

proof and must produce sufficient credible evidence to support a finding in their favor, the burden shifts to the CO to rebut that proof.

The procedures for establishing a prevailing wage for the purposes of the H-2A program have been known since 1981, and been accepted by employers, workers' advocates, and DOL.

The established and mandatory methodology set out in DOL's Handbook No. 385 ("Handbook") protects both employers and employees, as well as the public, by obtaining a valid prevailing wage rate in which all parties can have confidence. Under its federal grant agreement, the state of Montana's State Workforce Agency ("SWA") is required to follow and use the data collection methodologies in the Handbook. However, the SWA did not follow the Handbook in terms of appropriate sample size, timing of survey, use of occupation rather than crop activity, duration of the survey, 10% verification, and universe size of only 195 workers in an agricultural state of a million people. When viewed through the prism of generally applicable survey standards, due to these multiple deficiencies, the prevailing wage survey prepared by the Montana SWA is simply unreliable, invalid and should not have been used. As a result, the Employers have satisfied their burden of "advancing a *prima facie* case."

Finally, the CO has failed to provide credible evidence to rebut the Employers' *prima facie* case. No dispute exists that the Montana SWA in preparing the prevailing wage survey departed from the Handbook's methodology for establishing a reliable prevailing wage. These deviations were not insignificant and instead represent serious issues of non-compliance which led to a prevailing wage determination "far less reliable and probative" than intended by the Handbook. And, the CO's ad hoc justifications to find the faulty survey to be still reliable would render the Handbook's prevailing wage determination "standardless." Consequently, the

CO's reliance of a prevailing wage determination that materially fails to comply with the Handbook represents insufficient rebuttal.

³Opening statement, TR, pp. 17-20, and 22-33, and January 21, 2014 post-hearing brief.

Image 4

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Certifying Officer

4

The CO's NODs should be affirmed. The issue in this case is simple – is the general farmworkers wage survey produced by the Montana SWA representative of the wages for that position in that state? Although the SWA and DOL may have departed a little from the Handbook guidance and methodology, the survey remains valid because the guidance is not regulatory and consequently departure from non-regulatory guidance is not fatal in terms of the validity of the prevailing wage determination. As a result, the CO's NODs, issued on the basis that the Employers' labor certification applications with offered hourly wages of \$10.00 to 10.19 were deficiency since the applicable prevailing hourly wage for general farm workers was \$12.50, must be affirmed.

According to the regulations, the purpose of establishing a prevailing wage is to ensure that domestic workers are not harmed by the H-2A Program; in other words, to ensure that domestic workers are not kept from taking jobs they want by artificially low wages due to employers' use of foreign labor. Part of the prevailing wage determination requires a finding of what domestic workers are commonly paid in the field. Regardless of whether the state strictly

adhered to the Handbook, the Montana SWA's prevailing wage survey in this case accomplished that purpose. Specifically, the SWA contacted as many employers in the occupation as time and money allowed; "approximately 2/3's of the 360 Employers." They received responses from 43 of those Employers, which provided wage data on almost 200 employees, with a wide range of wages from \$20 to \$8. "Not surprisingly," the prevailing wage rate of \$12.50 the survey produced was somewhere in between, and evidence in the record demonstrates that the survey was representative of the prevailing wage rate for general farmworkers in the state of Montana.

In this case, the Employers have the burden to show that "Mr. Orona's decision regarding the prevailing wage, and thus the Certifying Officer's (CO) ultimately [sic] determination to require payment of the prevailing hour wage, was arbitrary and capricious in light of relevant law and fact." In that regard, the Employers are unable to show that departure from the Handbook during the development of the survey was "so fatally flawed that it must be declared invalid," such that "the CO's decision to rely on that prevailing wage rate survey was arbitrary and capricious." This applicable review standard is a "high bar," and can not be met by "picking out and criticizing minutiae and non-essential departures from the guidance" or by showing that the sampling levels in the Handbook were not met. "It can only be met by showing that the serious belief that the survey was representative of wages in the field was so off base as to be arbitrary and capricious." The evidentiary record developed during the hearing establishes that the prevailing wage survey was "of sufficient validity" considering that the SWA had limited resources, the deviations from the Handbook were harmless, the use of the category of general farmworker was appropriate, and Ms. Harris' estimated the actual employee population to be 500. Consequently, the CO's decision to issue the NODs based on the prevailing wage

determination was “reasonable.”

4Opening statement, TR, pp. 20, 31, and 38-40, and January 21, 2014 post-hearing brief.

