PREVAILING WAGE TRUCKING GUIDELINES

This document serves only to provide guidance and direction to the California Department of Transportation's staff involved in executing applicable federal and state prevailing wage and apprenticeship requirements on "public works".

To determine if trucking is subject to prevailing wage requirements, the Department's transportation/hauling policy must be evaluated under the context of the following factors:

1. Contract requirements
2. Origin of the material being hauled
3. Ownership of the material at off haul
4. Final destination of the material
5. The site of work
6. Material value or lack of (refuse)

DEFINITIONS

Site of Work

Material or commercial suppliers' batch plants, borrow pits, etc., may be considered part of the "site of work" and, therefore, require the payment of prevailing wages. If the material site is on, adjacent to or virtually adjacent to the site of the public works project and it is dedicated exclusively or nearly exclusively to the project, then the work is covered. 29 CFR 5.2(1)(2)

A site is considered dedicated to the project if no commercial sales are made or such sales don't exceed "nominal." Nominal has not been specifically defined in federal or state guidance. Lacking a clearer definition by an appropriate adjudicating body, each case must be decided separately based on its circumstances. (Construction policy)

A material supplier's plant, pit, etc. is not included in the "site of work" and prevailing wages are not required if it is established under both of the following conditions:

Federal:	State:
• Before the opening of bids, **and** • Not on, adjacent to, or virtually adjacent to the project site, regardless of whether its operations are dedicated exclusively to the public works project for a period of time. (29CFR5.2 (1)(3))	• Before the opening of bids, **and** • If the operations are not dedicated exclusively to the public works project.

References to Determinations are precedential coverage determinations that can be found on DIR's website at: http://www.dir.ca.gov/DLSR/PrecedentialDate.htm

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Commercial Supplier

If material is hauled to the jobsite from a commercial supplier no prevailing wages are required. To be exempt from prevailing wage requirements as a commercial supplier all of the following criteria must be met (Sansone v. Department of Transportation):

1. The employer must be in the business of selling supplies to the general public.
2. The plant from which the material is obtained cannot have been established specially for the particular contract.
3. The plant cannot have been located at the site of work.
4. The materials being hauled cannot be immediately incorporated into the project with no re-handling out of the flow of construction.

Refuse, including the removal of hazardous waste or materials

Refuse, by definition, is something of no value. It is most commonly hauled to a landfill. Any material that is purchased, put to use, or recycled has value and would not be refuse. Dirt used to cover landfill has use; construction material recycled has use. In both cases the material would not be refuse and would not automatically be covered.

Hazardous waste or material is generally refuse. Removal of hazardous waste or materials must be transported in accordance with DTSC guidelines and PUC regulations to an approved waste facility. However, if the hazardous waste can be recycled, it is no longer refuse. This would not be encountered commonly. Generally then, hazardous material is refuse and is covered.

HAULING SCENARIOS:

Trucking/Hauling to jobsite

If the material being hauled comes from a site/plant specifically set up for the public works project, then prevailing wages are required, regardless of who performs the hauling.
(29 CFR 5.2(1) & Sansone Criteria #2)

If the material being hauled comes from a commercial materials supplier that meets the criteria of the Sansone decision, then prevailing wages are not required. (Determinations #99 037, #2000-075, and #2004-023 & 2003-046)

Frequently Asked Questions – Hauling to Jobsite

Commercial Supply Delivery

Is the trucking covered when materials are delivered to the job site from a commercial source? **No**

Is trucking covered when materials are delivered to the job site and directly placed into the flow of construction or they are modified on the job site by the materials supplier? **Yes**

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Hauling from a non-commercial source, materials plant, recycler, or supplier

When materials are hauled from a non-commercial or dedicated source to the job site, is the trucking covered? **Yes, hauling of materials from a site dedicated to the public works project is covered work.**

Hauling of recycled materials to a transportation project

Are commercial recycled materials suppliers treated like other bona fide materials suppliers regarding coverage and prevailing wages? **Yes, where only hauling and delivery is provided.**

