

**DATE:** June 10, 2009

**TO:** Region Engineers  
Region Delivery Engineers  
TSC Managers  
Resident/Project Engineers  
Region Construction Engineers

**FROM:** Gregory C. Johnson  
Chief Operations Officer

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**SUBJECT:** Bureau of Highway Instructional Memorandum 2009-07  
Prevailing Wage Oversight Procedures (Supersedes BOH IM 2008-06)

The attached documents provide updated guidance on the process and procedures for prevailing wage oversight on construction projects with federal and state funding. The documents include:

- Procedures for prevailing wage oversight - **updated**
- Summary of changes for the updated procedures - **new**
- Exhibit A, example apprentice certification letter - **new**
- Exhibit B, example apprentice agreement - **new**
- Functions, duties and responsibilities matrix - **no change**

The procedures have been updated based upon the current guidance from the U.S. Department of Labor, Michigan Department of Energy, Labor and Economic Growth, and field review from the implementation of the procedures over the past year. The procedures include information to clarify many aspects of the overall prevailing wage program, including areas where the federal and state programs differ.

The summary of changes will assist with recognizing and understanding the revisions made to the procedures. Exhibits A and B clarify what documentation is required from the contractor for apprentices in the project files. The functions, duties and responsibilities matrix defines the roles and responsible parties for the various areas of the procedures.

The following forms are in the process of being updated and will replace the current on-line version when available.

- Form 1952, Certified Payroll Review Checklist
- Form 1954, Certified Payroll Status Record
- Form 1955, Certified Payroll Report
- Form 1156, Minimum Wage Rate Interview Sheet

Form 1952 will be revised to reflect the new information required and to eliminate duplicate items. Forms 1954 and 1955 instructions sheets will be updated to reflect the revised notification procedures for delinquent and deficient certified payrolls.

These procedures are effective immediately, with the exception of those placing additional responsibilities and impacts on the prime contractor and subcontractors. The additional responsibilities on the contractors will take effect with contracts let on July 10, 2009. Additionally these procedures will replace Sections 101.5, 101.6, 101.7 and 101.8 in the next revision of the *Construction Manual*.

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Chief Operations Officer

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Engineer of Delivery

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Index: Davis-Bacon Labor Compliance

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# **Prevailing Wage Compliance and Certified Payrolls**

## **General Information**

This document is intended to provide information and guidance regarding state and federal prevailing wages, as well as specific procedures and responsibilities to be carried out by the department and the contractor to assure compliance with contract prevailing wage provisions.

## **Contractor's Responsibilities**

State prevailing wage requirements are set forth in the State of Michigan Prevailing Wage Law, Act 166, P.A. of 1965. Federal prevailing wage requirements are included in the Davis Bacon and Related Acts, some of which are set forth in Title 29 of the Code of Federal Regulations (CFRs), Parts 3 and 5. The requirements of these CFRs along with other federal regulations are included in FHWA 1273, which sets forth the Required Contract Provisions for federal aid construction contracts. FHWA 1273 is included in all MDOT let federal aid contracts.

The prime contractor is responsible for all subcontractor and lower-tier subcontractor compliance with the requirements for state and federal prevailing wage. Note: The term subcontractor includes any company with which the prime contractor has entered into a contractual agreement to work on the project. Each prime contractor and subcontractor is liable for the payment of prevailing wage rates to its employees. The prime contractor is also liable for the payment of prevailing rates that are not paid by their subcontractors. In order to comply with these requirements, the prime contractor must:

- Advise all subcontractors of prevailing wage requirements and that all employees must cooperate during wage rate interviews.
- Submit all required weekly certified payrolls for themselves, each subcontractor, and each lower-tiered subcontractor to the project engineer.
- Submit MDOT Form 1955 with each weekly payroll submittal verifying that certified payroll has been reviewed, as described in this procedure under "Certified Payroll Review".
- Display labor compliance posters and wage determinations on the jobsite.

Submittal requirements for the first weekly certified payroll on each contract are allotted a three week "grace period". The three week period is to allow for processing and review of the certified payrolls by the prime contractor. Subsequent certified payrolls shall be submitted on a weekly basis thereafter.

In addition, the first weekly certified payroll must also include:

- An hourly breakdown of fringe benefits paid each work classification and the program administrator contact information with the first certified payroll for each contractor.
- Identification of trainees and apprentices, and program levels.

These contractor requirements are supplemental to all other required contract provisions.

## **State Prevailing Wage**

The Michigan Department of Labor & Economic Growth (DLEG) determines prevailing rates pursuant to the Prevailing Wage Law, Act 166, P.A. of 1965. The purpose of establishing prevailing rates is to provide rates of pay for workers on construction projects for which the state is the contracting agent and which are financed or financially supported by the state. By law, prevailing rates are compiled from the rates contained in collectively bargained agreements that cover the locations of the state projects. The prevailing rates attached to state projects provide an hourly rate which includes wage and fringe benefit totals. Special attention should be paid to overtime and premium pay requirements, as they may vary from federal prevailing wage requirements.

## **Federal Prevailing Wage**

The Davis-Bacon and Related Acts (DBRA) “prevailing wage” is made up of two interchangeable components – the basic hourly wage and the fringe benefits. The wage rate decision in the contract will list a basic hourly rate for all classifications and a fringe benefit for each classification. The total of the basic hourly wage and the fringe benefits comprise the “prevailing wage” requirements. The prevailing wage requirement may be met by any combination of hourly wages and creditable “bona fide” fringe benefits provided by the employer. Fringe benefits may be paid in one of the following manners.

- The total, including any fringe benefits listed for the classification, may be paid entirely in hourly wages.
- Payments made or costs incurred by the contractor for “bona fide” fringe benefits may be creditable toward fulfilling the requirements.
- A combination of hourly wages and “bona fide” fringe benefits may be used to meet the total required prevailing wage.

Examples of “bona fide” fringe benefits under DBRA include the following.

- Life insurance
- Health insurance
- Pension
- Vacation
- Holidays
- Sick Leave
- Disability insurance
- Defrayment of costs for apprenticeship programs
- Supplemental unemployment benefit programs
- Others as approved by the Secretary of Labor

The following are examples of fringe benefits not allowed under DBRA.

- Workers compensation
- Unemployment compensation
- Social security contributions
- Uniforms
- Clothes
- Safety Equipment

- Use of a company vehicle
- Christmas or other bonuses
- Per diems
- Fuel allowance

If there are any questions on the eligibility of a fringe benefit listed on the contractor's breakdown, contact the Construction and Technology (C&T) Division's prevailing wage compliance specialist.

## **Wage Decisions**

All MDOT-let contracts will contain either the state or the federal wage decision. On contracts involving two or more projects and job numbers and the type of funding is mixed, when one source of funding is federal, MDOT only places the wage rates issued by the U.S. Department of Labor (USDOL) in the contract. Federal requirements apply for all the contracted work. On contracts where DBRA does not apply, the state wage decision will be in the contract.

On most contracts where DBRA prevailing wages apply, the General Decision MI7 (AIRPORT & BRIDGE, HIGHWAY, SEWER/INCID. TO HWY.) is used in MDOT contracts with federal funds. There are some exceptions, which are detailed in each contract and discussed below.

## **Multiple Wage Decisions**

The USDOL requires multiple wage decisions to be placed in contracts in which a second category of work is substantial in relation to project cost. Substantial is defined as more than 20 percent (or \$1,000,000). The following are the most common types of work that may require an alternate decision:

- Sewer and watermain
- Landscaping
- Rest area or other buildings

When one or more of the above types of work is more than 20 percent of the contract cost or \$1,000,000 (based upon the engineer's estimate), an alternate wage decision will be included in the contract along with the MI7 decision. The wages in the alternate decision can only be used for the type of work that is more than 20 percent of the contract cost or \$1,000,000. All other work performed on the project will be subject to the wages in the MI7 decision.

Sewer and watermain work (MDOT prequalification classification K) is considered to fall under the Heavy Construction work classification; therefore, when that work type is more than 20 percent of the engineer's estimate or \$1,000,000, the wage decision with the construction type "HEAVY" will also be included in the contract and is to be used for the work related to the sewer and watermain work. All other work performed on the project will be covered by the "AIRPORT & BRIDGE, HIGHWAY, SEWER/INCID. TO HWY" (MI7) wage decision. If the contract also contains landscaping work, and it is not more than 20 percent of the contract or \$1,000,000, the "HEAVY" decision rates

cannot be used for that work. The landscaping and restoration of areas disturbed by roadwork would be covered by the MI7 wage decision. However, any restoration of areas disturbed by the sewer and water main work would be covered under the “HEAVY” decision.

When landscape work (MDOT prequalification classification H) is more than 20 percent of the contract cost or \$1,000,000, the “HEAVY” wage decision will be included in the contract to cover all landscape work. All other work performed on the project will be covered by the MI7 wage decision. If the project is a total landscape project, only the “HEAVY” wage decision will be in the contract.