Image 5

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Evidence

Sworn Testimony of Dr. Stephen Bronars (TR, pp. 40-78)

[Direct examination] Dr. Bronars has a PhD in economics from the University of Chicago, with specialization in labor economics. He taught at the University of Texas for 18 years, eventually becoming a tenured professor in, and chairman of, the economics department. Part of his academic training and teaching included a focus on applied statistics. His specialty included familiarity in empirical labor economics, including the use of wage surveys for empirical analysis.

5

Dr. Bronars recently reviewed the Montana SWA wage rate survey on the ETA Forms 232 and 232A. He also consulted the Handbook and the U.S. Census Bureau Census of Agriculture, and read the depositions of Mr. Orona and Ms. Harris (formerly Ms. Betz).

Dr. Bronars learned that general farmworkers in Montana engage various activities, including work with cattle and irrigation. In his opinion, the occupation title of general farmworker was generic enough to also include crop activities such as harvesting and bailing hay.

After reviewing the survey, Dr. Bronars concluded that he did not have enough

information to be assured that the sample was representative of the population of workers in the general farm worker category in the State of Montana. In particular, there was an inadequate sample size and a lack of evidence demonstrating that the sample was representative. Consequently, he does not believe the prevailing wage determination “would be a reliable indicator of the prevailing wage in the State of Montana for . . . general farmworker jobs.”

The Handbook is a DOL publication that sets out the prevailing wage finding process and the procedures for the associates wage rate surveys. The Montana SWA did not follow those procedures. Specifically, the sample of size of employees that were surveyed was “inadequate” according to the Handbook unless the 195 workers provided by 43 employers represented “100% of the workers in this category in the state.” In particular, “the number of workers that need to be included in the sample depends on the population number of workers in the crop activity in the state.”

The failure to comply with this procedure made the finding “unreliable” because “anytime a sample is smaller, it’s going to be less precise.” The Handbook emphasizes the need to make sure the sample is representative of geographic areas in crop activities. Neither Mr. Orona nor Ms. Harris expressed any attempt to make the sample representative. Instead, the only thing they discussed was making sure that not all of the responses were from the same geographic area.

5I accepted Dr. Bronars as an expert witness in labor economics.

Image 6

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Under the Handbook, if you have 3,000 or more employees, you could rely on sample of only 15% of the employees. However, Dr. Bronars found no information in the case that indicated the size of the population of general farmworkers. "There was nothing in the guidelines about what fraction of employers should be surveyed . . . so all I know is that they were able to get information from 43 of the 360 employers that they say were in the universe and that's 195 employees short of what's set out in Handbook 385." And, those 43 employers on average had five to six workers. Additionally, when Dr. Bronars reviewed the most recent census date from 2007, "there were 393 employers in agricultural with 10 or more employees; and 816 employers that had 5 to 9; and there were over 20,000 hired farmworkers." While Dr. Bronars recognized that the census farmworkers could be in different occupations than the general farmworker in the wage survey, he nevertheless believes the sample size of 195 employees is too small to be reliable.

Dr. Bronars also opined that the timing of the survey in February and March of 2013 may have affected the reliability of the SWA wage survey. In comparison, the USDA survey of farm workers that is used to set the AEWB is conducted four times a year and the January and April assessment have about half as many employees, working half as many hours, than in July. "So, clearly in Montana, this is at best an unusual time to be surveying farm workers." Additionally, the Handbook states the survey should be conducted during "peak time." Further, Ms. Harris was unable to verify that the reported number of workers were actually employed at the time of survey, which is required by the Handbook. This is an issue because the employers have two types of workers, seasonal and year round, which means the composition of the workforce is "pretty different" between the early spring and summer; and there may be higher paid workers in the early spring. So, the sampled workers may not be representative of the workers who

would
be employed in the summer. At the same time, Dr. Bronars stated, “I don't know without
studying the problem further.”

Contrary to the Handbook requirement of conducting the survey in three days, the SWA
wage survey was conducted from February 11 to March 4, 2013. That may also be a
secondary
issue.

Next, the SWA survey did not conduct personal interviews of 10% of the workers as
required by the Handbook. This requirement “appears to be a safeguard” because an
employer
may be providing approximate wages whereas taking to individual employees can
confirm
whether the employer’s reported wage is an approximate or an actual wage.