Truck Brokers

When a truck broker is working as an agent of the contractor or subcontractor is the trucking covered? **Yes, only for on hauling of materials from a source dedicated to the project.**

When the truck broker is working as an agent of a materials supplier who is transporting material to the job site from a non-commercial material source or a material source that was set up specifically for the public works project, is the trucking covered? **Yes**

When the truck broker is working as an agent of a bona fide material supplier who is transporting materials to the job site from a bona fide commercial material source, is the trucking covered? **No**

Trucking/Hauling within a single project or between different public works projects

Hauling material from any point or place within the jobsite to any other point or place within the jobsite requires the payment of prevailing wages. (Determination #2000-078)

If material is being hauled onto the jobsite by a commercial supplier's truckers and unloaded at a point or place solely for the convenience of the supplier, it is not covered. (Sansone)

If it is subsequently moved to another location on the jobsite by the supplier's truckers, that movement may not require prevailing wages as long as the truckers don't then incorporate the material into the project. (Extended haul is still within Sansone)

Hauling materials from one public works project to another public works project requires the payment of prevailing wages for the entire time spent hauling between the two locations.
(Labor Code Section 1772)

Frequently Asked Questions – Within or Between Project(s)

Within Site Hauling

Is the trucking of materials by contractor or subcontractor's employees within the limits of the project covered work? **Yes**

References to Determinations are precedential coverage determinations that can be found on DIR's website at: http://www.dir.ca.gov/DLSR/PrecedentialDate.htm

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Is trucking of materials, by a commercial supplier within the limits of the project, covered work? **No**

Is the trucking of materials from a stockpile or salvage site within the project limits covered work? **Yes, unless the movement of the materials is an extended haul performed by a commercial materials supplier.**

Public Works to Public Works Project Hauling

Is trucking from one public works project to another public works project covered work? **Yes**

Trucking/Hauling off the Jobsite

If "refuse" is being hauled, regardless of who employs the truckers, the trucking requires prevailing wages. (Labor Code Section 1720.3) Refuse is "anything discarded or rejected as useless or worthless; trash" (Determination #99-059) and the "worthless or useless part of something" (Determinations #2000-036 & #2000-078)

If any material is being hauled and that activity (hauling, removal, etc) is expressly required by the contract, then prevailing wages are required in accordance with Labor Code Section 1772, "...in the execution of any contract..." (Determinations #94-017 & 2000-078)

Frequently Asked Questions – Off Haul

Material Off Haul

Is trucking covered when materials to be removed become the property of the contractor and these materials are to be removed to an unspecified location off the state right of way? **No. When excess materials become the property of the contractor, as specified in the contract, no prevailing wages are required.**

When the contract provides for, but does not require the use of an optional location for disposal of excess material to be removed from a job site and the contractor chooses to utilize this site for disposal of excess material, is the trucking covered? **No, unless the contract directly requires the contractor to dispose of materials in a particular manner or location.**

When materials are to be removed from the project to a location specified in the contract plans, special provisions, or as directed by contract change orders is the trucking covered? **Yes, when either the contractor or subcontractor provided the trucking.**

Recycling of materials generated by a transportation project

When recyclable materials are hauled, at the option of the contractor, to a non-specified commercial offsite recycling plant, using trucks paid for by the recycler is the trucking covered? **No**

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Is trucking covered when recyclable materials are hauled, at the option of the contractor or recycler, to a non-commercial recycling plant set up specifically by the contract or when the contract requires recycling and specifies the location where recyclable materials are to be process or delivered? **Yes**

When a contractor's employees haul recyclable materials to a recycler or its subcontractors perform the hauling is the trucking covered? **No, unless the contract specifies that the materials must be hauled to a recycler.**

Owner-Operators

Federal and state owner-operator labor regulations differ significantly. Under federal enforcement, bona fide owner-operators of trucks who own and drive their own trucks are treated as independent contractors and are not covered under Davis Bacon wage determinations

State enforcement of owner operator coverage is currently stayed. On April 13, 2005, the Department of Industrial Relations (DIR) issued an Important Notice (Notice) regarding coverage of owner operators hauling to and from public work projects. The Notice indicates that due to its consideration of an appropriate wage rate for owner operators, DIR has stayed all enforcement obligations for owner operators performing on haul and off haul trucking until DIR issues rates for such work.

