

5200.1106 COVERAGE OF PREVAILING WAGE LAW UNDER MINNESOTA STATUTES, SECTIONS 177.41 TO 177.44.

Subpart 1. **In general.** For purposes of parts 5200.1105 and 5200.1106 and Minnesota Statutes, sections 177.41 to 177.44, the prevailing wage rate which, for the purpose of all public works highway projects funded in whole or in part by state funds only, includes truck rental rates, must be paid for work under the contract.

Subp. 2. **Work under the contract.**

A. Except as provided in subpart 4, work under the contract means all construction activities associated with the public works project, including any required hauling activities on the site of or to or from a public works project and work conducted pursuant to a contract as defined by item B, regardless of whether the construction activity or work is performed by the prime contractor, subcontractor, trucking broker, trucking firms, independent contractor, or employee or agent of any of the foregoing entities, and regardless of which entity or person hires or contracts with another. The term "work under a contract" has the same meaning.

B. "Contract" means the written instrument containing the consideration and the terms of agreement between the prime contractor and the contracting agency for the construction of all or a part of:

- (1) a highway pursuant to Minnesota Statutes, sections 161.32 and 177.44;
- (2) a public works project pursuant to Minnesota Statutes, section 177.43 and chapter 16B; or
- (3) any public building or public works financed in whole or in part with state funds pursuant to Minnesota Statutes, sections 177.41 to 177.44.

Contract includes project proposals, plans, and specifications, and all requirements for labor, equipment, and materials found in such proposals, plans, and specifications.

C. "Prime contractor" means an individual or business entity that enters into a contract as defined in item B with the contracting agency.

D. "Contractor" means an individual or business entity that is engaged in construction or construction service-related activities including trucking activities either directly or indirectly through a contract as defined by item B, or by subcontract with the prime contractor, or by a further subcontract with any other person or business entity performing work under the contract.

Subp. 3. **Work considered to be under a contract.** Without limiting the application of parts 5200.1105 and 5200.1106 to other situations, the following are considered to be work under the contract.

A. Work performed by employees of a contractor or subcontractor that operates an asphalt or concrete plant, that was moved into a gravel pit, borrow pit, or other location not on the project, primarily to serve public works projects is considered work under the contract including the contractor's employees loading the equipment hoppers with materials obtained from the pit regardless of whether the pit meets the definition of commercial establishment.

B. The following hauling activities are included in hours worked and considered work under the contract for purposes of payment of prevailing wages and payment of the truck rental rate:

(1) the hauling of any or all stockpiled or excavated materials on the project work site to other locations on the same project even if the trucks leave the work site at some point;

(2) the delivery of materials from any facility that does not meet the requirements of a commercial establishment to the project and the return haul to the starting location either empty or loaded;

(3) the delivery of materials from another construction project site to the public works project and the return haul empty or loaded is considered work under the contract. Construction projects are not considered a commercial establishment;

(4) the hauling required to remove any materials from the public works project to a location off the project site and the return haul if empty or if loaded from other than a commercial establishment;

(5) the delivery of materials or products by trucks hired by a contractor, subcontractor, or agent thereof, from a commercial establishment; and

(6) delivery of sand, gravel, or rock, by or for a commercial establishment, which is deposited "substantially in place," either directly or through spreaders from the transporting vehicles is work under the contract. In addition, the return haul to the off-site facility empty or loaded is also considered work under the contract.

Subp. 4. **Work not considered to be under a contract.** Without limiting the application of parts 5200.1105 and 5200.1106 to other situations, the following work is not considered to be work under a contract:

A. the processing or manufacturing of materials or products by or for a commercial establishment;

B. the work performed by employees of the owner or lessee of a gravel pit or borrow pit that is a commercial establishment and that performs work in conjunction with a public works project by adding value to the sand, gravel, or rock contained in or delivered to the pit through the use of screening, washing, or crushing machines. This applies even if the machines are portable. This does not include the employees described in subpart 3, item A;

C. the delivery of processed or manufactured goods to a public works project by the employees of a commercial establishment including truck owner-operators hired by and paid by the commercial establishment, unless it is the delivery of mineral aggregate that is incorporated into the work under the contract by depositing the material substantially in place; or

D. multiple site hauling operations include secondary hauling activities in addition to the hauling of materials on and off the public works project in order to complete the truck's round trip haul. The hauling of materials or products between these secondary off-site facilities as part of a multiple site hauling operation is not considered work under the contract as long as the time spent hauling between the secondary sites is properly documented in the trucking records and the time spent hauling on and off the project is properly compensated as required in subpart 3.