The Handbook may distinguish between crop activities for wage surveys because wages
may differ based on the different activities associated with each crop. Thus, failure to
conduct a
wage survey based on crop activity would “muddle” the wage information by grouping
disparate
workers together. At the same time, Dr. Bronars indicated, “I don't know if that would be
an
adequate way to treat it or not. It's clear to me from reading the Handbook that that is the
intention of Handbook 385 is to say, we need to do this by crop activity.” On the SWA’s
wage
worksheet, the number of workers are listed for each wage rate, “so it was hard to tell
from that
form whether there were different wages for the different crop activities or the same
workers
engaged at different times of year and the different activities or maybe even during the
survey
period they were doing different things on the same day.” And, any time you include
workers

Image 7

- 7 -

from different occupations who aren't really general farm workers, the prevailing wage rate is biased, with higher wage occupations inflating the wage rate.

Finally, Dr. Bronars noted the determined wage rate of \$12.50 represented a 25% increase in one year. Specifically, in 2012, the prevailing wage rate was \$10.00 and the AEW was \$9.99. A year later, while the prevailing wage rate was \$12.50, the AEW went up to \$10.69, which raises questions whether the 2012 prevailing wage is actually representative. At the same time, "I don't think you can look at the outcome alone and say that makes it a bad survey."

In terms of general survey methodology, a very small percentage of employees were surveyed in the Montana SWA wage survey in comparison to the number of workers who could have been surveyed. And, the survey lacks assurances that the sample is actually a representative subset of the overall general farmworker population. These two characteristics of this survey, sample size and representativeness, are "red flags" since they need to be sound if you're going to rely on a survey. For example, the bigger the sample, the more reliable the survey will be. For this prevailing wage survey, given the size of the population and considering the high non-response rate, Dr. Bronars has a low degree of confidence in the sample. He would not rely on that survey to make a business decision if he had an alternative.

The Handbook permits a result of "no finding" which provides an alternative to an unreliable finding.

[Cross examination] Assuming the total survey universe is 349 employees, a representative sample size could be something less than 100%, even though the Handbook indicates that for a population of between 100 and 349 employees requires 100%. That number doesn't have to be hit exactly. In that situation, the Handbook is being "overly maybe cautious to have a more reliable outcome than I think you would find in a statistics book that was talking

about this.” Since 100% requires the entire population to be in the sample, it’s a “high bar.” Dr.

Bronars normally doesn’t see a 100% sample size requirement because eventually you reach a point of diminishing returns. So, a 100% sample size is not necessary in order for a survey to be valid or representative?

Dr. Bronars agreed that in order to determine whether a sample size is representative a person needs to know the universe of what you're sampling. And, since he didn’t know the universe in the Montana SWA prevailing wage survey, he couldn’t determine whether the sample was representative or not.

The Census of Agriculture does not break farmworkers down by occupation. Based on that information, he still doesn’t know the employee universe in this prevailing wage survey.

Dr. Bronars observed that the survey universe was actually obtained from just 43 of the 360 employers and the survey provided no information about how many farmworkers the remaining 317 employers have had employed.

Image 8

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[Redirect examination] The ETA Handbook sets standards, which may be more rigorous than a person may see in other places. And, the ETA determined that for an occupation population of 0 to 350, 100% had to be sampled.

[Recross examination] The Handbook sets out sample sizes and the wage setting process.

In regards to adherence, the Handbook says, “The following general guide should be observed.

And, then it lists the sample sizes. That sounds like mandatory language.”

Sworn Testimony of Mr. Benito (“Ben”) Orona
(TR, pp. 80-123 and 151-180)

[Direct examination] Mr. Orona is an H-2A analyst in OFLC (Office of Foreign Labor Certification) in the DOL National Office. In that capacity for the past 13 years, he reviews the results of prevailing wage surveys. EX 2 is the final ETA Form 232 for the prevailing wage for general farmworkers in the state of Montana, dated June 24, 2013.

The H-2A program requires the Secretary, DOL, to make certification regarding the employment of foreign, non-immigrant workers in the United States. Part of the certification is a representation that such employment will not have an adverse effect on U.S. workers. And, one of the means to enable that representation is to require an employer to offer a particular wage rate to the foreign, non-immigrant workers. By regulations, the offered wage must be the highest of the AEW, prevailing wage, agreed-upon collective bargaining wage, or the minimum Federal/State wage.

An SWA is an agency designated to work with the DOL on foreign labor certification. The SWA is funded by a federal grant and conducts prevailing wage surveys. DOL requires the SWAs to follow the Handbook because it is essential that the prevailing wage be determined accurately. If the determined prevailing wage is too low there might be an adverse effect on domestic workers. And, if the prevailing wage is too high than employers are required to pay more than necessary to eliminate the adverse effect on similarly employed U.S. workers.