Rest area building contracts will include the construction type “BUILDING” wage decision when the Building portion of the work is more than 20 percent of the contract cost or \$1,000,000. When the “BUILDING” decision is included for rest area building contracts, the electrical work covered by the “BUILDING” decision is limited to the rest area building and within five feet of the perimeter. All other electrical work is covered by the MI7 decision. The other work performed on the contract will be covered by the MI7 wage decision and/or the “HEAVY” wage decision (landscape and/or sewer and watermain work) if either or both are greater than 20 percent or \$1,000,000. In some cases the alternate decision is for both construction types: “BUILDING” and “HEAVY”. In this instance, the alternate decision could apply to the building, landscaping and sewer if the work for any or all is greater than 20 percent of the contract or \$1,000,000.

### **Certified Payrolls**

Weekly certified payrolls covering the contractor’s and subcontractor’s workforce shall be submitted to the engineer on all MDOT-let contracts. Certified payrolls are required for all covered laborer and mechanic work regardless of the contracting method used such as subcontract, purchase order, invoice, or other contractual arrangement. Certified payroll information may be submitted in any format provided that all information requested on form WH-347 is included, and the compliance statement has original signatures. This is a USDOL form and a link is available on the MDOT Web site at <http://mdotwas1.mdot.state.mi.us/public/webforms/index.cfm> .

### **Submittal Requirements**

The first certified payroll is to be received by the engineer within three weeks from the start of the work for the prime contractor and/or subcontractor(s). The three week period is to allow for processing and review of the certified payrolls by the prime contractor. The first pay estimate can be made prior to the submission of the first certified payrolls. The three week grace period allows the first estimate to be paid in good faith assuming the contractor and subcontractor(s) will submit certified payrolls in a timely manner. Subsequent certified payrolls shall be submitted on a weekly basis thereafter. In certain circumstances, the time frame for submittal of the first payroll is two weeks for shorter duration projects as discussed at the end of the section titled “Notice of Delinquent Certified Payrolls”. Certified payroll submissions not meeting the above time requirements will be considered delinquent.

## **Notice of Delinquent Certified Payroll**

When weekly certified payrolls are delinquent as defined above, the engineer is to provide the prime contractor a first written notice of delinquent certified payrolls by certified mail or other method which establishes the date the first notice was received by the prime contractor, with a copy by regular mail to the offending subcontractor. The region coordinator for prevailing wage compliance is to receive a copy by regular mail. The notice informs the contractor that payment for work is suspended as of the date the certified payrolls became delinquent for the work items of the offending contractor(s). When the pay estimate is generated, the statement "Items withheld-Delinquent payrolls" should be entered in the comments area. In addition, the notice is to state that if certified payrolls remain delinquent after 30 calendar days from receipt of the first notice, non-compliance damages will be assessed retroactive to the date the contractor received the first notice. The damages will be assessed on a calendar day basis until complete and accurate certified payrolls are submitted and are current.

If the certified payrolls continue to be delinquent after 30 calendar days from receipt of the first notice by the prime contractor, the engineer is to implement the actions from the first notice. Concurrently, the engineer is to send the prime contractor a second written notice of delinquent certified payrolls by certified mail or other method which establishes the date the second notice was received by the prime contractor, with a copy by regular mail to the offending subcontractor. The region coordinator for prevailing wage compliance and the C&T Division prevailing wage compliance specialist are to receive a copy by regular mail. The notice is to state if the certified payrolls remain delinquent for 30 days from the receipt of the second notice, the engineer will rescind all previous payments for work completed by the offending contractor(s). In addition, the engineer will complete interim Contractor Performance Evaluations for the offending contractor. If certified payrolls have not been received from the contractor after 30 calendar days from receipt of the second notification, the engineer is to implement the actions from the second notice. In all circumstances, the withholding of payments, assessment of non-compliance damages, and rescinded payments are to continue until all delinquent certified payrolls are current, complete and correct.

The notification sequence previously described would be as follows:

<b>Initiate Notice</b>	<b>Notice Sequence</b>	<b>Contractor Notice of Action</b>	<b>Allotted Time For Response /Resolution</b>	<b>If No Response /Resolution</b>
First payroll has not been received within 3 weeks.	First Notice (See Note 1)	Payment is being withheld for offending contractor's work items. Non-payment will continue until complete and accurate payrolls are received. Intent to assess non-compliance damages until all payrolls are complete, accurate and current. (See Notes 2 and 3)	30 days from receipt of first notice by the prime contractor	Implement actions from the first notice. Send second notice.
Payroll remains delinquent 30 days after first notice received by prime contractor	Second Notice (See Note 1)	Intent to rescind all prior payment for the offending contractor's work items. Intent to submit interim Contractor Performance Evaluation(s) for the offending contractor(s). (See Note 2)	30 days from receipt of second notice by the prime contractor	Implement actions from the second notice

Note 1: Notice is to be signed by the engineer and delivered by certified mail or other method which establishes the date received by the prime contractor. The region coordinator for prevailing wage is to be copied on the first notice to the prime contractor. The region coordinator for prevailing wage and the C&T Division's prevailing wage compliance specialist are to be copied on the second notice to the prime contractor.

Note 2: Prior to generating an estimate on which payment is being withheld or deducted, the following statement will be entered in the comment box: "Items withheld – Delinquent payroll".

Note 3: See Table 1 Schedule of Non-Compliance Damages

The engineer should work with the project design staff during the development phase of the project to include Notice to Bidders 03NB12, Prevailing Wage Oversight for Short Duration Projects, for projects with a progress schedule duration of 75 days or less. The Notice to Bidders reduces the "grace period" from three weeks to two weeks for the initial certified payroll submittal, and adjusts the allotted time for response/resolution from the above table. This will allow the engineer time to ensure resolution will be

obtained prior to the contract completion date. The Notice to Bidders 03NB12 is to be included in the bidding documents prior to the project advertisement or by addendum.

**Table 1 Schedule of Non-Compliance Damages**

Contract/Subcontract/P.O./Invoice Amount <sup>a</sup>	Non-compliance damages per calendar day
\$0 to 49,999	\$200
50,000 to 99,999	400
100,000 to 499,999	600
500,000 to 999,999	900
1,000,000 to 1,999,999	1,300
2,000,000 to 4,999,999	1,550
5,000,000 to 9,999,999	2,650
10,000,000 and above	3,000
Trucker	\$200

<sup>a</sup> “Contract” amount if offending contractor is the prime contractor. “Subcontract/P.O./Invoice” amount if offending contractor is a subcontractor/vendor.

**Certified Payroll Status Record**

The engineer is to maintain a current (updated weekly) log documenting the submittal status of certified payroll for each contract. The Certified Payroll Status Record (MDOT form 1954) is available for this purpose. The record is to show whether the contractor and/or subcontractor worked during the weekly period, and the date the certified payrolls were received from the prime contractor. In addition, the status record should document the date any notifications are sent to the prime contractor (via certified mail) of delinquencies and/or deficiencies with certified payrolls, and the dates when the revised/corrected certified payrolls were received. All certified payrolls are to be date stamped upon receipt from the prime contractor. The envelope in which the certified payrolls arrive should be attached to the payroll and saved as part of the project file records.

The certified payroll is to include the following information:

- The firm’s name and address with the prime or subcontractor(s) identified.
- Payroll number, week ending, project location and contract ID (contract identification).
- The employee’s full name and only the last four digits of their social security number. If a contractor or subcontractor submits certified payrolls with complete social security numbers, the engineer is not to take possession of the certified payrolls and will return them to the prime contractor. This is the only instance where certified payrolls are to be returned to the prime contractor. Failure by the contractor or subcontractor to submit certified payrolls with only the last four digits of the social security number shall not change the time frames for the consideration of delinquent and deficient certified payrolls and resulting actions by the engineer.

- Information identifying minority and female employees. The following ethnic code notation is to be used: Black (B), Hispanic (H), Native American Indian or Alaskan Eskimo (N/A), and Asian or Pacific Islander (A). For female use (F).
- The employee's classification and group number. (DBRA Laborer example: LABO0465-001, Group 1)
- Identification of trainees and apprentices, and program levels.
- The employees daily and weekly hours worked in each classification, including actual overtime worked.
- The total weekly hours worked on all jobs (prevailing and non-prevailing wage)
- The basic hourly rate, overtime rate (if applicable) and the method by which fringe benefits are paid (By checking Box(4)(a) approved programs, Box (4)(b) paid in cash, or a combination of the above methods with an explanation in Box (4)(c). If fringe benefits are paid to an approved plan, a detailed breakdown of the type of benefits and hourly dollar values must accompany the first certified payroll. In addition, plan administrator contact information shall be included. If there is a change to the fringe benefits payment after submittal of the first certified payroll, the fringe benefit information must be resubmitted. This information is to be used to verify the benefits being paid are "bona fide" and that the total compensation is in compliance with the required prevailing wage in the contract.
- The itemized deductions - miscellaneous itemized deductions must be explained on the certified payroll. (Space provided after paragraph (1) on the compliance statement)
- The gross job wages paid.
- The gross weekly wages paid for all jobs.
- The net weekly wages paid for all jobs.
- The compliance statement with original signature.

