

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 guidance must be evaluated under the context of the following factors:

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

DEFINITIONS

I. 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.

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:
<ul style="list-style-type: none"> • 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)) 	<ul style="list-style-type: none"> • Before the opening of bids, and • If the operations are not dedicated exclusively to the public works project.

PREVAILING WAGE TRUCKING GUIDELINES

II. Commercial Supplier

If material is hauled to the project from a commercial supplier no prevailing wages are required as long as employees of the contractor or subcontractor do not perform the hauling. To meet the definition of a commercial supplier all of the following criteria must be met (Sansone v. Department of Transportation):

1. The supplier must be in the business of selling supplies to the general public.
2. The plant from which the material is obtained cannot be established specially for the particular contract.
3. The plant cannot be 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.

III. Refuse, including the removal of hazardous waste or materials

The hauling of refuse typically requires the payment of prevailing wages. Refuse, by definition, is something of no value.

Any material that is purchased, put to use, or recycled has value and would not be considered refuse. Dirt used to cover landfill has use; recycled construction material 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 requires transport 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 hauling of such requires prevailing wages.

HAULING SCENARIOS:

A. Trucking/Hauling to Project

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.

Frequently Asked Questions – Hauling to Project

Commercial Supply Delivery

- Is the trucking covered when materials are delivered to the project from a commercial source? **No, as long as the contractor or subcontractor's employees are not performing the hauling.**

PREVAILING WAGE TRUCKING GUIDELINES

- Is trucking covered when materials are delivered to the project from a commercial materials supplier and placed directly into the flow of construction or are modified on the project by the materials supplier? **Yes.**

Hauling from a non-commercial source, including but not limited to a materials plant, recycler, or supplier

- When materials are hauled from a non-commercial or dedicated source to the project, 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 and the materials are not hauled by the contractor or subcontractors employees.**

Truck Brokers

- When a truck broker is working as an agent of the contractor or subcontractor is the trucking covered? **Yes, for on hauling of materials from a non commercial source.**
- When the truck broker is working as an agent of a materials supplier who is transporting material to the project 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 project from a bona fide commercial material source, is the trucking covered? **No, as long as the materials are not immediately incorporated into the project.**

<h2>B. Trucking/Hauling Within a Single Project or Between Different Public Works Projects</h2>
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Hauling material from any point or place within the project to any other point or place within the project typically requires the payment of prevailing wages.

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)

If material is being hauled onto the project by a commercial material supplier's trucker or an independent third party trucker and unloaded at a point or place solely for the convenience of the supplier, it is not covered. (Sansone) If material is subsequently moved to another location on the project by the supplier or independent third party trucker, that movement may not require

PREVAILING WAGE TRUCKING GUIDELINES

prevailing wages as long as the trucker does not then incorporate the material into the project. (Extended haul is still within Sansone)

Frequently Asked Questions – Within or Between Project(s)

Within Site Hauling

- Is the trucking of materials by a contractor or subcontractor’s employees within the limits of the project covered work? **Yes**
- Is trucking of materials, by a commercial supplier or independent third party trucker within the limits of the project, covered work? **No, unless the materials are immediately incorporated into the project.**
- 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 or independent third party trucker.**

Public Works to Public Works Project Hauling

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

C. Trucking/Hauling off the Project
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The hauling of “refuse” off the project requires prevailing wages regardless of who employs the truckers. (Labor Code Section 1720.3)

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...”

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 project 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.**

PREVAILING WAGE TRUCKING GUIDELINES

- 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.**

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**
- 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 processed or delivered? **Yes**
- When a contractor or subcontractor'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.**

D. 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 regarding coverage of owner operators hauling to and from public work projects. The Important 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, dispatches bona fide owner-operators to perform on and off haul trucking, do the owner operators have to be paid prevailing wages?

Currently, DIR has stayed enforcement of prevailing wages for on and off haul trucking for bona fide owner operators. However, a Form CEM 2510, “Truck Owner Operator Certification Status” must be submitted verifying the individual’s status as an owner operator.

PREVAILING WAGE TRUCKING GUIDELINES

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 guidance must be paid accordingly.

For all projects advertised **after** September 1, 2005, trucking wage rate determinations apply to 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.

After September 1, 2005 there is no applicable wage rate, other than in the six Northern California counties, for hauling to the project or away from the public works project. While the work may be considered covered due to court rulings and advisory coverage determinations issued by DIR, there are no prevailing wage determinations except in the six counties above.

Until such time as DIR issues wage determinations applicable for hauling to and from the project, 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.
- 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*.

PREVAILING WAGE TRUCKING GUIDELINES

- 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, and/or 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 truck, and a written declaration under penalty of perjury that the information is true and correct.

Form CEM 2505, “Owner Operator Listing,” will no longer be used for verifying the status of a trucker as a bona fide owner-operator.