Once an SWA completes the prevailing wage survey, it is transmitted to Mr. Orona, who then reviews and validates the survey. His job is to make sure the form is completed correctly. After review and validation, Mr. Orona prepares a recommendation memorandum for the National CO who either approves or disapproves his recommendation. Upon approval, the prevailing wage then is sent to the Chicago National Processing Center for use in evaluating temporary labor certifications. The prevailing wage is also posted on-line in the Agricultural Online Wage Library ("AOWL").

In his validation process, Mr. Orona ensures the prevailing wage survey complies with the Handbook. If there is a non-compliance issue, he reaches out to the SWA about the issue before anything is elevated to the National CO. "If it is brought to our attention that a discrepancy existed on the form after it was validated and approved by the Certified Officer, National Certified Officer, then we would definitely, you know, raise the issue, you know, to -- I would raise the issue immediately to my supervisor who, in turn, would elevate that to upper management." If based on a "collective decision," the non-compliance issue was significant,

Image 9

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"the actions would follow accordingly," and may include withdrawing the prevailing wage finding. For example, DOL has already withdrawn the prevailing wage determination for irrigators in Montana based on a non-compliance issue. Specifically, although Mr. Orona had previously reviewed the Montana SWA prevailing wage survey for irrigators, which established a prevailing wage of \$15.00 per hour, and found it "fully compliant," in response to the present litigation challenge, the survey was again reviewed and a determination was made that there was an issue with the employee universe on the survey form. "Because [there] was such a small number of workers both in the universe and in the sample, it was decided that it was too small of a survey response for us to move forward with . . . and we decided to revise that from a \$15 per hour wage finding to a 'no finding.'" As a result, the labor certification "applications would be then be processed without the \$15.00 wage rate requirement and, in essence, it would default to the adverse effect wage rate."

The Handbook specifies how the wage data is to be collected and evaluated.

EX 2, the Montana SWA prevailing wage survey form, has several sections. The first numbered section is titled, "Number of Domestic Hired Workers in Sample Size Range," which is further broken down into "total, in-state, and interstate." According to the Handbook, for a prevailing wage finding to be made for the in-state column and "it must surpass 25% of the total number of workers in the survey; that the 25% also applies to the interstate column." The "17" for interstate workers is no more than 25% of 195. At the same time, "the 25% rule is no longer applicable on the new forms that OMB (Office of Management and Budget) recently approved back in November." However, Mr. Orona acknowledged this prevailing wage determination preceded the elimination of the 25 % rule, so the rule still applied. He also agreed that if the number of workers either category, in-state and interstate, was less than 25%, a prevailing wage determination cannot be made. So, there should not have been a \$12.00 per hour prevailing wage determination for interstate workers. Mr. Orona explained, "Item No. 2, the "All Worker" category was established as \$12.50. And that's what we went out as the prevailing wage rate. In this instance, both the "In-State" and the "Total" columns came in at exactly the same prevailing wage rate, at \$12.50 per hour. Even though the survey noted \$12.00 for the interstate, we didn't take that into account."

Mr. Orona is aware that the June 24, 2013 Montana SWA prevailing wage survey form, EX 2, was subsequently changed to show "no finding" for the interstate workers.

6 The forms

"are identical except for 1(c) wherein the document that we had before us just momentarily it has \$12.00 per hour. The new document that I have before me now shows a no finding." Mr. Orona doesn't know who changed the document. However, EX 2 was the document upon

which the prevailing wage determination was made, and the change to interstate workers does not change the \$12.50 determination.

The first step in the process to generate a wage survey involves a state submitting a grant proposal to DOL to specify what resources it needs to conduct prevailing wage surveys. The state is expected to negotiate for the amount it needs.

⁶See EX 8.

Image 10

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The Handbook term “crop activity” means either a crop or an activity associated with a crop. The Handbook also requires the state to ensure that its survey samples are representative.

A wage reporting area is an area where the state believes that there are different wage patterns, and the state determines whether to conduct the survey by wage reporting areas or a statewide survey. For wage reporting areas, a state petitions DOL to subdivide the state into a new wage reporting area or delete a certain wage reporting area. The particular survey area in Montana for general farmworker is statewide. The Handbook specifies sample sizes. However, they are not mandatory. Instead, the sample size is a “general guide that should be observed” because it’s important to get accurate results.

In the Montana SWA wage survey for general farmworkers, the form indicates that 100% of the overall population in the general farmworker occupation was sampled. “The state of Montana indicated in their 232 form in Section 2(c) that the estimated domestic hired

workers
was 195.” Mr. Orona did not verify that number because “I take the information
provided by the
State at face value.” Mr. Orona acknowledged, that his determination based on the state’s
representation is only as valid as the state’s representation. In this case, Mr. Orona “took
what
was provided to me on its face and . . . determined that it did comport with the
requirements of
the ETA 385.”