### **Certified Payroll Review**

The engineer is to closely review the certified payrolls from the prime contractor and subcontractor(s) that work on the project. Once it is established that a contractor/subcontractor is submitting complete and accurate certified payrolls, subsequent payrolls need to be spot checked during the remainder of the project for that contractor/subcontractor. The review should verify that the information described above is included on the certified payroll. Form 1952, Certified Payroll Review Checklist, is available on MDOT's forms Web site to assist in checking the payrolls for completeness. In addition, the total combination of base wage and fringe benefit reported on the certified payroll should be at least the prevailing wage contained in the wage rate decision in the contract or applicable addendum.

The review should compare information contained in the certified payrolls with information on the Inspectors Daily Reports (IDRs), including number of workers, hours worked, type of work and equipment on the job. It is important that the information is accurately recorded on the IDR each day so the proper review can be completed on the certified payrolls. The review should verify that the appropriate work classifications are reported to support the type of work being done on the job. For example, when concrete curb and gutter is being placed on a job covered by DBRA, there are finishers (cement

masons, PLAS0016-016); laborers (form/line setters, LABO0465-001, Group 6); laborers (unskilled laborers, LABO0465-001, Group 1); and operators (if using a slipform curb machine, ENGI0324-006, Group 1). Compliance with prevailing wage requirements can only be determined once this comparison is made and any inconsistencies are brought to the attention of the contractor.

The rules for payment of overtime should be considered during the certified payroll review. Overtime rates are a combination of the base rate plus a premium amount. However, there are significant differences between overtime requirements when federal prevailing wages apply and when state prevailing wages apply.

#### Contracts with Federal Prevailing Wage:

- The overtime rate must be at least one and one half times the base hourly rate from the wage rate decision in the contract.
- Overtime is required to be paid for hours worked in excess of 40 hours in a work week.
- Fringe benefits will be paid for every hour worked.
- If two or more base hourly rates apply, then a weighted average should be used to determine the overtime rate for hours worked in excess 40 hours per week. The applicable base hourly rates will be paid for every hour worked plus a weighted average premium rate for the hours worked in excess of 40 in a week.

Contact the C&T Division's prevailing wage compliance specialist for assistance with the determination of weighted average overtime rates.

#### Contracts with State Prevailing Wage:

- The time and one-half rate is stated in the prevailing wage schedule.
- The prevailing wage schedule for each contract will need to be referenced to determine the specific overtime payment requirements. In general, overtime is applied as follows:
  - For hours worked in excess of eight hours in a day.
  - For most classifications, the contractor may choose to work four tens (4 – 10 hour days) where overtime would be required after the tenth hour in a day and any time worked over forty hours in a week.
  - Some classifications require double time in certain situations.
  - The classification of iron worker has its own overtime requirements.

### **Deficient Certified Payroll**

During the review, if the weekly certified payrolls are found to be incomplete, inaccurate, or inconsistent with the other project records, they are considered deficient. The engineer is to notify the prime contractor of the deficiencies in writing by certified mail or other method which establishes the date the notice is received by the contractor with a copy by regular mail to any subcontractor(s) that may be involved and the region coordinator for prevailing wage compliance.

The notice is to inform the contractor(s) that if the deficiencies are not corrected and revised certified payrolls are not received by the engineer in 30 calendar days from receipt of the notice by the prime contractor, payment for the offending contractor's work items will be withheld until corrected and revised payrolls are received by the engineer. In addition, the notice will state the intent to assess non-compliance damages retroactive to the date the prime received the first notice until all issues are resolved. The offending contractor is to submit revised certified payrolls correcting all deficiencies and/or errors through the prime contractor.

If the issues are not resolved within 30 calendar days from the receipt of the first notice, the engineer will implement the action from the first notice. Concurrently, the engineer is to send a second notice to the prime contractor by certified mail or other method which establishes the date the notice was received by the contractor, with a copy by regular mail to any subcontractor(s) that may be involved. The second notice is to state that if corrected and revised certified payrolls are not received within 30 calendar days of the receipt of the second notice by the prime contractor, the engineer will rescind all payments for the offending contractor's work items previously paid. In addition, the notice is to inform the contractor the engineer will complete interim Contractor Performance Evaluations for the offending contractor. The C&T Division's prevailing wage compliance specialist and region coordinator for prevailing wage compliance are also to receive a copy of the second notice.

If the deficient certified payrolls are not corrected and revised certified payrolls received by the engineer within 30 calendar days of the second notice, the engineer is to implement the actions in the second notice and prepare the appropriate Contractor Performance Evaluations to report the continued non-compliance with prevailing wage requirements.

Assessment of non-compliance damages, withholding of payments, and rescinded payments will continue until all corrected and revised certified payrolls are received by the engineer.

The original certified payrolls submitted by the contractor/subcontractor(s) are to remain in the project files. Do not return certified payrolls to the contractor/subcontractor(s), except in the following circumstance. In the event the prime contractor submits certified payrolls containing full social security numbers, the engineer shall not take possession of the payrolls and shall return them to the prime contractor. This is the only instance where certified payrolls are to be returned to the prime contractor. This action is to protect the security of the employee social security numbers. Certified payrolls should never be altered, revised, corrected, amended or changed by project personnel (except for the date stamp).

The notification sequence previously described would be as follows:

<b>Initiate Notice</b>	<b>Notice Sequence</b>	<b>Notice of Action to Contractor</b>	<b>Allotted Time For Response /Resolution</b>	<b>If no Response /Resolution</b>
Payroll deficiencies	First notice (See Note 1)	Intent to withhold payment for offending contractor's work items. Intent to assess non-compliance damages from the date the first notice was received by the prime contractor. (See Note 3)	30 days from receipt of first notice by the prime contractor	Implement actions from the first notice. Send second notice.
Payroll issue not resolved 30 days after first notice	Second notice (See Note 2)	Intent to rescind payment for all work items of offending contractor(s). Intent to submit interim Contractor Performance Evaluations	30 days from receipt of second notice by the prime contractor	Implement actions from the second notice.

Note 1: Written notice is to be signed by the engineer and delivered by certified mail or other method which establishes the date the notice was received by the prime contractor. The offending subcontractor(s) and the region coordinator for prevailing wage compliance are to be copied by regular mail.

Note 2: Written notice is to be signed by the engineer and delivered by certified mail or other method which establishes the date the notice was received by the prime contractor. In addition, the offending subcontractor(s), the region coordinator for prevailing wage compliance, and the C&T Division's prevailing wage compliance specialist are to be copied by regular mail.

Note 3: See Table 1 Schedule of Non-Compliance Damages

The engineer should work with the project design staff during the development phase of the project to include Notice to Bidders 03NB12, Prevailing Wage Oversight for Short Duration Projects, for projects with a progress schedule duration of 75 days or less to adjust the allotted time for response/resolution from the above table. This will allow the engineer time to ensure resolution will be obtained prior to the contract completion date.

The Notice to Bidders 03NB12 is to be included in the bidding documents prior to the project advertisement or by addendum.

### **Wage Rate Interviews**

Wage rate interviews are required to be performed at least once for each contractor and/or subcontractor when they are on the job, throughout the life of the project, for both state and federally funded projects. For multi-year projects, wage rate interviews are to be conducted with all contractor/subcontractors each season that they perform work on the project.

When a contractor/subcontractor works on multiple MDOT projects within a region during a construction season, the number of projects where wage rate interviews are required may be reduced for that contractor/subcontractor when the following criteria are met:

- The contractor/subcontractor certified payrolls must be current and complete.
- The contractor/subcontractor can not have been involved in any prevailing wage violation actions within the last 12 months or have had any unresolved complaints.
- For prime contractors, all posters and jobsite information must be posted as required.

If the above criteria are met, the region coordinator for prevailing wage compliance will coordinate with the TSCs to reduce the frequency of interviews to a rate of **one project in five** for a contractor/subcontractor within their region. The region coordinator will oversee the reduced frequency process and track which contractor/subcontractor(s) are eligible and which projects will have the wage rate interviews waived for those contractors. The region coordinator will provide the engineer with documentation for when wage rate interviews have been waived. This documentation will be placed in the project files. Wage rate interviews will continue to be required for all local agency projects.

The contractor and subcontractor(s) shall permit the engineer or their representative to interview employees during working hours on the project, and advise employees they must cooperate with department representatives during wage rate interviews. The prime contractor is responsible for advising subcontractor(s) of the requirement to pay the prevailing rate prior to the commencement of the work and that all employees must cooperate during wage rate interviews.

If a language barrier is encountered, employees of the contractor or subcontractor are not to assist in language interpreting. The services of a language interpreter are available to the engineer upon request. Contact the C&T Division's prevailing wage compliance specialist for information about interpreter service.

Use the Minimum Wage Rate Interview Sheet (form 1156) to record information obtained during the wage rate interview. The form should be filled out to the extent

possible prior to conducting the interview. The following procedures are to be used when conducting wage rate interviews.

- Project or region staff will conduct field interviews with workers covered under DBRA or state prevailing wage on all federal and state funded projects in progress.
- Wage rate interviews will be completed each season for multi-season projects.
- Interviews will be conducted with a representative sample of the work force for each contractor and subcontractor on the project during each construction season. Each classification and group should be included in the interview process. Operators of equipment and trucks whose ownership is not clearly identified should be interviewed.
- Interviews should be completed during the early part of the project to verify prevailing wage compliance. If issues are found, they need to be dealt with immediately.
- The interview is to be done to ensure the privacy of the workers. Coworkers and supervisors are not allowed to be present during the interview or allowed to hear the interview.
- The worker shall be given a standard business card with contact information in the event the interviewee would like to discuss the interview issues further, supply additional documentation or information, or to continue the interview in a more private and confidential setting.

