



Labor Compliance Brochure

(For Contractors)



Office of Federal Compliance
NH Department of Transportation
P.O. Box 483, 7 Hazen Drive
Concord, NH 03302-0483
Phone: (603) 271-2467
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MONTHLY SUBMISSIONS

☀ **Monthly Prompt Pay Certifications:** The NHDOT adopted a mandatory prompt pay reporting system in May 2011 in order to comply with FHWA program requirements. See page 5 for additional information about prompt pay requirements.

State Managed Projects: Prime Contractors (and subcontractors who have further sublet) are required to submit a Monthly Prompt Payment Certification, OFC Form 18, to the NHDOT Office of Federal Compliance no later than the 10th calendar day of each month. Negative replies are required. Certifications can be faxed to (603) 271-8048, or emailed to the NHDOT OFC at laborcompliance@dot.nh.gov or mailed to the physical address: 7 Hazen Drive, PO Box 483, Concord, NH 03302-0483. Questions regarding this requirement should be referred to Merideth Wilson, OFC External EEO Coordinator, at (603) 271-8252.

Municipal (LPA) Projects: The OFC Form 12, Prompt Payment Certification, shall be used.

- Sponsor shall send the form to the Prime Contractor with each payment
- Primes shall complete the top portion of the form and then forward to his/her subcontractors and/or material suppliers with their payment, as applicable.
- Primes shall instruct the subcontractors/material supplier to complete the lower half of the form and to send the form **directly** to the on-site Contract Administrator listed at the bottom of the form.

ANNUAL ASSURANCES SUBMISSIONS (DUE EACH JANUARY)

☀ **OFC Form 2:** The Prime Contractor, Subcontractors and Lower-Tier Subcontractors with contracts of \$10,000 or more are required to complete and submit an OFC Form 2, EEO Officer Notification and Program Compliance Certification.

☀ **OFC Form 14a:** Annual Contractor Assurances Federal-Aid Contracts: This document is required annually and must be signed by a company executive officer and/or owner. Mail or fax to the attention of: NHDOT Office of Federal Compliance.

☀ **OFC Form 14b:** Non-New Hampshire Based Contractor Employment Security Annual Assurance (out of state contractors must submit *in addition to* the above OFC Form 14a).

☀ **OFC Form 22:** Company Information Sheet

Please email the above documentation to the Office of Federal Compliance every January.

☀ **Current Workers' Compensation Insurance Coverage**

- Insurance certificate must list the NHDOT as the Certificate Holder. It must also include any exclusions and what states are covered under section 3A of the policy.
- Workers' Compensation coverage must be on file with the NH Department of Labor.
IMPORTANT: No excluded individual, owner, or officer may perform work on site, without exception.

☀ **Note:** **Safety Summary Forms** must be on file with the NH Department of Labor. Please do not submit them to the NHDOT OFC unless requested.

SUBCONTRACTOR APPROVALS

☀ Prime Contractors are required to submit subcontractor approval requests to the NHDOT **no later than 5 business days prior to the start of work.** When working on LPA projects, Primes should send a courtesy copy to the Consultant (or Town) on each submission. Requests must be submitted electronically by the Prime Contractor who will enter the required subcontracting information into iCX, upload the subcontracting documents, and then electronically submit the request for approval. After submitting the request, Primes should contact the NHDOT by email at laborcompliance@dot.nh.gov to notify of the pending request. The subject line of the email must be “Project Name and Number – Subcontractor Name.”

Note 1: Subcontractors cannot perform any work on site until approved by the NHDOT.

Note 2: Independent Contractors require subcontractor approval.

Note 3: Per NHDOT Standard Specification 108.01, “No payment will be made for work performed by any Subcontractor, Lower-Tier Subcontractor who performs work without consent by the Department.”

☀ **What Each Subcontractor Approval Package Submission Should Have:**

- OFC Form 14 - Contractor Acknowledgement Certification Form
- OFC Form 15 – Transmittal Request for Consent to Sublet
- OFC Form 26 - Work Certificate w/supporting documents
- Certificate of Liability Insurance/COI (if not already submitted)
- A written contract signed by both parties (an approved invoice or estimate is not sufficient)

☀ By signing the upper portion of the OFC Form 14, Prime Contractors are certifying the following documents have been physically included in each contract and lower-tier subcontract agreement:

- NH Subcontracting Procedures (available at the Office of Federal Compliance web site)
- Form FHWA 1273, Required Contract Provisions
- 41 CFR 60-4.2 and 41 CFR 60-4.3 (Solicitations and Equal Opportunity Clauses)
- Disadvantaged Business Enterprise (DBE) Policy and DBE Program Requirements (Standard Spec 103.06)
- NHDOT 21-Day Prompt Pay Supplemental Specification to Standard Specification 109.09
- Applicable wage rates from the contract

☀ Subcontractors shall not further sublet any part of their work without the consent of the NHDOT.