The comment on EX 5, which was the first Form 232 submitted by the state in March
2013, under number six only tells Mr. Orona that workers doing fertilizing were getting
paid
more in 2013. During his initial review of the survey, he “found it to be deficient and I
identified
some of the concerns that I had with it.” In particular, the wage rate was \$12.46 per hour
but in
reviewing the attachment, he did not see any wage listed as \$12.46. So, he asked Ms.
Harris for
clarification by e-mail (EX 6). They also had conversations over the telephone.

In August 2011, DOL conducted training for SWAs. EX 9 is the PowerPoint
presentation for that training on determining prevailing wages.

The Handbook has been in place for 32 years and represents “the only methodology, if
you will, for conducting the wage surveys. So since it's been out there since 1981, that is
the
only document that state holders and interested parties have seen.” The Handbook as
withstood
the test of time and remains the authority for conducting prevailing wage surveys. It is
accepted
as the benchmark normal by all parties involved in agriculture, including employers and
employees.

To the “best of my knowledge,” Mr. Orona believes the state of Montana complied with
the Handbook. At the same time, without approval, rather than the three days stated in
the
Handbook, this survey took three weeks. However, that discrepancy does not affect the
validity
of the survey because “we’d rather have the states conduct a thorough survey than to
rush their
process to obtain the wage data and submit their data in the period outlined in the

timeframe,
outlined in the 385 Handbook.” Mr. Orona acknowledged the Handbook does not
contain any
language about taking as long as necessary to obtain a valid survey.

Image 11

- 11 -

The state also did not conduct personal interviews, but that requirement is “obsolete.”
The survey was done telephonically. Recently, in November 2013, OMB approved
updated
changes to the forms, which essentially represent a revision to the Handbook. And,
during
training, DOL advises that “certain items in the Handbook have been supplanted by more
modern methods.”

Mr. Orona only finds deficiencies based on the Handbook’s recommendations when the
“deficiency impacts the data obtained through the survey.”

Mr. Orona acknowledged that the state of Montana did not interview an average of 10%
of the workers involved, which represents non-compliance with the Handbook.

In regards to the peak season requirement, the state was surveying an occupation rather
than a crop. Mr. Orona further testified, that “the peak season is usually done when there
are
piece rates associated with a prevailing wage. The State of Montana surveyed the general
farm
worker, which is an occupation and it's paid on an hourly basis. There is no peak season
where
that wage rate would go up and down.” At the same time, the Handbook “speaks to” a
survey of
crop activity.

Mr. Orona does not have a background in mathematics and statistics. He does not have
an academic background in survey methodology or labor economics.

Mr. Orona has “no reason to believe” the inclusion of fertilizer workers in this
occupational survey impacted the \$12.50 per hour wage rate because in Montana the
duties of a

general farmworker include fertilizing, dealing with crops, and handling livestock.

Upon his initial review of the Form 232, Mr. Orona had “no probable cause to dispute the data” that was submitted. In particular, the “survey as submitted to me on its face led me to believe, showed me by the numbers themselves, that Montana had complied by surveying 100% of the worker universe.”

If the workers universe was 500, an issue would be raised since that number affects the correct sample size that need to be obtained. The transmitted data showed that “the state was fully compliant with their sample size.” Everything looked valid on the face of the survey so “I did not ask for further clarification.” At the time the survey was submitted, Mr. Orona did not ask whether the worker universe was 195 or 500.

[Cross examination] If the population size was 500 and not 195, the survey would not explicitly meet the general sample guide in the Handbook. For a population of 500, the threshold sample size would be 250 workers. However, the Handbook sample size is not a fixed number. The Handbook indicates that the ‘following guide should be observed.’”

In that situation, Mr. Orona considered that “the survey had 17 different wages being paid to 195 workers . . . We had 43 employers providing us with wage information. Those factors would be taken into consideration in determining whether if the survey lacked the appropriate

Image 12

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sample size; whether it would still be considered a valid survey for making a prevailing wage determination.”

In Mr. Orona’s experience, occupations have been a part of the prevailing wage process

since “long before I arrived at the Department of Labor.” There has never been a time since he arrived that general farmworker was not a survey category.

[ALJ examination] The June 2013 wage survey showed a worker population of 195; “we have on the form that the estimate of total domestic hired workers was 195.” If that population was 500, the survey sample size did not reach 50% sample size called for by the Handbook. In that event “we go back to the state and ascertain as to the fact that if the 500 worker universe they claim would be true.” At the same time, Mr. Orona’s recommendation would be there was “enough information there to be able to come up with a prevailing wage, even though it didn't meet the 250. There were what -- we were lacking 55 workers to have met the sample size.” The sample size is a general guide, and this survey would still “provide adequate information for us to determine whether a prevailing wage could be derived from that.”