The engineer will compare the wages and the work classifications documented on form 1156 with the certified payrolls, IDRs, inspector's observations, diaries, documentation in the project files and prevailing wage compliance requirements in the contract. If deficiencies or discrepancies (i.e., an employee is not paid prevailing wages and fringe benefits as stated in the contract) are found, the engineer is to look into the apparent violation (see section In-Depth Examinations below for further guidance). The engineer should contact the C&T Division's prevailing wage compliance specialist and region coordinator for prevailing wage compliance to discuss the examination and any actions that may be taken as a result of the findings.

### **In-Depth Examination**

When an apparent prevailing wage compliance violation arises and an in-depth examination of the certified payroll records becomes necessary, the engineer is to contact the region coordinator for prevailing wage compliance for guidance and assistance. It is imperative that during any examination the identity and privacy of all individuals be protected. DBRA regulations require strict confidentiality for individuals. All discussions and communications with contractors and others must be general and all encompassing so individuals can not be singled out. Examinations may be required due to a number of reasons including, but not limited to, the following:

- Wage rate interview issues
- Employee complaint
- Certified payroll discrepancies
- Fraud and Abuse Hot Line calls
- Laborer's Council requests

- Contractor requests
- Inspector observations
- Other issues

Depending on the nature of the issue, a number of avenues may be pursued. Examinations will need to utilize, but will not be limited to, the following:

- Information in the project files which may include: IDRs, certified payrolls, payroll status records, wage rate interviews, diaries, force account records, delivery tickets, progress reports or other sources from the files and other readily available project information.
- Interviews with present and former employees of the contractor.
- Documentation from employees such as time cards and check stubs.
- Information from the contractor or subcontractor(s).

The examination may require detailed observation of the contractor's activity on the job and documenting the number of workers, hours on the project and equipment in use. It is important that any information gathered and used in any examination be factual and accurate, as it may have to withstand the scrutiny of a court proceeding. The information from these and any other sources should be reviewed and analyzed to either support the existence of a violation, that no violation has occurred, or that there is not enough evidence to make a determination and further investigation is needed.

When it is determined that an investigation will need to go beyond what is readily available to the engineer in the project files and other sources, the C&T Division's prevailing wage compliance specialist is to be contacted. The situation will be reviewed and a determination made whether to pursue the issue further and turn it over to others to perform the investigation.

## **Restitution**

If the engineer and the region coordinator for prevailing wage compliance determine there are prevailing wage violations and restitution is required, the C&T Division's prevailing wage compliance specialist is to be notified. If possible, the amount of restitution will be determined. The engineer is to send the first notice to the prime contractor and any involved subcontractors of the violation and restitution amount, if known, in writing by certified mail or other method which establishes the date the notice is received by the prime contractor. The first notice is to inform the contractor(s) that the engineer is immediately withholding the amount of the violation, if known, or an estimated amount and that if the violation is not fully resolved in 60 calendar days from the receipt of the first notice, the intent to withhold payment for the offending contractor's items. The engineer and the contractor can mutually agree in writing to extend this 60 day requirement.

If the violation is not fully resolved within 60 calendar days from the receipt of the first notice or the mutually agreed upon extension, the engineer is to implement the actions from the first notice. Concurrently, the engineer is to send a second notice to the prime contractor and involved subcontractor(s) stating that if the violations are not fully

resolved within 30 calendar days of the receipt of the second notice, non-compliance damages will be assessed back to the date of the first notice, and the contractor will be responsible for any and all costs associated with the investigation and audit expenses accrued by MDOT and associated entities in dealing with the violation. The notice will also state that the assessment of non-compliance damages will continue to be assessed until the date the violation is fully resolved and proof of payment in the form of cancelled checks or other form of acceptable proof is provided to the engineer.

If the violation is not fully resolved within 30 calendar days of the receipt of the second notice, the engineer will implement the actions from the second notice and prepare interim Contractor Performance Evaluations reflecting the non-compliance activity of the offending contractor(s) and lack of supervision by the prime if the offending contractor(s) are subcontractor(s).

A copy of all correspondence dealing with prevailing wage violations is to be sent to the C&T Division's prevailing wage compliance specialist and region coordinator for prevailing wage compliance. In addition, any extension of the 60 day requirement will be discussed with the C&T Division's prevailing wage compliance specialist and region coordinator for prevailing wage compliance.

The engineer will require the contractor to submit supplemental certified payrolls and canceled checks as proof of restitution. The supplemental payroll(s) shall reflect the amount of restitution paid to each employee, the time period covered by the restitution listing the payroll(s) number(s) and week ending date(s). If the violation involves a subcontractor, the engineer and region coordinator for prevailing wage compliance are to work through the prime contractor to assure that restitution is made. Once restitution has been made, the delivery engineer is to report the amount and number of employees involved to the region coordinator for inclusion in the central office semiannual report. On local agency projects, the local agency engineer is to report the same data to the delivery engineer in the TSC for inclusion in their report to the region coordinator.

### **Post-Construction**

When prevailing wage violations become apparent after the final estimate has been processed, the contractor is to be notified of the violation(s) in writing by certified mail with a copy to the C&T Division's prevailing wage compliance specialist and the region coordinator for prevailing wage compliance. If the violation involves a subcontractor, a copy of the letter will go to the subcontractor. The letter will give notice that if the issue is not resolved within 60 calendar days from contractor receipt of the notification, a post final negative estimate is to be generated rescinding payment in the amount required for restitution for the violation from the work items of the contractor found to be in violation.

### **Contractor Performance Evaluation (CPE)**

When a contractor/subcontractor(s) is found to be in non-compliance with the state prevailing wage or DBRA requirements and fails to take the necessary actions to become compliant, the engineer is to document the non-compliance through the use of the CPE process. Item number five includes prevailing wage compliance. During the project,

when issues are found and there is a lack of cooperation from a contractor/subcontractor, an interim evaluation is to be submitted. The documented record of non-compliance is important when contractor prequalification is being reviewed for possible negative action. The use of the interim CPE can assist in getting the contractor to become compliant while the project is active. Without accurate and timely evaluations, corrective action with contractors is difficult to achieve.

### **Prevailing Wage Discussion at the Preconstruction Meeting**

The following issues are to be discussed at the preconstruction meeting to establish the expectations of MDOT for the contractor with regards to prevailing wage compliance during the work on the contract:

- The Wage Rate Decision(s) to be used when there are multiple decisions in the contract.
- The wage classifications to be used when there are apparent overlaps in classification duties and rates (Open Cut; Airport, Bridge, Highway Construction; Underground etc.).
- Submittal of certified payrolls through the prime contractor.
- Prime contractor's responsibility for prevailing wage compliance for all subcontractors on the project.
- Posting of wage rates and posters on the job site.
- Wage Rate Interview process and availability of employees for interviews.
- Payroll submission time frames.
- Specific overtime and trucking requirements for projects covered under state prevailing wage laws.
- The consequences of delinquent and deficient certified payrolls.
- Other issues as needed.

### **Jobsite Posting**

The following is a list of items to be posted at the job site for projects covered under federal and state prevailing wage requirements:

- OSHA 3165 – Job Safety and Health Protection
- OFCCP 1420 – Equal Employment Opportunity is the Law \*
- WH-1420 – Your Rights Under Family and Medical Leave Act of 1993
- WH-1321 – Notice to Employees (Davis-Bacon Wage Rate)
- WH-1495 – Wage Rate Information \* (May be substituted for FHWA 1321)
- FHWA 1022 – Notice: Federal Aid Projects \*
- WH-1462 – Notice: Employee Polygraph Protection Act

These posters may be obtained by calling 800-927-7332 (USDOL Office of Small Business Programs). For informational purposes, pdf versions may be downloaded at: <http://www.dol.gov/osbp/sbrefa/poster/matrix.htm> .

- State of Michigan Civil Rights poster \*
- State of Michigan Title VI poster \*

\*These posters may be obtained by calling 517-373-8546 (MDOT's Business Development Division).

The contractor is also required to post the following at the jobsite:

- Prevailing wage rates from the contract
- Equal Employment Opportunity (EEO) policy statement
- Letter appointing an EEO officer for the contract

All required posters and information must be placed in as accessible location on the job site. Some projects will not be conducive to having a particular location for postings such as moving operations, pavement marking contracts and similar types of projects. Questions concerning postings for these types of projects should be directed to the C&T Division's prevailing wage compliance specialist.

### **Supervisors and Working Foremen**

Supervisory and managerial personnel are generally not covered by federal or state prevailing wage requirements. However, working foremen who perform the work of mechanics and/or laborers on the job may be subject to prevailing wage requirements. On projects covered by DBRA, if the supervisor or working foreman devotes more than 20 percent of their time during the time worked during a work week to laborer or mechanic duties, they are considered to be laborers or mechanics for the time spent performing those duties and are subject to prevailing wage requirements. The state prevailing wage requirements are similar to those under DBRA except that the time requirement is more than 40 percent of their time in a work week.