☀ **Companies Who Perform Testing, Monitoring, Inspection Services:**

- Companies and/or independent contractors performing testing, monitoring, or inspection, such as ground penetration radar, erosion control monitoring, video inspection, SWPPP, environmental testing/monitoring or vibration monitoring, for example, require subcontractor approval (NHDOT will verify Workers’ Compensation Insurance coverage). Companies/individuals providing these services on site who do not have WC insurance coverage would be subject to fines by the NHDOL.
- A more abbreviated subcontractor approval package is permitted for above contractors:

- OFC Form 15 - Transmittal (15a for a State managed project; 15b for LPA projects)
- OFC Form 26 - Work Certificate
- Certificate of Insurance (if not already provided)

☀ OFC Recommendation: Primes should establish internal procedures to inform the on-site superintendent when subcontractors have been “approved” to work. This is critical to avoid violations of RSA 228:4-b, which often results in civil penalties that can be costly to contractors. Inform your superintendents they should not allow any subcontractor to perform work on site until they have been “approved” by the NHDOT.

☀ **BASIC PRIME CONTRACTOR RESPONSIBILITIES (not all inclusive):**

- The overall compliance of all subcontractors and lower-tier subcontractors who work on site.
- Complete all necessary subcontractor approval paperwork prior to the subcontractor (including lower-tier subcontractors) performing work on site.
- Review subcontractor and lower-tier subcontractor certified payrolls **prior to submitting to the NHDOT** to ensure submissions are accurate and fully compliant with Federal requirements.
- Ensuring all payrolls are submitted to the NHDOT within 14 calendar days (all contractors).
- Proper classification of workers (all contractors)
- Payment of wages to workers (all contractors)
- Ensuring additional work classifications (all contractors) are submitted to the OFC 3-4 weeks prior to utilization of the classification.
- Closing OFC Field Audits by the due date (extensions must be requested prior to the due date).
- Referring subcontractors and/or lower-tier subcontractors to NHDOT Contractor Compliance Training as needed

Note: Primes who are experiencing compliance problems with subcontractors or lower-tier subcontractors must show *good faith efforts* that they are working to resolve these problems. These efforts shall be documented in writing and be presented to the OFC upon request. Primes who fail to demonstrate good faith efforts to resolve compliance issues will be deemed “in noncompliance” resulting in sanctions as determined by the Department.

OWNERS WHO WORK ON SITE

Definition of Owner: Those individuals who own at least 20 percent of the company.

❁ Owners who perform work on site **cannot exclude themselves from Workers' Compensation coverage**, in accordance with Title XX of the Transportation laws, RSA 228:4-b. Owners found in violation shall be removed from the project site, subject to a civil penalty of up to \$2,500 and \$100 per day of noncompliance, and will be subject to sanctions as deemed appropriate by the Department.

❁ Owners who perform the work of a “laborer or mechanic” on a Federal-aid project on the site of work are not due Davis-Bacon wages; however, **the owner must be listed on a weekly certified payroll** with only their name and the notation “owner” in the work classification box.

SALARIED SUPERVISORS AND WORKERS

Any person employed in a supervisory capacity that performs the work of a “laborer or mechanic” 20 percent or more in any given workweek are subject to Davis-Bacon provisions. Consequently, he or she must have all payroll information shown. He/she must be paid not less than the appropriate Davis-Bacon wage, including applicable fringe benefits, for the job classification work was performed in. Non-supervisory workers who are paid a weekly salary must have a rate of pay indicated on payrolls – **do not indicate “salary” only**. The rate of pay shall be an average of all work performed that week, regardless of where the work was performed. *Accurate time sheets for these individuals should be a priority for companies.*

LEASED EMPLOYEES/TEMPORARY LABORERS

Companies who augment their workforce by utilizing leased employees and/or temporary day laborers, must obtain subcontractor approval for the companies who employ these workers (they are the “employer of record” – responsible for payment of wages, complying with state and federal unemployment compensation requirements, including the reporting of wages paid, calculating, collecting, and remitting all payroll taxes, including income tax and social security tax as required by law, etc.)

PROMPT PAY REQUIREMENTS

Prompt pay requirements outlined in NHDOT Standard Specifications were revised on September 6, 2011. Contractors shall pay all Subcontractors for the work performed no later than 21 calendar days from the date the Prime Contractor received payment from the Department for said work, including materials in accordance with 109.07 and/or 109.08 paid for in the progress payments.

IMPORTANT: If the Prime Contractor believes that any portion of the payment should be withheld from the Subcontractor, the Prime Contractor shall notify the NHDOT Contract Administrator, in writing, PRIOR to the estimate being processed. The NHDOT Office of Federal Compliance shall be made part of this notification. The NHDOT may withhold payment for the portion of work in dispute pending resolution.

IMPORTANT: Per NHDOT Standard Specification 109.09, the Prime Contractor must include, in all subcontract agreements, notices to Subcontractors of their right to prompt payment, and of the Department’s policy prohibiting Prime Contractors from holding retainage from Subcontractors under 49 CFR 26.29. Compliance with this requirement shall be verified in NHDOT Desk Audits or by random compliance checks performed by the NHDOT OFC.