According to Mr. Orona, the actual calculation of the prevailing hourly rate of \$12.50 occurred as follows:

We had 17 different wages paid to 195 workers. We take the total number of workers, 195. The first principle is that we apply the 40% rule. Forty percent of 195, if my memory serves me correctly, would be like 78 workers. Then we would look at the specific array. Do we have 78 or more workers earning a specific wage? And I reviewed that. We did not have 78 or more workers earning a specific rate. Therefore, the 40% rule does not apply. We now default to the 51% rule, which means that you take the 195 and you look at the wages being paid in descending order, with the \$20.00 being at the very top. We begin at the lowest array, which was \$8.00 being paid to a group of workers. We count up until we get to 51% of 195. That is the threshold. In the instant case, the prevailing wage was based on 100 workers being paid \$12.50.

The premise in that calculation is that 195 is a valid figure because the sampling size is good. That’s why a sample size is required.

If the population size had been 1,000 when the survey only showed 195 workers, Mr. Orona would “definitely” change his mind about the validity of the Montana SWA prevailing wage survey.

However, Mr. Orona is unable to identify at what level of population between 500 and 1000 when the sampling error would make a difference regarding the validity of the wage survey.

The figure Mr. Orona used was 195 to apply the 40% and 50% rules when he evaluated the wage survey.

Image 13

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Sworn Testimony of Ms. Jennifer A. Harris (formerly Ms. Jennifer A. Betz)

7

(TR, pp. 125-148)

[Direct examination] Ms. Harris works in the Montana Department of Labor, which is the SWA for Montana for the purpose of conducting prevailing wage surveys for DOL foreign labor certification. As part of her duties, Ms. Harris conducted the prevailing wage survey in 2013 related to the occupation of general farm workers. She started the survey in February 2013 pursuant to a cost reimbursable federal grant. One of the requirements of the grant is that the state of Montana comply with the Handbook in conducting the prevailing wage survey.

The survey she conducted did not involve a substantial number of personal employer interviews. Instead, she used telephone interviews. The survey was conducted over the course of three weeks from February 11 to March 4, 2013. In regards to peak season, some employers were calving about that time. The state didn't survey 10% of the workers in the associated universe; no worker was interviewed. The state did not survey 100% of the employers who employed general farm workers. Instead, the state obtained responses concerning a subset of the

employed people in the occupation of general farm workers. Although some of the employers did not have any current employers and were entered as non-response, the state did not speak with all the employers and the state did not ensure that employers who were not contacted didn't differ in some systematic way from the employers who were contacted.

Ms. Harris did not complete the first survey correctly. So, she worked with Mr. Orona "to organize the data in the way it should be on the form. And then I resubmitted it to him" on June 24, 2013.

The state did not comply with all the requirements of the Handbook in performing its prevailing wage survey.

[Cross examination] Ms. Harris didn't do personal interview because the size of the state precludes such travel, and they have limited funds. In the prior year, the survey was done by mail. However, due to a low response rate, Ms. Harris used a phone survey to get a higher response rate from the employers. Her efforts were successful. She attempted to contact 220 employers. Some employers responded, others did not.

Ms. Harris conducted the survey over the course of three weeks "in order to get more data to base the wage rate on. To do it in three days to one week, the response rate that we would have gotten would have been very low and would not have been very reliable information."

The handwriting on EX 8 is Ms. Harris' handwriting and it was probably done in June 2013.

⁷During Ms. Harris' testimony, Mr. Mark Cadwallader, state special assistant attorney general with the Montana Department of Labor and Industry, was present at her side.

Image 14

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When Ms. Harris put 195 in Section 2(c) of the Form 232, she thought “I was supposed to fill in the total number of domestic hired workers that we got a response from” and “that is what I did.” Since then, she has learned that Section 2(c) is suppose to be “the total domestic hired workers in Montana for general farm workers.” When asked what that number should have been in her deposition, Ms. Harris didn’t know. However, upon further thought, and based “my first hand experience” with employers and employees for the past three years, unemployment insurance numbers, and Department of Revenue numbers for reported wages, she estimates that number should be “roughly 500.” Ms. Harris doesn’t know what the Handbook recommends for obtaining that number.

Ms. Harris believes the June 2013 wage survey is valid and representative of the wage paid to domestic hired general farm workers in Montana.