Subp. 5. **Commercial establishment, exceptions, definitions.** For purposes of parts 5200.1105 and 5200.1106 and Minnesota Statutes, sections 177.41 to 177.44, the following terms have the meanings listed.

A. "Laborer or mechanic" means a worker in a construction industry labor class identified in or pursuant to part 5200.1100.

B. "Mineral aggregate" is sand, gravel, or crushed stone or rock, or earthen material suitable for roadway development, or mixtures of these naturally occurring substances with recycled materials, suitable for the base or shoulder of a highway or heavy project used to compose the shoulder, or support bituminous or concrete pavement, or used as a final gravel road surface. Mineral aggregate specifically does not include screenings, slag, riprap, recycled concrete and bituminous materials, ready-mix concrete, bituminous concrete, asphalt, mastic, mortar, plaster, macadam, and other similar processed or manufactured materials or products. Additionally, mineral aggregate does not include materials such as clay, topsoil, fill, dirt, silt, boulders, wall stone, loam, gumbo, loess, peat, muck, hardpan, or other similar soils or mixed earth.

C. "Incorporated into the work under the contract by depositing the material substantially in place" means the mineral aggregate is deposited on the project site directly or through spreaders where it can be spread from or compacted at the location where it was deposited. As used in this part, "depositing substantially in place" has the same meaning.

D. To be a "fixed place of business," a commercial establishment must serve the government project from a location from which it served the public prior to and at the time of advertisement of the public works contract and that has sufficient utilities and equipment to serve the public upon demand.

E. "Regularly supply" includes supply by a commercial establishment that is closed on a seasonal basis.

F. The determination of whether a facility is a "commercial establishment" is made on a location-by-location basis and on a product-by-product basis, not on a businesswide basis. For purposes of parts 5200.1000 to 5200.1120 and Minnesota Statutes, sections 177.41 to 177.44, production of mineral aggregate is considered production of one product. Construction projects are not considered commercial establishments. A "commercial establishment" is a business entity that has not set up at the location from which deliveries are made primarily to serve public works projects and, prior to and at the time of advertisement of the public works contract, it:

- (1) owned or leased the land on which it operates;
- (2) possessed business records indicating that sales from the location from which deliveries are made are for other than the contracting agency's public works contracts;
- (3) advertised the availability of material for sale to the general public from the location and had facilities available for effecting sales at the location; and
- (4) has acquired all necessary permits to operate from the location, and met all legal obligations of state and local regulations to excavate soils, sand, gravel, or rock for the purpose of receiving something of value for the product.

Subp. 6. **Prohibited payment practices.** The contractor, subcontractor, trucking broker, or other person making payment to an employee laborer, mechanic, worker, or truck owner-operator may not accept a rebate for the purpose of reducing or otherwise decreasing the value of the compensation paid.

Subp. 7. **Trucking definitions.** The following terms have the meanings given them for the purpose of parts 5200.1105 and 5200.1106 and Minnesota Statutes, sections 177.41 to 177.44.

A. "Independent truck owner-operator" is an individual, partnership, or principal stockholder of a corporation who owns or holds a vehicle under lease and who contracts that vehicle and the owner's services to an entity which provides construction services to a public works project. In addition, an owner and operator of a vehicle that is licensed and registered as a truck, tractor, or truck-tractor by a governmental motor vehicle regulatory

agency is an independent contractor, not an employee, only if each of the following factors are significantly present:

(1) the individual, partnership, or corporation owns the equipment or holds it under a lease arrangement;

(2) the individual, partnership, or corporation is responsible for the maintenance of the equipment;

(3) the individual, partnership, or corporation bears the principal burden of the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses while on the road, but not including brokerage fees;

(4) the owner drives the equipment;

(5) the owner determines the details and means of performing the services in conformance with regulatory requirements, operating procedures, and specifications of the entity with which the individual or corporation contracts; and

(6) the individual or corporation enters into a legally binding agreement that specifies the relationship to be that of an independent contractor and not that of an employee.

B. "Trucking firm" is any legal business entity that owns more than one vehicle and hires the vehicles out for services to brokers or contractors on public works projects.

C. "Trucking broker" is an individual or business entity, the activities of which include, but are not limited to:

(1) contracting to provide trucking services in the construction industry to users of such services;

(2) contracting to obtain such services from providers of trucking services;

(3) dispatching the providers of the services to do work as required by the users of the services;

(4) receiving payment from the users in consideration of the trucking services provided; and

(5) making payment to the providers for the services.