ADDITIONAL WORK CLASSIFICATIONS (CONFORMANCES)

If there is a classification of work to be employed on the project that is not included in the wage determination for any given project, a Standard Form (SF) 1444 submission is required. Prime Contractors are responsible for ensuring properly executed requests are sent to the NHDOT 3 to 4

weeks **prior to the classification being utilized on the project.** Submissions initiated by subcontractor and/or lower-tier subcontractors must also be signed by that company. Instructions (a sample SF 1444) on how to complete this form can be found at the OFC web site.

IMPORTANT INFORMATION about SF 1444:

- a.** Proposed rates, including the fringe rate, must be in accordance with USDOL Memorandum 213. Requests that do not meet USDOL requirements will be returned to the contractor for correction.
- b.** A full description of duties must be provided in Block 13a of the SF 1444 for any conformance request within the Laboring category. Note: The person performing in the conformed classification cannot work outside those duties that are included in Block 13a of the SF 1444.

APPEAL PROCEDURES (USDOL CONFORMED CLASSIFICATIONS/RATES)

By contract (OFC Special Attention) contractors shall notify the NHDOT Office of Federal Compliance (OFC) of their “intent to appeal,” in writing, within 10 calendar days of the OFC’s email to the Prime notifying him/her of the USDOL’s decision. Emails are preferred.

Contractors shall provide proof to the Office of Federal Compliance that a properly executed appeal was submitted to the USDOL Wage and Hour Administrator **no later than 30 calendar days from the date the OFC’s email notification to the Prime of the USDOL’s higher rate stipulated.**

Note: Possible restitution does not need to be provided to employees during the time the appeal is being reviewed by the USDOL.

“Deferred” wages must be reported to the OFC NHDOT OFC using the OFC Form 27, Summary of Deferred Wages (visit our web site for a copy). Completed OFC Form 27s should be attached to the proof of appeal letter being provided to the OFC.

If additional work is to be performed in the classification(s) having disputed wages and additional wages will be deferred, the contractor shall provide the OFC an OFC Form 27, Summary of Deferred Wages, **on a weekly basis** (on the same submission schedule as the corresponding payrolls). Submissions should be sent directly to the NHDOT Office of Federal Compliance (the applicable Federal Compliance Officer overseeing the project). Please do not submit with your regular weekly payroll submissions.

Contractors shall submit an OFC Form 27, Summary of Deferred Wages, on a weekly basis until such time no additional work is to be performed in the classifications or a ruling is received from the USDOL. Contractors should indicate “final submission” (in the appropriate box on the OFC Form 27) on his/her final submission.

IMPORTANT: Failing to provide proof to the NHDOT Office of Federal Compliance that a properly executed appeal was submitted to the USDOL within 30 days of the OFC’s notification to the Prime Contractor that a higher rate was stipulated, shall be deemed **automatic acceptance of the USDOL**

stipulated rate. The OFC shall then notify the Prime Contractor that any possible restitution is due within 10 calendar days. Note: Requests for extensions to the 30 day due date, if needed, must be justified in writing and be received by the OFC prior to the 30-day due date.

If a wage appeal, of any level, is denied by the USDOL, restitution, if owed, shall be paid to workers **within 10 calendar days** of receiving the appeal denial.

IMPORTANT: Should a contractor elect to submit a higher level appeal to the USDOL, an “Intent to Submit a Higher Level Appeal” notification must be provided, in writing, to the NHDOT OFC within 10 calendar days of receiving the appeal denial. The Contractor shall then have 30 calendar days (from the appeal denial) to submit proof to the NHDOT OFC that a properly executed reconsideration appeal was sent to the USDOL.

Appeal procedures are located in the wage determination of every Federal-aid contract. Questions regarding the USDOL appeal process should be directed to the Federal Compliance Officer having oversight of the project.

HIRING/ RECRUITMENT

All Primes and Subs with contracts of \$10,000 or more must take specific recruitment measures with respect to the circulation of job vacancy postings/advertisements. The Contractor is required to maintain records of all recruitment actions, as stipulated in Section II. 4. of the Required Contract Provisions (FHWA Form 1273). These records must be available and presented upon request. As with all contract records, recruitment documentation is required to be maintained for three (3) years. The Federal affirmative action requirements for minority and female representation have been stated in the contract (See 41 CFR 60-4.2, Solicitations). The contractor should carry out its recruitment/outreach efforts in consideration of these goals to address under-representation in the workforce.

WAGES & PAYROLLS

❁ **Full Wages Are Due Weekly:** All participating contractors must pay full wages earned not less often than once weekly. Wages paid must not be less than the prevailing minimum hourly wage rates, including fringes, specified in the wage decision/determination.