[Redirect examination] Ms. Harris did not know the percentage of employers who employed people in the occupation of general farmworkers was covered by the survey, but she believes “it was less than 40%.” She does not know the percentage of workers that were covered by the survey

ET Handbook Number 385 (“Handbook”) Extracts

8

(EX 1)

The Handbook, published by ETA in August 1981, is sub-captioned “Employment Service Forms, Preparation Handbook.”

According to the Handbook, “[a]ccurate farm wage data are essential to the effective operation of the Public Employment Service in serving farm employers and farm workers and in

implementing the Secretary’s regulations on the intra/interstate recruitment of farm workers.”

The wage data is collected through surveys of wages paid to workers within a specified wage reporting area working in the same crop activity, and used to develop a prevailing wage rate for the specific crop activity in the agricultural reporting area.

9 This prevailing wage rate finding is

“made after adequate wage data have been collected and the prevailing wage has been determined.”

In planning the survey, the state agency should review seasonal crops “well in advance of

the anticipated farm labor needs.” Usually, when foreign workers were employed in the previous

season and employers are expected to request foreign workers in the current season, a wage rate

survey should be conducted at least once per season. “Surveys should normally be complete

within 3 days unless there is prior regional office approval, the survey period should not exceed

1 week.”

8Handbook, pp. I – X, 97, 99 – 124, 172, 173, 175 – 179, 181 – 183, 185 – 187, 189 – 191, 193, 195 – 203, 205, 207, 209, and 211 – 213.

9The geographic division within a State that is reasonably integrated in terms of farm characteristics and has a significant demand for seasonal hired farm workers.

Image 15

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Before conducting a wage rate survey, “the State agency should assure itself that the

planned sample will yield data which will be representative of the wages paid in the crop activity.” In constructing a wage rate survey sample size, “the following guide should be observed.” Specifically, for 100 to 349 workers in the crop activity in the area, the sample size should be 100% of the workers; for 350 to 499 workers, the sample size should be 60% of the workers; for 500 to 799 workers, the sample size should be 50% of the workers; for 800 to 999 workers, the sample size should be 40% of the workers; and, for 1,000 to 1,299 workers, the sample size should be 35% of the workers.

10

The wage survey must “include a substantial number of personal employer interviews.” These interviews may be supplemented “to a limited extent” by telephone or mail contacts.

“Under certain conditions, employer contacts by mail or by telephone may be made, in lieu of personal field contacts, but the State agency must assure itself that the information . . . is representative of the rates being paid in the crop activity.” Additionally, to verify the supplied employer wage data, “10 percent of the workers included in the sample for each wage survey must be interviewed.” These workers “should be drawn from as many as possible” of the interviewed employers.

Upon completing the survey, the State agency will make a prevailing wage rate finding based on the collected wage information by applying two methods in order. First, under the “40 percent rule,” if a single wage rate is paid to 40% or more of the workers in the crop activity, then that rate is the prevailing wage rate. Second, if no single wage rate accounts for 40% or more of workers, the workers and their associated rates are arrayed in descending order. Then, starting with the lowest rate, the workers are cumulatively counted until 51% of the workers in the survey are covered. The rate at that point in the count becomes the prevailing wage

rate.

Under 20 C.F.R. Part 655, this prevailing wage rate is used in part in determining the wage rate an employer must offer to and pay to domestic and alien workers under the Immigration and Nationality Act.

Finally, if a survey does not result in a prevailing wage finding, “another survey should be made at the earliest appropriate time.” At the same time, “a report must be submitted for each survey whether or not it results in a finding.”

In-Season Wage Report, ETA Form 232 (EX 2)

On June 24, 2013, Ms. Harris completed an ETA Form 232 for a wage survey of the state-wide reporting area for general farm workers. The survey was conducted from February 11 to March 4, 2013, with a March 8, 2013 date of finding.

¹⁰The general guide continues in increments up to 3000 or more workers, in which the sample size is 15% of the workers.

Image 16

- 16 -

Under Section 2, captioned “Estimated Numbers of Employers and Employees in Crop Activity,” Subsection 2a indicated the estimated total number of employers in the crop activity was “360.” In Subsection 2c, the estimated total of domestic hired workers was “195,”¹¹ consisting of “178”

¹² local and intrastate workers and “17” interstate workers. Forty-three employers were “contacted,” which represented 12% of the estimated 360 employers with general farm workers in the state. Based on the following survey data, Ms. Harris determined

the prevailing hourly wage rate for all general farmworkers in Montana was \$12.50, with \$12.50 for intrastate workers, under the 51% rule, and “\$12.00 per hour for interstate,” under the “41%” rule. The prevailing wage the previous season was \$10.00.