Supervisors and working foremen that meet the above criteria must be reported on certified payrolls with the same reporting requirements as laborers and mechanics. For the time the supervisors and foremen are not performing DBRA covered duties, they still need to be included on the certified payrolls although their work hours and wages do not need to be reported.

### **Apprentices and Trainees**

Apprentices and trainees are allowed to be paid at rates that are below the prevailing rates as long as they are registered in the approved apprenticeship programs discussed below. They are to be paid a percentage of the prevailing rate based upon their level of progression within their program.

#### **DBRA:**

An apprentice is a person employed and individually registered in a bona fide apprenticeship program registered with the USDOL, Employment and Training Administration, Bureau of Apprenticeship and Training (BAT); or with a state apprenticeship agency recognized by BAT, or a person who in the first 90 days of probationary employment as an apprentice in such an apprenticeship program; is not individually registered in the program, but who has been certified by BAT or a state apprenticeship agency to be eligible for probationary employment as an apprentice. The contractor must provide the engineer with a current signed apprentice certification letter

from the BAT that lists each apprentice. The apprentice certification letter is valid for the 90 day period listed on the letter. The apprentice certification is to be updated and kept current through the life of the contract if the apprentice wage rates are to be paid. This is to be submitted with the certified payroll where the apprentice is listed for the first time. An example apprentice certification letter is shown in Exhibit A.

If additional information is needed to verify proper wages are being paid to apprentices, the contractor shall provide a copy of the current apprentice agreement. An example apprentice agreement is shown in Exhibit B. If any of the above requirements are not met, the contractor shall be required to pay the journeyman rates listed in the wage decision. Fringe benefits are to be paid to apprentices in accordance with the apprentice agreement. If the apprentice agreement is silent on fringe benefits, the apprentice is to receive full benefits. In general, the maximum allowable ratio of apprentices to journeymen for the contractor or any subcontractor is one to one for all trades. Any questions regarding the apprentice program should be directed to the C&T Division prevailing wage compliance specialist or the region coordinator for prevailing wage compliance.

#### **State Prevailing Wage:**

In order for the contractor to pay apprentice rates to employees, all of the following criteria must be met:

- The employee must be registered with the USDOL, BAT and
- Be working during the period covered by the BAT apprentice certification letter and
- The contract must include apprentice prevailing wage rates as part of the prevailing wage rate schedule.

If any of the above criteria are not met, the contractor shall be required to pay the journeyman rates in the prevailing wage decision.

If additional information is needed to verify proper wages are being paid to apprentices, the contractor shall provide a copy of the current apprentice agreement (see Exhibit B). Fringe benefits are to be paid to apprentices in accordance with the apprentice agreement. If the apprentice agreement is silent on fringe benefits, the apprentice is to receive full benefits. Any questions regarding the apprentice program should be directed to the C&T Division prevailing wage compliance specialist or the region coordinator for prevailing wage compliance.

#### **MDOT's On-the-Job Training (OJT) Program**

Trainees are persons employed by the contractor and are covered under MDOT's OJT program. The program is managed by the Business Development Division.

For trainees, the wage rates schedule is listed in the Special Provision for On-The-Job Training Program in the contract as a percentage of the journeyman level prevailing wages. Trainees are to receive fringe benefits during their entire training period. For

additional information and questions regarding the OJT program, contact the OJT technician in the Business Development Division at 517-241-2981.

## **Davis-Bacon and State Prevailing Wage Information**

The following information clarifies various areas of DBRA and Michigan prevailing wage compliance oversight, and assist in consistent interpretation of the regulations.

### **Definition of Site of Work**

The USDOL regulatory definition (See 29 CFR 5.2) for “site of the work is the physical place or places where the . . . work called for in the contract [is occurring]; and any other site where a significant portion of the . . . work is constructed, *provided* that such site is established specifically for the performance of the contract or project.”

The site of work for most MDOT projects is defined as the entire construction site as specified in the plans and contract. The site of work also includes batch plants, borrow pits, job headquarters, tool yards, etc., provided they are established for and dedicated exclusively, or nearly so, to the . . . project, **and** are adjacent or virtually adjacent to the site of work.

The following locations are specifically excluded from the site of work definition:

- Permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal or federally–assisted project. In other words, if it is a permanent site that is not dedicated to the job, it is not within the site of work definition.
- Fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier that are established by a supplier of materials for the project before opening of bids, **and** not on the site of the work, even where such operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

## **Truck Drivers**

Coverage of truck drivers under DBRA and state prevailing wage vary in several areas. The following guidance is to be used to determine whether truck drivers are covered under DBRA and state prevailing wage regulations.

### **DBRA Trucking**

**Truck drivers are covered by DBRA while:**

- They are working on the “site of work.”
- Hauling to or from a facility that is deemed part of the “site of work.” (For example, driving between the job site and a dedicated batch plant or tool yard located adjacent to, or virtually adjacent to, the job site).

**Truck drivers are not covered by DBRA in the following instances:**

- If the driver is not working exclusively on the site of work. To be covered by DBRA, the time spent working on site must be more than de minimis (20 percent or more of the work week).

Examples when a truck driver is not covered by DBRA include, but are not limited to, the following:

- While off the “site of work.” The transportation of materials supplies, tools, equipment, etc., from one site of work to another is not covered unless such sites are dedicated and adjacent.
- While loading and/or unloading materials and supplies on the “site of work.” As a practical matter, since the majority of time spent by material delivery truck drivers is off site beyond the scope of DBRA coverage and the time spent on site is relatively brief, MDOT chooses to use a rule of reason and will assume that some activities will never exceed de minimis. These items include, but are not limited to:
  - Trucks delivering materials to a stockpile.
  - Trucks delivering materials along the jobsite for later installation. Example: concrete pipe, traffic control devices, etc.
- Drivers traveling between a DBRA project and a commercial supply facility, while they are off the “site of work.”
- The travel time between two DBRA projects. The one exception to this rule is when there are adjacent projects under the same or different contracts that were established to accomplish the same objective (60 miles of resurfacing may be broken into several contracts), then all of these projects are considered contiguous and travel between sites is covered by DBRA.

## **State Prevailing Wage Trucking**

**Trunk drivers are covered under state prevailing wage wages when:**

Note: “Site of Work” and “de minimis” criteria are not applicable.

The truck driver is hired by the contractor for the sole purpose of providing transportation of materials from the source to the project, as well as time spent hauling materials from the project to an off site location. The covered time starts when the truck driver enters the vehicle until the driver completes the transportation services. This time includes time spent driving to the project from the base of operations through the time the truck driver returns to the base of operations after completing the hauling services. The method of hire, whether subcontract, purchase order, invoice, or as an employee is immaterial. A typical example of this would be the delivery of hot mix asphalt to a road paving job, where the paving contractor has brokered non owner operator trucking to deliver the material to the project site.

If the driver is providing material hauling services for multiple projects, including non covered and state prevailing wage jobs, the covered time begins at the point where

the hauling services end for the unrelated project(s). The covered time ends at the point where the hauling services begin for the non-covered project(s), or when the truck driver parks the vehicle if the covered work is the last operation of the day. An example of a multiple project hauling operation where there are covered jobs and non-covered jobs follows.

The truck driver starts their day hauling gravel from a pit to a non covered project. After delivering their last load of gravel to the non covered project, they switch to hauling hot mix asphalt to a covered project. The covered time starts at the point the driver leaves the non covered job and drives to the hot mix asphalt plant, including drive time. The covered time ends when the driver parks the vehicle after the last load has been delivered, including drive time to the base of operations, or the driver arrives at another non-covered project to haul material.

In general, when a driver is performing work for the sole intended purpose of the covered project, all time spent is covered under state prevailing wage laws.

**Truck drivers are not covered under state prevailing wage when:**

The truck driver is delivering materials/product for the company of which they are employed, and that company is selling materials/product to the contractor. An example of this would be the delivery of concrete pipe to a project. The person delivering the pipe is also an employee of the pipe manufacturer and not the contractor.

**Owner-Operator Trucking, DBRA and state prevailing wage**

Bona fide owner-operators of trucks who own and drive their own truck and operate the truck on the “site of work” are not covered under DBRA or state prevailing wage requirements. However, the contractor who hires the owner-operator must include the names of such owner-operators on their certified payrolls, but do not need to show the hours worked or rates paid, only the notation “owner-operator.” (Note: This applies only to the individual owner of a truck. The same policy does not apply to owner-operators of other equipment such as bulldozers, backhoes, cranes, welding machines, etc.)

**Product and Material Suppliers Personnel**

Product and materials suppliers such as barricade companies are not generally subject to DBRA coverage unless they are spending more than a de minimis amount of time on the site of work (20 percent or more of the work week). This 20 percent rule applies to individual projects and is not cumulative.