❁ **Payroll Submissions:** Each contractor (primes/subs/lower-tier subs) performing work on site shall submit payrolls on a weekly basis. Payrolls are due to the collection authority no later than 14 calendar days from the week ending date (Saturday) in which work was performed. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors/lower-tier subcontractors (see Prime Contractor Responsibilities above).

❁ **Payroll Submission Format:** Per the OFC Special Attention directive, payrolls, as required by FHWA Form 1273, shall be submitted electronically (by email) as a pdf document to the NHDOT Contract Administrator, named in the following format: Contractor’s name (abbreviated is acceptable) followed by the “week ending” date (yyyy-mm-dd). The Contractor’s and each Subcontractor’s payroll shall be submitted as separate, individual files. Please note that this is a contract requirement. For Example: *Plow Brothers Inc 2014-12-03*.

❁ **Payroll Deductions:** All deductions from gross wages must be authorized and specific— “Other” deductions must be described on the Payroll Certification. An overall company’s deduction does not meet this requirement. Descriptions of “other” deductions must be specific to each person appearing on the payroll.

❁ **Fringe Benefits:** If claimed, the costs of providing fringe benefits must be in accordance with 29 CFR 5.23. Contractors who rely on bona fide fringe benefits in order to meet the “total rate”

requirement must submit a Fringe Benefit Breakout with each payroll submission. An “hourly” amount must be provided for each benefit. Please refer to the NHDOT sample on the OFC website.

❁ **Checking 4a or 4b on Payroll Certifications (Side 2):** Contractors who provide fringe benefits to their employees should check 4a. Contractors who do not provide benefits should check 4b. Contractors who use the benefits in order to meet the “total rate” for a classification must also include a fringe benefit breakout with each payroll submission.

❁ **Projects with Multiple Counties or Construction Types:** Certified payroll reports submitted on projects having multiple wage determinations must have the applicable wage schedule (county or state) indicated **on each payroll submission**. Payrolls that do not have the applicable county or construction type (highway, heavy, building) indicated will be returned to the contractor for correction.

❁ **Every Payroll Must Contain:** Form FHWA 1273, Required Contract Provisions, Section IV, Paragraph 3 describes what each certified payroll must contain. Incomplete payrolls will be returned to the Prime Contractor for correction. Numbering payrolls is optional but we strongly encourage it when further work is performed after periods of inactivity. Contractors who repeatedly submit payrolls with discrepancies may be required to attend mandatory training.

❁ **Classifications on Payrolls:** All Classifications used on payrolls must accurately reflect the physical nature of the work performed regardless of skill level. **Classifications should be stated exactly as they appear on the wage determination.** “In house” titles should not be used on payrolls. When the classification of work to be performed is not covered by a classification on the wage determination, a SF 1444, *Request for Authorization of Additional Classification and Rate* must be submitted. See page 5 for additional information about the SF1444.

❁ **Split Classifications:** Contractors employing workers in multiple classifications must make a separate entry on the certified payroll report for each classification work was performed in. Time sheets shall accurately record the amount of work performed in each classification. Copies of time sheets shall be made available to the NHDOT upon request.

❁ **Time Sheets are Mandatory:** The OFC Special Attention requires every contractor to create and maintain time sheets for every worker performing work on the project. This includes salaried workers who perform any work on site, whether full time or intermittently. Contractors should take time to review the OFC Special Attention to ensure their company is in compliance with the requirement. Contractors will provide copies of time sheets to the OFC when requested.

❁ **Payment of Wages (Davis-Bacon & Related Act Provisions):**

- **Rate of Pay, including Fringe Benefits:** On the line designated “ST,” list actual cash hourly rate paid to the employee for straight time worked. On the line designated “OT,” show overtime hourly rate paid. The overtime rate shall be not less than the sum of the base rate, plus the half time premium on the base rate, plus the required fringes at the straight time rate: **(Base rate x 1.5) + fringe amount = minimum overtime rate.**

- The standard workweek is forty (40) hours. All hours worked in excess shall be paid at the overtime rate.

- **IMPORTANT:** The Prime Contractor is liable for unpaid wages to all workers, including those of any subcontractor. Also, the Prime Contractor is subject to progress payment withholding for any unpaid wages noted.

❁ **Payroll Records must be Maintained** for a period of at least 3 years following the final invoice.

❁ **Payrolls must be Legible** if handwritten.

❁ **Reviewing Subcontractor Payrolls:** Prime Contractors are responsible to ensure subcontractor payrolls (including lower-tier subcontractor payrolls) are in full compliance with Federal requirements prior to submitting them to the NHDOT Contract Administrator or the hired consultant if an LPA project. A payroll “Quality Assurance Checklist” is available at the NHDOT OFC website.

