a facility may consist of a reactor vessel, pressurizing tank, coolant loops, pumps, heat exchangers, and other auxiliary equipment as needed. The facility also may include sufficient shielding to permit work on the reactor to proceed following a short period of power interruption. (Note: Although the erection and on-site assembly of such a reactor facility is covered by the Statute, the set-up of components whose characteristics are under study are excluded from Statute coverage.)

(5) *Decontamination.* Decontamination includes washing, scrubbing, and scraping to remove contamination; removal of contaminated soil or other material (except asbestos); and painting or other resurfacing, provided that such painting or resurfacing is an integral part of the decontamination activity. Except to the extent section 1804 of the Atomic Energy Act of 1954 (as amended by Title XI of the Energy Policy Act of 1992), 42 U.S.C. 2297g-3, applies to the work at issue. Section 1804 requires all laborers and mechanics performing decontamination or decommissioning of DOE uranium enrichment facilities are paid prevailing wages.

(6) *Burial of contaminated soil waste or contained liquid.* Note, however, that the initial preparatory work readying the burial ground for use (*e.g.,* any grading or excavating that is a part of initial site preparation, fencing, drilling wells for continued monitoring of contamination, construction of guard or other office space) is covered by the Statute. Work performed subsequent to burial that involves the placement of concrete or other like activity is also covered by the Statute.

(e) *Statute-covered experimental development work.* Notwithstanding the exceptions in paragraph (d)(4) of this section, the following experimental development work is Statute covered: building construction, structural changes, drilling, tunneling, excavation, back-filling, modifications to utility services, as distinguished from temporary connections thereto, and set-up of equipment to be used for continuous testing (*e.g.,* a machine to be continuously used for testing the tensile strength of structural members).

(f) *Different work categories may have differing Statute coverage.* For instance, a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are classifiable as not Statute covered, since it may be necessary to separate work

that should be classified as Statute covered. Therefore, the Contracting Officer shall establish and maintain controls for the careful scrutiny of proposed work assignments under such contracts.

(1) Contractors whose contracts do not contemplate the performance of work covered by the Statute with the contractor's employees are not authorized to perform such work within the scope of the Statute, unless the Contracting Officer, in compliance with FAR subpart 22.4, modifies the contract.

(2) Determinations of Statute applicability are the responsibility of the HCA on a case-by-case basis. However, the HCA may delegate to the Contracting Officer, if consistent with DOE's responsibilities as described in this subsection, the authority to prescribe, from time to time, classes of work as to which applicability or non-applicability of the Statute is clear.

(g) *Contracting Officer responsibilities.* The Contracting Officer shall comply with the procedures for requesting wage determinations set forth in FAR 22.404, as necessary.

(h) *Construction site contiguous to an established manufacturing facility.* As DOE-owned property sometimes encompasses several thousand acres of real estate, a number of separate facilities may be located in areas contiguous to each other on the same property. These facilities may be built over a period of years, and established manufacturing activities may be regularly carried on at one site at the same time that construction of another facility is underway at another site. On occasion, the regular manufacturing activities of the operating contractor at the first site may include the manufacture, assembly, and reconditioning of components and equipment that in other industries would normally be done in established commercial plants. While the manufacture of components and equipment in the manufacturing plant is not covered by the Statute, the installation of any such manufactured items on a construction job is covered by the Statute if the installation includes more than incidental construction work relative to the overall effort involved.

Parent topic: Subpart 922.4—Labor Standards for Contracts Involving Construction