However, the USDOL maintains that when a material supplier, manufacturer, or carrier undertakes to perform part of a construction contract as a subcontractor, its laborers and mechanics employed at the site of work are subject to the prevailing wage requirements in the same manner as those employed by any other contractor or subcontractor. Prevailing wages must be paid to the employees for all time spent working on the site of work, and certified payrolls must be submitted to the engineer. In other words, if the

traffic control company puts the devices into place as specified by the contract documents, the work is covered. This includes placement and covering of lead in signing for the construction project and any other one time activity of this nature.

Examples of when DBRA coverage is required:

- Placing/moving temporary signs and barricades on the DBRA covered site of work in accordance with the requirements of the contract (including initial placement).
- Providing flag control on a DBRA covered site of work.

Examples when DBRA coverage **is not** required:

- Drop off and pick up of traffic control products on the site of work when this time is de minimis.
- Maintaining/servicing temporary signs and barricades, replacing lights, etc., when this time is de minimis.
- Drop off and pick up of traffic control products at contractor's yard outside the site of work.
- Travel between DBRA-covered projects.

### **Post Tensioning of Concrete Beams at the Site of Work**

The USDOL regulatory definition (See 29 CFR 5.2) of “construction” includes “[m]anufacturing or furnishing of materials, articles, supplies or equipment on the site of the . . . work . . . .” as well as the installation of items fabricated off site. For example, employees of a materials supplier who are required to perform more than an incidental amount of **construction work** in any work week at the site of the work would be covered by DBRA and due the applicable wage rate for the classification of work performed.

For enforcement purposes, the USDOL adopts a policy that if such an employee spends more than 20 percent of his/her time in a work week engaged in the work of a laborer or mechanic on the site of work, he/she is subject to DBRA coverage for all time spent on the site during the work week. DBRA coverage does not apply to factory representatives who simply observe and monitor the post tensioning activities.

### **Prevailing Wage Oversight Quality Assurance**

In order to assure compliance with MDOT prevailing wage oversight procedures, Quality Assurance (QA) reviews will be conducted at all levels of prevailing wage oversight for MDOT let contracts.

The following process is to be followed at all of the levels of oversight.

- In order to identify any problems with prevailing wage compliance, the QA reviews will be conducted each construction season while the contract is active.
- A sufficient number of contractors assigned to the contract will be reviewed to assure compliance with prevailing wage requirements.
- Certified payrolls and other project documentation will be reviewed to determine compliance. The certified payroll review checklist form 1952 will be used for the review.

- If deficiencies are discovered during the review, follow-up and document the resolution. When deficiencies are found, the proper procedures are to be reviewed with the engineer.

During the review, the following prevailing wage compliance procedure requirements are to be checked:

- All posters and jobsite information must be posted, as required.
- Wage rate interviews are conducted according to the prevailing wage procedures.
- The certified payrolls are completed properly and agree with project documentation.
- The workers for all classifications were paid the correct wage.

### **Local Agency Level**

- The region coordinator for prevailing wage compliance will work with the engineer of each TSC to assure that a QA review is done for a minimum of one contract for each local agency under the jurisdiction of the TSC. Additional reviews may be needed if the level of compliance is questionable.
- Once the review is complete, the engineer will forward a copy of the review documents to the region coordinator.
- The region coordinator will review the documents to assure compliance with MDOT procedures and forward a copy to the C&T Division prevailing wage compliance specialist.

### **TSC Level**

- The region coordinator for prevailing wage compliance will conduct random QA reviews for each engineer in each TSC in the region.
- The region coordinator will select a minimum of 10 percent of TSC projects for review. If the TSC has less than ten projects in a construction season, then at least one project is to be reviewed. Additional reviews may be needed if the level of compliance is questionable.
- Once the review is complete, the coordinator will forward a copy of the review documents to the C&T Division prevailing wage specialist.

### **Statewide Level**

The C&T Division wage compliance specialist assures compliance of the prevailing wage oversight program statewide. The following process will be used:

- Review reports from region coordinator for prevailing wage to assure oversight compliance at the TSC and local agency level.
- Select a minimum of one contract from each region for QA review of prevailing wage compliance.
- In addition to the above, review a minimum of one consultant-administered contract if applicable.

**Summary of Changes to the Procedures  
For  
Prevailing Wage Oversight**

**Page    Section Title**

**Federal Prevailing Wage**

- 2    A bullet was added to the list of bona fide fringe benefits for Supplemental Unemployment Benefit Programs.
- 3    A bullet was added to the list of fringe benefits not allowed under DBRA for Per Diems.

**Multiple Wage Decisions**

- 4    Clarification was added for work delineation between ‘Building’ and ‘Airport, Bridge and Highway’ decisions for electrical work in rest area contracts.

**Certified Payrolls**

- 4    Clarification for when certified payrolls are required including work under subcontracts, purchase orders, invoices, or other contractual arrangements.

**Submittal Requirements**

- 4    Included statement for short duration projects for certified payroll submittal time frame of two weeks instead of three.
- 4    Inserted ‘in good faith’ when discussing the three week grace period for submission of the first certified payroll.

**Notice of Delinquent Certified Payroll**

- 5    Added options for sending of notices to include other methods which establish the date received by the prime contractor.
- 5    Revised distribution for first and second notices to the prime contractor.
- 5    Content of the first notice was revised to include the intent to assess non-compliance damages if payrolls remain delinquent after thirty calendar days from the receipt of the first notice until complete and accurate certified payroll are received by the engineer.
- 5    Removed the action of withholding all payment for all items after 30 calendar days of the second notice.
- 5    Second notice warns of rescinding payment for all items of work and warns of the submittal of interim Contractor Performance Evaluations for the offending contractor(s).
- 6    Note 1 for the action table revised the method of sending the notices by allowing other methods which establish the date the contractor receives the notice and the distribution copies of the first and second notices.
- 6    Added Note 3 referencing Table 1 Schedule of Non-Compliance Damages.
- 6&7    Revised the paragraph that addresses steps to be taken for short duration projects using Notice to Bidders 03NB12 which changes the three week grace period for

certified payroll submittal to two weeks and shortens the contractor response times for action for the first and second notices from 30 calendar days to 15 calendar days.

7 Added Table 1 Schedule of Non-Compliance Damages.

**Certified Payroll Status Record**

7 Deleted requirement for employee address on certified payrolls and requiring only the last four digits of the employee social security number. Payrolls containing full social security numbers are to be returned to the prime with no change in the time frames for delinquent or deficient certified payrolls and associated actions by the engineer.

8 Revised the reporting requirement for classification description to include the complete classification description from the wage rate decision.

8 Eliminated the duplication and provided clarification for employee daily and weekly hour reporting.

8 Added requirement for reporting total weekly hours for all jobs worked.

8 Provided further clarification of reporting method for fringe benefits and explanation of miscellaneous deductions.

8 Clarified requirement for reporting of gross jobs wages, gross weekly wages for all jobs, and net weekly wages for the job and all jobs.

8 Revised the example for curb and gutter work under DBRA to include the revised classification descriptions.

8 Clarified overtime payment requirements for DBRA projects.

**Deficient Certified Payrolls**

9 Method of sending notices was revised to include other methods which establish the date the notice was received by the prime contractor.

10 Revised the information to be included in the first notice to the prime contractor to include withholding of the offending contractor's item if the issues are not resolved within 30 calendar days from the receipt of the first notice by the prime contractor until all payrolls are complete, accurate, and current.

10 Added notice that if deficiencies are not corrected within 30 calendar days of receipt of the first notice by the prime, non-compliance damages will be assessed retroactive to the date the first notice was received by the prime contractor.

10 The second notice to the prime contractor is to include a warning that past payments for all work items of the offending contractor(s) will be rescinded if complete, accurate, and current. Additionally, that interim Contractor Performance Evaluations will be submitted reflecting the non-compliant actions of the offending contractor(s).

11 Revised the Notice/Actions Table and Notes to reflect the above changes.

11&12 Revised the paragraph that addresses steps to be taken for short duration projects using Notice to Bidders 03NB12 which changes the three week grace period for certified payroll submittal to two weeks and shortens the contractor response times for action for the first and second notices from 30 calendar days to 15 calendar days.

11 Added Note 3 referencing Table 1 Schedule of Non-Compliance Damages.

### **Restitution**

- 13 Revised the content of the first notice to the prime contractor and involved subcontractor(s) to include the intent to withhold payment for offending contractor'(s) items if the non-compliance issues are not resolved in 60 calendar days.
- 14 Revised the content of the second notice to the prime contractor and involved subcontractor(s) to include the intent to assess non-compliance damages retroactive to the date the second notice was received by the prime contractor and to assess all the investigation and audits expenses by MDOT and associated entities until the non-compliance issues are fully resolved and proof of restitution is received by the engineer.
- 14 If issues are not fully resolved within 30 calendar days of the receipt of the second notice by the prime contractor, the engineer is to submit interim Contractor Performance Evaluations for the offending contractor(s) and the prime if the offending contractor(s) are subcontractor(s) reflecting the lack of compliance with prevailing wage regulations and the lack of oversight by the prime contractor.
- 14 Submission of 'revised' certified payrolls was changed to 'supplemental' certified payrolls for the non-compliant period and further explains what information is to be included in the supplemental certified payrolls.
- 14 Revisions were made to the way restitution and non-compliance issues are reported to the region coordinators for prevailing wage compliance. The local agencies are to report there issues to their delivery engineer who will include it with their report to the region coordinators for submission to the Lansing office.