SIGN-IN SHEETS

Sign-In Sheets (LPA Projects): Use of daily sign-in sheets is **mandatory** on all LPA projects. Every worker must sign in, on a daily basis, **prior** to performing work on site. The OFC Form 20 shall be used for this purpose. The Prime Contractor is responsible to ensure sign-in sheet requirements are met and are turned in to the Contract Administrator on a daily basis. Contract Administrators shall review and initial sign-in sheets daily cross matching what employees have indicated for their work classification and what employers are indicating on certified payroll reports, and verifying employers of workers signing in have been approved to work by the NHDOT. Sign-in sheets shall be co-located with certified payrolls and filed in a 3-ring binder, newest sign-in sheets on top. Sign-in sheets are an inspection item.

Sign-In Sheets (State Managed Projects): Use of daily sign-in sheets may be directed by the OFC on State Managed projects anytime a contractor does not report all workers performing work on site on their payrolls. In addition, use of daily sign-in sheets is mandatory for all asbestos work whenever the Prime Contractor sublets the work.

OFFICE OF FEDERAL COMPLIANCE FIELD AUDITS

❁ A NHDOT Federal Compliance Officer will visit each work site approximately once every six weeks to perform a Labor Compliance Field Audit. A Field Audit Report will be generated at the end of each visit and emailed the Prime Contractor. One of three ratings will be assigned:

- **“Satisfactory”**- no discrepancies,
- **“Not in Full Compliance”** - minor or few discrepancies noted, or
- **“Unsatisfactory”** - significant, numerous, or repeat discrepancies noted.

❁ Prime Contractors must take corrective action for any discrepancies noted in the Field Audit Report no later than seven (7) calendar days from the date of the audit (a due date will be indicated on the audit report). Extension requests, if needed, must be justified and submitted to the OFC, in writing, prior to the due date. Extensions will be considered and approved on a case-by-case basis. Failure to respond appropriately by the audit due date will result in the withholding of progress payments until corrective action has been completed and verified. Contractors should send all required documentation in response to the audit to the designated OFC staff member via fax or email (pdf.)

❁ **Mandatory Training:** Effective May 1, 2017, Prime Contractors who fail to obtain an annual average (based on the calendar year) of at least 60% “Satisfactory” ratings on all OFC Field Audit Reports will be required to attend a mandatory 4-hour Contractor Compliance Training Class each spring (as scheduled by the OFC). A principal owner (or executive officer of the company) and his/her payroll accountant shall attend. Note: Compliance ratings on all projects will be averaged whenever a Prime Contractor has multiple projects.

NHDOT RESTITUTION POLICY

- ☀ Restitution, if required, shall be performed in accordance with NHDOT Office of Federal Compliance guidelines.
- ☀ Providing restitution via a subsequent company certified payroll (revised payroll) **IS NOT ALLOWED** (*see below exception). The procedure is as follows:
 - a. Complete and sign an OFC Form 8, Employee Pay Restitution Worksheet. A separate worksheet is needed for each worker, one OFC Form 8 for each pay week involved. Worksheets are project specific. Please do not include pay data/hours from another project.
 - b. Provide a copy of the restitution check. A single check can be used.
 - c. Provide a signed copy of the Employee Restitution Affidavit that has been properly witnessed.
- ☀ Contractors should email completed OFC Form 8 worksheets, copies of checks, and Employee Restitution Affidavits to the NHDOT Office of Federal Compliance designated staff member.
- ☀ If restitution resulted from a Field Audit discrepancy, Prime Contractors must collect and forward all required documents to the NHDOT Office of Federal Compliance on or before the audit due date.
- ☀ Pay statements and copies of checks shall clearly indicate the purpose of the check is to provide restitution and will list the project name and number.
- ☀ **Exception to Restitution Procedure:** Underpayments of \$15.00 or less can be paid to the employee in their next regular paycheck. Companies must provide evidence that restitution was paid to the worker (a copy of the pay statement having a specific line item for the restitution). The NHDOT will attach the pay statement to the applicable payroll having the underpayment.

WORK CLASSIFICATION DESCRIPTIONS AND INFORMATION

Important Note: The OFC Special Attention inserted into each Federal-aid contract has described a small number of work classifications. Contractors should review these requirements and also make the document available to any subcontractors or lower-tier subcontractors that work for them. Questions involving correct classification of workers should be addressed with the Office of Federal Compliance prior to performing work on the project.

- ☀ **Multi-Purpose Equipment:** Multi-Purpose equipment must be classified, and shown on payrolls, according to the “controls” on the equipment. For example, many Loaders can be retrofitted with forks to make it a forklift; however, the controls are that of a Loader. As such, it’s a Loader. Questions should be referred to the Office of Federal Compliance prior to utilizing the equipment on site.
- ☀ **Use of Classifications on Payrolls:** All Classifications used on payrolls must accurately reflect the physical nature of the work performed. Classifications should be stated exactly as they appear on the wage determination. When the classification of work to be performed is not covered by a classification on the wage determination, a *Request for Additional Work Classification* must be submitted. A sample of this request was provided in the Pre-Construction Information Folder.
- ☀ **Apprentices:** Apprentices will only be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to, and individually registered in, a bona fide apprenticeship program registered with the USDOL. Companies must be registered as “sponsors” at the US DOL. A copy of the apprentice’s registration, USDOL Apprenticeship Agreement Form ETA 671, must be submitted with each payroll, as applicable. More information

may be obtained at the Office of Federal Compliance or the USDOL Bureau of Apprenticeship and Training, 143 North Main Street, Suite 205, Concord NH 03301. Phone: (603) 225-1444.