Frequently Asked Questions – Owner Operators

Owner Operators

When the contractor, subcontractor, or truck broker, regardless of the hauling conditions, dispatches bona fide owner-operators do the owner operators have to be paid prevailing wages? **Bona fide owner operators driving their own truck are not employees and are not covered. However, if the hauling scenario is covered and the contract is federally funded, a CEM 2510 must be submitted verifying the individual's status as an owner operator.**

Note: In accordance with federal enforcement policies, a combined rate of equipment and labor is still required for equipment owner operators.

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ENFORCEMENT:

STATE

For all projects advertised **prior** to September 1, 2005, there are Teamster wage rate determinations for hauling to, hauling within or between, and hauling from public works in all areas of the State. Any trucking performed within the scope of the Department's Trucking policy should be paid accordingly.

Effective for all projects advertised **after** September 1, 2005, there are trucking wage rate determinations for the following:

Northern California

- Driver **(On/Off Hauling To/From Construction Site)** in the counties of Alameda, Contra Costa, San Mateo, Santa Clara, Santa Cruz and Solano Counties. **Applies to bottom dump, transfer rig or semi-end dump only.**
- Teamster **(applies only to work on the construction site)** in all Northern California counties

Southern California

- Teamster **(applies only to work on the construction site)** in all Southern California counties

San Diego

- Teamster **(applies only to work on the construction site)** in San Diego County.

There is currently no applicable wage rate, other than in the six Northern California counties, for hauling to the jobsite or from the jobsite. While the work is considered covered due to precedential wage determinations issued by DIR, there is no prevailing wage liability in all but the six counties above because there are no prevailing wage rates in effect for hauling to or from for projects advertised after September 1, 2005. (Determination 2004-023 & 2003-046)

Until such time as DIR issues wage determinations applicable for hauling to and from the jobsite, contractors should be advised of specific scenarios that are covered under prevailing wage requirements, and then referred to DIR for questions regarding applicable wage rates.

FEDERAL

The federal requirements for on haul, hauling within or between, and hauling from a public works relate only to those facilities dedicated to the public works project and located adjacent to or virtually adjacent to that project. If a contract has both state and federal funding, the federal guidelines will apply in the absence of more stringent state requirements. Following are examples in which trucking would be covered under federal guidelines.

- Drivers of a contractor or subcontractor for time spent working on the site of work.

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- Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of work, if such time is not *de minimis*.
- Drivers transporting materials or supplies between a facility that is deemed part of the site of work and the actual construction site.
- Drivers transporting portions of the building or work between a dedicated facility, where portions of the building or work are constructed, and the actual project site, where the building or work will remain.
- Drivers transporting materials, supplies, tools between the construction site and a dedicated facility "adjacent to or virtually adjacent to" the work site.
  (US DOL Davis-Bacon Resource Book)

If a scenario exists for hauling to or from the public works project, consider the federal guidelines for coverage and require the contractor to pay the appropriate prevailing wage rate as listed in the federal wage determination included in the contract. If an owner operator performs the covered hauling, verification of owner operator status is required.

The verification of owner-operator status will be accomplished by certification using form CEM 2510, Truck Owner-Operator Certification Status. The certification will provide sufficient information to identify the truck owner-operator, the description, identity and ownership of the owner-operator's truck, and a written declaration under penalty of perjury that the information is true and correct.

Form CEM 2505 will no longer be used for verifying the status of a trucker as a bona fide owner-operator.

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