### **Prevailing Wage Discussion at the Preconstruction Meeting**

- 16 Bullets were added to include discussion of certified payroll submission time frames and to discuss specific overtime and trucking requirements for projects covered under state prevailing wage laws.

### **Jobsite Posting**

- 17 A paragraph was added discussing postings locations on the job as well as for jobs without field offices or for moving operations.

### **Apprentices and Trainees**

- 18 Information is provided to clarify what documentation is needed when apprentices and trainees show up on certified payrolls. The documentation includes an Apprenticeship Certification letter and Apprenticeship Agreement. Examples have been added in Appendix A and Appendix B.

### **State Prevailing Wage Trucking**

- 20 The sections on covered activities and activities that are not covered have been completely rewritten to reflect the updated policy from the Michigan Department of Labor and Economic Growth.

**Product and Materials Suppliers Personnel**

- 21 The activity of placing and covering lead in signing and other one time activities for traffic control setup are now considered a covered activity under DBRA. The example given in this section was also changed to reflect this revision.

**Exhibit A**  
**U. S. Department of Labor**



**Office of Apprenticeship**  
**Employment & Training Administration**

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Date:       «Date»  
From:       Dave Jackson, State Director  
              Office of Apprenticeship  
Subject:     Apprentice Certification  
  
To:         «Contact»  
              «Company»  
              «Address»  
              «City», «State» «Zip»

The following individuals are apprentices registered with the U.S. Department of Labor, Office of Apprenticeship, under the sponsorship of Program Number «RAIS»:

                  «Company»  
                  «Address»  
              «City», «State» «Zip»

<b>Apprentice ID</b>	<b>SSN</b>	<b>Apprentice Name</b>	<b>Trade</b>	<b>Date Registered</b>	<b>Date Apprenticeship Began</b>	<b>Date Cancelled (If applicable)</b>
«ID»	«SSN»	«Apprentice»	«Occupation»	«RegDate»	«Indenture»	«Can-Com»
-----end-of-registered-apprentice-list-----						

Certified By:

Date Issued:

\_\_\_\_\_  
David Jackson, Michigan ATR  
Office of Apprenticeship

«Date»

**\*\* Void 90 Days from Issue Date \*\***



APPRENTICE REGISTRATION-SECTION II

OMB No. 1205-0223 Expires: 01/31/2012

**Warning: This agreement does not constitute a certification under Title 29, CFR, Part 5 for the employment of the apprentice on Federally financed or assisted construction projects. Current certifications must be obtained from the Office of Apprenticeship (OA) or the recognized State Apprenticeship Agency shown below. (Item 22)**

The program sponsor and apprentice agree to the terms of the Apprenticeship Standards incorporated as part of this Agreement. The sponsor will not discriminate in the selection and training of the apprentice in accordance with the Equal Opportunity Standards in Title 29 CFR Part 30.3, and Executive Order 11246. This agreement may be terminated by either of the parties, citing cause(s), with notification to the registration agency, in compliance with Title 29, CFR, Part 29.6

**PART A: TO BE COMPLETED BY APPRENTICE. NOTE TO SPONSOR: PART A SHOULD ONLY BE FILLED OUT BY APPRENTICE**

1. Name (Last, First, Middle) and Address      *Social Security Number  (No., Street, City, State, Zip Code, Telephone Number)		Answer Both A and B (Voluntary) (Definitions on reverse)	5. Veteran Status (Mark one)  <input type="checkbox"/> Non-Veteran <input type="checkbox"/> Veteran
2. Date of Birth (Mo., Day, Yr.)		4. a. Ethnic Group (Mark one) <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino  b. Race (Mark one or more) <input type="checkbox"/> American Indian or Alaska native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or other Pacific Islander <input type="checkbox"/> White	6. Education Level (Mark one)  <input type="checkbox"/> 8th grade or less <input type="checkbox"/> 9th to 12th grade <input type="checkbox"/> GED <input type="checkbox"/> High School Graduate or Greater <input type="checkbox"/> Post Secondary or Technical Training
3. Sex (Mark one)  <input type="checkbox"/> Male <input type="checkbox"/> Female		7. Career Linkage or Direct Entry (Mark one) (Instructions on reverse) <input type="checkbox"/> None <input type="checkbox"/> Incumbent Worker <input type="checkbox"/> Adult <input type="checkbox"/> Youth <input type="checkbox"/> Dislocated Worker <input type="checkbox"/> Trade Adjustment Assistance <input type="checkbox"/> Job Corps <input type="checkbox"/> School-to-Registered Apprenticeship <input type="checkbox"/> YouthBuild <input type="checkbox"/> HUD/STEP-UP <input type="checkbox"/> Direct Entry: _____	
8. Signature of Apprentice      Date		9. Signature of Parent/Guardian (if minor)      Date	

**PART B: SPONSOR:**

10. Sponsor Program No.  Sponsor Name and Address (No. Street, City, County, State, Zip Code)		11a. Trade/Occupation (The work processes listed in the standards are part of this agreement).		
11b. Occupation Code		12. Term (Hrs., Mos., Yrs.)	13. Probationary Period (Hrs., Mos., Yrs.)	
14. Credit for Previous Experience (Hrs., Mos., Yrs.)		15. Term Remaining (Hrs., Mos., Yrs.)	16. Date Apprenticeship Begins	
17a. Related Instruction (Number of Hours Per Year)	17b. Apprentice Wages for Related Instruction <input type="checkbox"/> Will Be Paid <input type="checkbox"/> Will Not Be Paid	17c. Related Training Instruction Source		

18. Wages: (Instructions on reverse)

18a. Pre-Apprenticeship Hourly Wage \$ \_\_\_\_\_      Apprentice's Entry Hourly Wage 18b. \$ \_\_\_\_\_      Journeyworker's Hourly Wage 18c. \$ \_\_\_\_\_

Check Box	Period 1	2	3	4	5	6	7	8	9	10
18d. Term <input type="checkbox"/> Hrs., <input type="checkbox"/> Mos., or <input type="checkbox"/> Yrs.										
18e. Wage Rate (Mark one) % <input type="checkbox"/> or \$ <input type="checkbox"/>										

19. Signature of Sponsor's Representative(s)      Date Signed	21. Name and Address of Sponsor Designee to Receive Complaints (If applicable)
20. Signature of Sponsor's Representative(s)      Date Signed	

**PART C: TO BE COMPLETED BY REGISTRATION AGENCY**

22. Registration Agency and Address	23. Signature (Registration Agency)	24. Date Registered
25. Apprentice Identification Number (Definition on reverse):		

**Item 4.a. Definitions:**

**Hispanic or Latino.** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino."

**Item 4.b. Definitions:**

**American Indian or Alaska Native.** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

**Asian.** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

**Black or African American.** A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American."

**Native Hawaiian or Other Pacific Islander.** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

**White.** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

**Item 7. Instructions:**

Indicate any career linkage (definitions follow) or direct entry. Enter "None" if no career linkage or direct entry apply. Enter "Incumbent Worker" if the individual before becoming an apprentice was currently employed full-time by the sponsor or entities participating in the apprenticeship program (Military). Career linkage includes participation in programs that provided employment, training and other services to adults, youth and dislocated workers. Funds for these activities are provided by the U.S. Department of Labor/Employment and Training Administration (U.S. DOL/ETA) to states and local communities.

**Adult.** Also includes individuals participating in Native American Programs, and/or Migrant and Seasonal Farmworker Programs.

**Youth.** Includes Youth ages 16-21 years, and other concentrated Youth programs in designated areas.

**Dislocated Worker.** Includes an individual that has been terminated or laid off and is unlikely to return to the industry or occupation. It also includes a displaced homemaker who has been providing unpaid services to family members in the home, is no longer supported, and is unemployed or underemployed.

**Trade Adjustment Assistance.** Includes trade-affected workers who have become unemployed as a result of increased imports or shifts in production out of the United States.

**Job Corps.** Youth ages 16-24 years usually receiving services in a residential setting.

**School-to-Registered Apprenticeship.** Program designed to allow high school youth ages 16 - 17 to enter a Registered Apprenticeship program and continue after graduation with full credit given for the high school portion.

**YouthBuild.** Program transferred from the U.S. Department of Housing and Urban Development (HUD) to U.S. DOL/ETA in September 2006. It assists youth ages 16-24 to obtain education and skill training and advance toward post-secondary education and career pathways in construction and other high growth, high demand occupations while building affordable housing in their communities.

**HUD/STEP-UP.** Developed in conjunction with the U.S. Department of Housing and Urban Development (HUD). The program provides the actual apprenticeship experience and the framework for moving into high-skill Registered Apprenticeship.

**Direct Entry.** A graduate from an accredited technical training school, Job Corps training program, Youth Build Program, or a participant in a military apprenticeship program, any of which training is specifically related to the occupation and incorporated in the Registered Apprenticeship standards. Also, fill in the name of the program.

**Item 18. Wage Instructions:**

18a. Pre-Apprentice hourly wage, sponsor enters the individual's hourly wage in the quarter prior to becoming an apprentice.