D. "Own" and "operate" have the following meanings and apply to independent truck owner-operators and trucking firms. The notation "truck owner-operator" for the purposes of this part will apply to both the independent owner-operator and trucking firms unless otherwise defined:

(1) "Own" means to have a legal and rightful title to the vehicle or to have an approved lease on the vehicle.

(2) "Operate" means the owner either physically drives the vehicle or hires another to physically drive the vehicle but maintains the right to direct the day-to-day operations of the vehicle.

Subp. 8. Trucking provisions.

A. Independent truck owner-operators or the owner-driver of a trucking firm are not required to be paid the truck rental rate for:

(1) time spent repairing or maintaining, or waiting to repair or maintain, the truck owner-operator's equipment, except that repair, maintenance, or time spent waiting to load or unload which is attributable to the fault of the broker, contractor, agent thereof, or an employee of such entities, must be included in the hours worked and paid the hourly truck rental rate; and

(2) time spent correcting work that was not performed according to the prime contract that can be directly attributed to the negligence of the truck owner-operator.

B. Employees of a trucking firm must always receive the appropriate prevailing wage rate for any work performed under the contract.

C. The owner of a trucking firm may either drive the vehicles or hire employees to drive the vehicles. If the owner drives the vehicle, then the truck hire is subject to the truck rental rates. If the owner hires an employee to drive the vehicle, the truck hire is subject to the truck rental rates and the employee driver is subject to the appropriate prevailing wage rate. These provisions apply regardless of who owns any trailer being pulled by the truck.

Subp. 9. Required records.

A. Upon agreement of a contractor or trucking broker with an independent truck owner-operator to perform work under the contract, the contractor or broker must keep the following records for a period of at least six years following the payment for services:

(1) name, address, and social security number of the truck owner-operator;

(2) name, address, and phone number of the truck owner-operator's business and federal tax identification number;

(3) time period covered by the agreement between the truck owner-operator and the broker or contractor;

(4) date and amount of each payment to the truck owner-operator, and for each payment:

(a) number of hours the truck owner-operator performed work under the contract, not including hours excluded under subpart 7;

(b) type of trucking equipment used for each job by the truck owner-operator and if leased, the name and address of the individual or business entity which owns the equipment;

(c) type of services performed;

(d) hourly truck rental rate used to calculate the minimum payment due;
and

(e) an itemization of any deductions from the gross amount payable to the truck owner-operator;

(5) a copy of the owner's certificate of insurance; and

(6) a copy of the vehicle/truck registration.

The contractor or broker must also keep the same records for owner-drivers of trucking firms working on the public works project unless the owner-drivers' information is submitted along with the employee information to a contracting agency as listed under subpart 10.

B. Records required to be kept by item A and other similar records necessary to determine compliance with Minnesota Statutes, sections 177.41 to 177.44, as determined by the commissioner of the department of transportation or the department of labor and industry, must be provided upon request accompanied by a certification form approved by the requesting department.

Subp. 10. **Required employee records.** Records pertaining to the proper payment of employees including, but not limited to, fringe benefit documentation, time cards, payroll ledgers, check registers, and canceled checks will be made available on request from the department for further review to determine if the employee was paid according to this part and Minnesota Statutes, sections 177.41 to 177.44. If the commissioner of the department of transportation or the department of labor and industry requests any or all of the following information, the contractor, subcontractor, or trucking firm shall submit the following information to the department together with any certification forms approved by the requesting department:

A. name, address, and social security number of the employee;

B. the classification of work performed defined by part 5200.1100, master job classification;

C. the hours worked per day and per week;

D. legal deductions made from the employee's check;

E. contract information regarding the public works projects worked on by the employee;

F. hourly rate of pay, including any fringe benefit information deemed necessary to determine if the proper prevailing wage rate was paid;

G. project gross amount earned;

H. weekly gross and net amount of payroll check; or

I. in the case of the owner-driver, information described in items A to E shall be submitted along with the hourly truck rental rate paid to the owner-driver.

Subp. 11. **Effective date.** Parts 5200.1105 and 5200.1106 are effective June 25, 2001. Part 5200.1106 is effective for all projects as described in part 5200.1106, subpart 2, item B, that are advertised for bid on and after June 25, 2001. The new truck rental rates to be issued under part 5200.1105 are effective for all projects as described in part 5200.1106, subpart 2, item B, that are advertised on and after the publication in the State Register of the notice of certification of the truck rental rates.

Statutory Authority: *MS s 175.171; 177.41 to 177.44*

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