- ❁ **Asbestos Abatement**: All work associated with asbestos abatement shall be classified as “Laborer,” unless said work involves piping that will be reinsulated. In these cases, “Asbestos Abatement Worker” shall be used.
- ❁ **Blaster**: Supervises and assists in locating, loading, and firing blast holes with explosives to break up hard materials. This work includes any of the following duties on-site: determining the spacing and depth of drilled holes; determining the amount of explosives, timing and placement of detonators; handling blasting materials in the work area; loading holes with detonators, primers and explosives; tamping and stemming holes; directing the placement of blasting mats or other fly rock controls; and detonating the charges.
- ❁ **Brick Mason (also called Brick Layers)**: Builds and repairs walls, floors, paths, partitions, fireplaces, chimneys, and other structures with brick, precast masonry panels, concrete block, and other masonry materials, with or without mortar.
- ❁ **Carpenter**: NH currently has two carpenter classes in the Highway category, Carpenter (Excluding Form Work) and Carpenter (Form Work Only). Rates vary depending on what county work is performed in. Whenever the highest rate is paid for the work, contractors can use “Carpenter” only on payrolls (the full classification title is not required). Whenever the highest rate is not paid, contractors will use the full classification title on payrolls. Contractors will be provided additional information at pre-construction meetings.
- ❁ **Cement Mason**: Smooths and finishes surfaces of poured concrete to specified textures using hand or power tools, including floats, trowels, and screeds.
- ❁ **Drill Operator**: Unless a hand held tool, which can then be classified and performed as a Common/General Laborer, all drill work shall be performed in the “Drill Operator” classification. Conformances, if needed, shall be consistent with this requirement
- ❁ **Guardrail Installers**: Except for the “pounder,” each person performing guardrail installation item work shall be classified as “Guardrail Installer.”
- ❁ **Ironworker, Reinforcing**: Positions and secures steel bars to placement of reinforced concrete; determines number, size, shape and location of reinforcing rods from plans, specifications, sketches and/or oral instructions; places and ties reinforcing steel using wire and pliers; sets rods in place, spaces and secures reinforcing rods. May bend steel rods with hand tools or operate a rod-bending machine; may reinforce concrete with wire mesh; may weld reinforcing bars together; may perform other related duties.
- ❁ **Ironworker, Structural**: Performs any combination of the following duties to raise, place and unite girders, columns and other structural steel members to form completed structures or structure frameworks, working as a member of a crew; sets up hoisting equipment for raising and placing structural steel members; fastens steel members to cable of hoist using chain, cable or rope; signals worker operating hoisting equipment to lift and place steel members. Guides member using guy line (rope) or rides on member to guide it into position. Reads plans; rigs, assembles and erects structural members requiring riveting or welding. May perform other related duties.
- ❁ **Lead Abatement Worker**: All work associated with lead abatement shall be classified as “Lead Abatement Worker.”
- ❁ **Landscape Laborer**: Landscape laborers install plants and other elements into landscaped areas and often maintain them. They mow, edge, trim, fertilize, dethatch, water, and mulch lawns and grounds many times during the growing season. They grade property by creating or smoothing hills and inclines, install lighting or sprinkler systems. They also transport and plant new vegetation, and transplant, mulch, fertilize, and water existing plants, trees, and shrubs. Landscape Laborers also place decorative stone that is not part of a structure (walls, walking paths, etc.).

- ❁ **Stone Mason:** Stone Masons build stone walls, as well as set stone exteriors and floors, lays/sets all cut stone, marble, slate, or stone, with or without mortar. They work with natural cut stone such as marble, granite, and limestone and artificial stone made of concrete, marble chips, or other masonry materials.
- ❁ **Sweeper/Brooms Operators:** Whenever the “Sweeper” or “Broom” classification does not appear in the contract, contractors may use the Truck Driver classification for this service if the equipment used is of the over the road type (only). However, anytime the contract has an established classification/rate for “Sweeper or “Broom,” this classification must be used and the minimum rate, as it appears in the contract, shall apply.
- ❁ **Traffic Coordinator:** Performs sign placement and maintenance, including proper set up and relocation of construction sign packages and message boards; designs lane closures in accordance with local, state, and Federal requirements. Please do not confuse this classification with Flagger.
- ❁ **Working Supervisors:** Superintendents/forepersons performing in a supervising role only are not considered laborers or mechanics and should be shown on the payroll as Foreman or Superintendent. If the employee is non-hourly, indicating “Salary” with no hours or rate of pay listed is acceptable. However, when these employees perform work within any classification more than 20% of the work week, Davis-Bacon provisions apply, and these working supervisors must be classified appropriately on the payroll(s) and receive at least the minimum wage for the classification worked—regardless if the company pays the employee a “salary” rather than an hourly rate. Work hours for these employees should therefore be entered on the daily time sheets. Payrolls showing multiple foreman/supervisors who are “salaried” are usually suspect and will be audited for compliance.
- ❁ **Rental Equipment:** Owner-Operators of rental equipment, such as bulldozers, loaders, graders, etc., **are considered subcontractors.** A subcontractor approval package must be sent to NHDOT at least 5 days prior to utilizing the equipment on site. See instructions on page 2.
- ❁ **Truck Drivers:**