18b. Journeyworker's wage, sponsor enters wage per hour.

18c. Apprentice's entry hourly wage, (hourly dollar amount paid), sponsor enters this apprentice's entry hourly wage.

18d. Term, sponsor enters in each box the apprentice schedule of pay for each advancement period.

18e. Percent or dollar amount, sponsor marks one.

**Note:** 18b. If the employer is signatory to a collective bargaining agreement, the journeyworker's wage rate in the applicable collective bargaining agreement is identified. Apprenticeship program sponsors not covered by a collective bargaining agreement must identify a minimum journeyworker's hourly wage rate that will be the basis for the progressive wage schedule identified in item 18e. of this agreement.

18d. The employer agrees to pay the hourly wage rate identified in this section to the apprentice each period of the apprenticeship based on the successful completion of the on-the-job learning and the related instructions outlined in the Apprenticeship Standards. The period may be expressed in hours, months, or years.

18e. The wage rates are expressed either as a percent or in dollars and cents of the journeyworker's wage depending on the industry.

**Example - 3 YEAR APPRENTICESHIP PROGRAM**

<u>Term</u>	<u>Period 1</u>	<u>Period 2</u>	<u>Period 3</u>	<u>Period 4</u>	<u>Period 5</u>	<u>Period 6</u>
hrs., mos., yrs.	1000 hrs.					
%	55	60	65	70	80	90

**Example - 4 YEAR APPRENTICESHIP PROGRAM**

<u>Term</u>	<u>Period 1</u>	<u>Period 2</u>	<u>Period 3</u>	<u>Period 4</u>	<u>Period 5</u>	<u>Period 6</u>	<u>Period 7</u>	<u>Period 8</u>
hrs., mos., yrs.	6 mos.							
%	50	55	60	65	70	75	80	90

**Item 21.** Identifies the individual or entity responsible for receiving complaints (Code of Federal Regulations, CFR, Title 29 part 29.6(k)).

**Item 25. Definition:** The Registered Apprenticeship Partners Information Data System (RAPIDS), formerly known as the Registered Apprenticeship Information System (RAIS), encrypts the apprentice's social security number and generates a unique identification number to identify the apprentice. It replaces the social security number to protect the apprentice's privacy.

\*The submission of your social security number is requested. The apprentice's social security number will only be used to verify the apprentice's periods of employment and wages for purposes of complying with the Program Assessment Rating Tool (2005) of the Office of Management and Budget related to common measures of the Federal job training and employment programs for measuring performance outcomes and for purposes of the Government Performance and Results Act. The Office of Apprenticeship needs the apprentice's social security number to match this number against the employers' wage records. Also, the apprentice's social security number will be used, if appropriate, for purposes of the Davis Bacon Act of 1931, as amended, U.S. Code Title 40, Sections 276a to 276a-7, and Title 29 CFR 5, to verify and certify to the U.S. Department of Labor, Employment Standards Administration, that you are a registered apprentice to ensure that the employer is complying with the geographic prevailing wage of your occupational classification. Failure to disclose your social security number on this form will not affect your right to be registered as an apprentice. Civil and criminal provisions of the Privacy Act apply to any unlawful disclosure of your social security number, which is prohibited.

The collection and maintenance of the data on ETA-671, Apprentice Registration – Section II Form, is authorized under the National Apprenticeship Act, 29 U.S.C. 50, and CFR 29 Part 29.1. The data is used for apprenticeship program statistical purposes and is maintained, pursuant to the Privacy Act of 1974 (5 U.S.C. 552a.), in a system of records entitled, DOL/ETA-4, Apprenticeship Information Management System (AIMS), which is now known as (RAPIDS) at the Office of Apprenticeship, U.S. Department of Labor. Data may be disclosed to a State Apprenticeship Council to determine an assessment of skill needs and program information, and in connection with federal litigation or when required by law.

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond is required to obtain or retain benefits under 29 USC 50. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Apprenticeship, 200 Constitution Avenue, N.W., Room N-5311, Washington, D.C.. 20210. (Paperwork Reduction Project 1205-0223).

## Prevailing Wage Oversight Functions and Duties Matrix Federal Aid & State Funded Projects

### Abbreviations

CP = Certified Payroll  
 WRI = Wage Rate Interview  
 RC = Region Coordinator  
 PWCS = Prevailing Wage Compliance Specialist-Central Office  
 PW = Prevailing Wage  
 FHWA = Federal Highway Administration

USDOL = United States Department of Labor  
 FAHL = Fraud and Abuse Hot Line  
 AG = Attorney General  
 OJT = On the Job Trainee  
 MDOT = Michigan Department of Transportation  
 DLEG = Department of Labor and Economic Growth

Function/Duty	Responsible Party			
	TSC	Region	Central Office	Contractor
Provide guidance and advice on PW issues		Assist PWCS with this function with TSC personnel	Lead activity for this area to coordinate with RC and TSCs	
Conduct training for PW compliance oversight at various levels and groups		Assist PWCS in conducting region level training including local agencies and consultants	Lead and coordinate training at all levels in MDOT, local agencies and consultants	
Organize and conduct an annual meeting with the RCs to improve consistency and uniformity in the statewide PW compliance program			Lead duty	
Provide updates on procedures and changes to the PW regulations to MDOT and other personnel		Assist PWCS as needed	Lead duty	
Act as technical advisor on all PW issues on MDOT committees and task forces		Assist PWCS as needed	Lead duty	
Serve as MDOT liaison with USDOL, DLEG, FHWA and industry on PW issues			Lead duty	
Coordinate PW oversight activities on a statewide basis to provide consistency and uniformity in the PW compliance program			Lead duty	
Discuss PW compliance at precons	Lead duty	Assist TSC as needed		Discuss PW requirements with all subcontractors

Function/Duty	Responsible Party			
	TSC	Region	Central Office	Contractor
Monitor & document CP submission on Status Log for all contractors	Lead duty			Prime & Subs submit CPs to Engineer through the Prime
Conduct in depth review of CPs to verify acceptable quality, including proper format, content, and compliance; when contractor submits acceptable quality CPs; then spot check	Lead duty			Submit properly completed CPs
Obtain OJT and Apprentice Program documentation from contractor, review for compliance and maintain records in project files	Coordinate with PWCS for verification when apprentices and OJTs are listed on CPs		Assist the TSC's with verification of approved program documentation and wage rates	Provide TSC with OJT & Apprenticeship Program documentation
Determine the projects where WRIs will be conducted	Work with the RC to coordinate WRIs	Lead duty for RC to coordinate with TSC		
Verify that PW rates and posters are posted on all projects	Lead duty	RC randomly audits 10% of projects		Post wage rates and posters on the job in conspicuous place
Verify the accuracy of CPs using project documentation	Lead duty	RC randomly audits 10% of projects		
Perform WRIs for the TSC projects	Lead duty	RC randomly audits 10% of projects		Make employees available
Compare information from WRI with CPs & other project documentation to verify compliance	Lead duty	RC randomly audits 10% of projects		
Conduct and document QA reviews on all aspects of the PW compliance oversight program statewide		Assist PWCS as needed	Lead duty	
Provide assistance and guidance to local agencies & consultants on PW issues and oversight procedures	Lead duty	Assist TSC as needed	Assist RC and TSC as needed	
Conduct QA review of PW oversight program on local agency projects	Shared responsibility with RC	Shared responsibility with the TSC Delivery Engineer		

Function/Duty	Responsible Party			
	TSC	Region	Central Office	Contractor
Identify WRI issues, conduct follow-up data gathering on WRI issues to verify compliance needs	Lead duty	Act as support in follow up activities in data gathering and coordinate with PWCS.	Provide guidance and assistance as needed to RC and TSCs	Cooperate with Engineer in providing documentation & records and resolve issues
Coordinate PW activities as assigned on issues from the FAHL, complaints or other sources; document actions taken and follow-up until the issues are resolved	Assist PWCS and/or RC with this activity as needed	Assist PWCS as needed	Serve as coordinator and assist others as needed	
Identify potential PW violations and issues for possible investigation by others	Assist RC and PWCS as needed	Assist TSC and PWCS as needed	Work with region and central staff to determine if an investigation is required; submit to others for further action	Cooperate with Engineer in providing documentation & records and resolve issues
Take appropriate action when PW violations are found during investigation by others	Lead duty	Works with PWCS and others	PWCS provide support	
Provide oversight and follow-up with TSC to verify resolution is reached on all PW issues identified in investigation by others	Initiate appropriate actions to obtain resolution of PW issues	Lead duty for RC to assure resolution is reached to the extent possible	Provide guidance and assistance as needed to RC and TSCs	
Serve as coordinator for PW investigation handoffs to AG and others			Lead duty	
Compile state-wide semi annual report of PW violations and issues for FHWA and others	Assist RC as needed	Assist PWCS with providing data and information	Lead duty	
Manage the PW data base under development			Lead duty	
Prepare miscellaneous reports and updates for the USDOL, FHWA, the Executive PW committee as needed	Assist PWCS as needed	Assist PWCS as needed	Lead duty	
Coordinate and chair the Labor Compliance Oversight Team			Lead duty	