 - **Pick-up and Delivery of Materials/Supplies and Equipment (Only):** The USDOL “*De minimis*” definition for material suppliers allows material suppliers to spend up to 20% of their workweek on site (8 hours in a 40-hour workweek) before Davis-Bacon applies. Typically, time spent on site never reaches 20% however amounts of time that exceed 20% should be considered covered time and Davis Bacon applies. Subcontractor approvals are not required.
 - **Contractor:** Any truck driven by an “employee” of company. Davis Bacon applies for truck drivers of a contractor or subcontractor for all time spent working on the site of work (includes time spent driving to and from pits/staging areas deemed part of the work site and time spent being loaded with excavated materials from the job site). Companies are responsible for tracking the amount of time each truck driver spends on site and to pay the appropriate rate. Time sheets shall be made available upon request. Subcontractor approvals are required prior to any work being completed.
 - **Owner/Operators:** These are truck drivers who own and drive their own trucks. Bona fide owner/operators of trucks are exempt from Davis-Bacon; however, they must appear on payrolls (of the Prime or the approved Subcontractor who hired them). Hours worked and pay information is not required. If at any time another person other than the owner of this vehicle drives the vehicle,

a “Contractor” status now exists and subcontractor approval is required prior to the vehicle returning to the job site. Note: This position **does not apply** to owner/operators of other equipment such as bulldozers, backhoes, cranes, welding machines, etc.

- **Cold Planning, Rumble Strips, Reclaiming**: Whenever cold planning and rumble strips items of work are completed (Standard Specification Section 417), trucks that are loaded with the excavated material are performing work on site and are “covered” by the Davis Bacon Act. The same applies to Reclaiming that is part of Section 306. Subcontractor approvals are needed anytime the Prime elects to use another contractor to complete the work. In accordance with the NHDOT Trucking Guide dated November 2, 2015, contractors shall make a good faith effort to track all covered time. Owner/Operator truck drivers, if used, shall appear on the Prime’s payroll (hours worked and rates of pay not required).

BULLETIN BOARD Mandatory Poster Requirements

❁ **Bulletin Board Requirements:** The Contractor shall erect and maintain a bulletin board on which to post the notices, rates, and related items that are required to be posted. The board shall be a minimum of 4 foot by 8 foot in order to allow sufficient space, without overlapping, for both State and Federal poster/information, as required. Additional work classifications and their rates, requested by the Contractor and subsequently approved by the USDOL, shall also be posted. Bulletin boards shall be an enclosure and the posted documents shall be protected from the elements by glass or Plexiglas. Boards shall be erected on the site of work, be placed in a conspicuous and accessible location where it can be easily seen by all workers. If placing the bulletin board on the site of work is not feasible, either for safety reasons or due to the work taking place, the Contractor may recommend placing it in an adjacent location subject to NHDOT approval. If the NHDOT deems the alternate location as unsuitable (the location is too distant or will not be utilized by all subcontractors, etc.), the NHDOT may instead require the use of employee bulletin board handouts in accordance with FHWA policy.

Contractors have two options for posters:

- **Option 1** – Use “all-in-one” Federal and State posters; or
- **Option 2** – Arrange posters in a predetermined manner as provided by the NHDOT. Please see the NHDOT OFC website for a diagram of the required format if using this option.

The bulletin board shall remain the property of the Contractor and shall be removed upon completion of the work.

❁ **Bulletin Board Handouts:** Whenever erecting a bulletin board is not practical for a project, bulletin board handouts may be used if approved by the NHDOT (will be discussed at preconstruction meetings). When permitted, the Prime Contractor will provide each worker, including those workers of his/her subcontractor and lower-tier subcontractor(s), with a complete set of bulletin board posters and information, including any additional work classifications requested and subsequently approved by the USDOL. As proof of compliance, each worker is required to sign a “Bulletin Board Poster/Information Packet Receipt Affidavit” (available at the OFC web site). Affidavits will be provided to the OFC.

SPECIAL TRAINING PROVISION – ON THE JOB TRAINING PROGRAM

NHDOT Standard Specification – Section 693

Objective: To address the under-representation of and to promote the advancement of women, minorities, and disadvantaged persons in the highway construction trades.

When the contract includes a Training Special Provision, the following requirements apply:

- ✿ Contractors must submit an OJT Form 1, “Acknowledgement and Statement of Intent” to the Office of Federal Compliance within 30 days of commencing work. This document indicates the proposed training classification, number of trainees in each classification, the projected start date, and a “no later than” date for the start of training in order to complete the requirement.
- ✿ A completed/signed OJT Form 2, “Enrollment/Registration” must be submitted to the NHDOT Office of Federal Compliance for approval before the OJT candidate begins work.
- ✿ Training candidates must be approved by the Office of Federal Compliance (OJT Form 2)— provide candidate information along with a copy of the proposed training program to the NHDOT External EEO Coordinator as soon as possible. Please fax to (603) 271-8048.
- ✿ Contractor must provide the trainee with a copy of the training program to be followed.
- ✿ Once approved and upon the commencement of training, the Contractor must submit weekly training reports (OJT Form 3), **in two copies**, one to the Contract Administrator at the job site, and one to the NHDOT External EEO Coordinator.
- ✿ The NHDOT External EEO Coordinator will issue a completion certificate once the trainee has fulfilled the requirements of the selected classification.

FAILURE TO COMPLETE THE TRAINING SPECIAL PROVISION REQUIREMENT

If a contractor fails to complete a Training Special Provision requirement and fails to make and document good faith efforts to fulfill the requirements of the provision, the NHDOT Office of Federal Compliance shall notify the NHDOT Pre-Qualification Committee in writing. The Pre-Qualification Committee will inform the Contractor of the OFC notification and require the Contractor to submit a Corrective Action Plan to the OFC. Failure to provide an acceptable Corrective Action Plan could lead to partial or full suspension consistent with the prequalification rules. Please contact Larisa Djuvelek-Ruggiero at (603) 271-6612 with questions.

ANNUAL EEO REPORT SUBMISSION

Some Contractors will be required to submit an annual EEO report (FHWA Form 1391) to the NHDOT Office of Federal Compliance each September, indicating the number of minorities, women, and non-minority group employees engaged in each work classification on Federally assisted projects for payroll period ending the last week in July. All participating Contractors that worked during this period on a Federal-aid Contract totaling \$10,000 or more are required to submit this report. Contractors to which this requirement applies will receive instructions to complete and submit a FHWA Form 1391.

FINAL PAYMENT

The Office of Federal Compliance sends a “final payment” authorization letter (Ok to Pay letter) to the Bureau of Construction (if a State project) or the Bureau of Planning and Community Assistance (if an LPA project) when:

- When the Consultant (or Town) has submitted an OFC Form 13 indicating the project is completed (LPA projects only.)
- All required payrolls of the Prime, Subcontractors and Lower-Tiers have been received and deemed correct.
- There are no outstanding OFC Field Audit Reports.
- There are no pending claims of nonpayment under Standard Specification 109.09 (Prompt Pay.) □
There are no pending conformance requests or appeals.
- There is no pending restitution.

EEO OFFICER REQUIREMENTS

☀ Company Equal Employment Opportunity (EEO) Officers are responsible for ensuring EEO requirements stipulated in Form FHWA 1273 are completed as required. This includes mandatory EEO briefings, newcomer indoctrinations, recruitment and personnel actions, and records and reports. **These actions must be fully documented and made available during OFC Home Office Audits and/or Desk Audits.**

☀ Prime Contractors are responsible for ensuring the worksite is free of all forms of harassment/discrimination. The Prime Contractor is also responsible for Subcontractor compliance with the Required Contract Provisions; therefore, the Prime Contractor’s EEO Officer shall expeditiously investigate alleged violations of the Provisions (FHWA Form 1273) and take corrective action when found to have occurred.

MISCELLANEOUS

☀ **Payments to contractors are based on the satisfactory completion of work, which includes the timely submission of payrolls** to certify payment of the minimum Federal wages for all work performed. Primes should consider the work of any Subcontractor satisfactory on the same basis.

☀ **Emphasize Key Requirements to Subcontractors/Lower-tiers:** Primes should ensure that all Subcontractors are reminded of their obligations to comply with Davis-Bacon wage rates, submit weekly payrolls, to provide Fringe Benefit Breakout Reports when appropriate, and advised of the procedures to request additional work classifications. Primes may recommend that new Subcontractors (and subcontractors having difficulty meeting requirements) attend the NHDOT Office of Federal Compliance Contractor Compliance Training. Companies can enroll by calling (603) 271-6752.

☀ **Employee Interviews:** The Office of Federal Compliance (and hired Consultants on LPA projects) will conduct on-site employee interviews throughout the life of the project. Insofar as possible,

interviews will be conducted at times that will least impact the contractor's operations. The interview is considered confidential and will not be conducted in the presence of other employees, superintendents, forepersons or other representatives of the Contractor. Workers may be asked to come to the job trailer to complete an interview whenever project working conditions do not afford adequate privacy conditions.

Please see the NHDOT Office of Federal Compliance website for forms, documents, training schedules, contact information, and other helpful material.
<https://www.nh.gov/dot/org/administration/ofc/index.htm>