Wage Rate All U.S. Workers Instate U.S. Workers Interstate U.S. Workers

Total 195 (194) 178 (177) 17

\$20.00 2 2

\$16.00 11 11

\$15.62 1 1

\$15.50 3 3

\$15.00 16 15 1

\$14.58 1 1

\$14.50 8 8

\$14.00 7 7

\$13.75 5 5

\$13.00 13 13

\$12.50 33 / 51% rule 30 / 51% rule 3

\$12.00 37 24 13 /41% rule

\$11.50 2 2

\$11.00 12 12

\$10.00 38 38

\$9.50 1 1

\$8.00 4 4

11The actual number is 194 based on the wage calculations and associated ETA Forms 232A.

12The actual number is 177.

Image 17

- 17 -

Interview Records – ETA Form 232A (EX 3)

As set out on separate interview forms, 43 employers responded with wages information regarding 204 domestic general farmworkers. Several of the employers specified varying rates of pay based on job activity, including 10 supervisors earning between \$16.00 and \$27.50 per hour, and 41 individuals engaged in fertilizing operations with hourly wages ranging from \$10.00 to \$20.00.

In-Season Wage Report, ETA Form 232 (EX 4)

On June 24, 2013, Ms. Harris completed an ETA Form 232 for a wage survey of the state-wide reporting area for irrigators. The survey was conducted from February 11 to March 4, 2013.

The estimated number of employers in the crop activity (general farm worker) was 150, with 92 employers using contract foreign workers. The estimated number of domestic hired workers in the state was 15, representing 15 local and intra state workers. There were no interstate workers. Eight employers were interviewed, which represented 5% of the estimated number of employers with irrigators. Based on the following survey data, Ms. Harris determined the prevailing hourly wage rate for all irrigators was \$15.00 under the 41% rule. No prior survey

had been conducted.

Wage Rate All Workers

(15)

Instate Workers

(15)

Interstate Workers

(0)

\$15.00 7 / 41% rule 7 / 41% rule

\$12.00 2 2

\$10.93 1 1

\$10.00 4 4

\$5.25 1 1

In-Season Wage Report, ETA Form 232

(EX 5)

On March 8, 2013, Ms. Harris completed an ETA Form 232 for a wage survey of the state-wide reporting area for general farmworkers. The survey was conducted from February 11 to March 4, 2013.

The estimated number of employers in the crop activity (general farm worker) was "42."

¹³ The estimated number of domestic hired workers in the state was 201,

¹⁴ consisting of 184

intrastate workers and 17 interstate workers. Based on an attached schedule, which included wages for 191 workers, varying between \$8.00 and \$20.00, and 10 supervisors, who earned

¹³The actual number was 43. *See* EX 2 and EX 3.

¹⁴The actual number based on the associated ETA Forms 232 A was 204 workers, including 10

supervisors

Image 18

- 18 -

between \$16.00 and \$27.50 an hour, Ms. Harris determined the prevailing wage for all general farmworkers was \$12.46 per hour. The prevailing wage rate the previous season was \$10.00.

However, Ms. Harris explained, "We had a lot more fertilizer this year and they got paid more."

E-Mail Exchange

(EX 6)

On May 20, 2013, Mr. Ben Orona asked Ms. Harris several questions regarding the wage surveys for Montana. Concerning the general farmworker wage survey, Mr. Orona asked for the survey questionnaire that was used, and indicated that a separate survey would be needed for supervisors. He additionally asked how she arrived at the \$12.46 hourly wage rate.

On May 22, 2013, in regards to the general farmworker wage survey inquiry, Ms. Harris provided a supervisor wage survey report and addressed the questionnaire issue. Concerning the wage rate calculation, Ms. Harris indicated that she added the 30 wage rate responses and divided by 30.

OMB Revision Approval Request

(EX 7)

In 2013, when seeking approval from OMB for revisions to the In-Season Wage Report and Wage Survey Interview Record, in an effort to streamline the wage survey process, DOL proposed moving instructions for completing the forms and calculating the prevailing

wage from the Handbook to the two forms, ETA Form 232 and ETA Form 232A. In the background discussion concerning various revisions, DOL observed that in the number of workers in either the intrastate or interstate categories is less than 25%, then a wage rate determination “cannot be made.” DOL proposed to eliminate the worker interview requirement “because most states no longer conduct field surveys due to reduced funding.” Instead, the interviews were conducted by mail, fax, or phone.

The two forms represent DOL’s “uniform administrative procedure for collecting information that will permit it to determine and publish prevailing wages rates for agricultural employment to the used in administration of the H-2A program.” The State agency obtains information concerning domestic employees, including the number of employees and the wages paid. The State agency then evaluates, summarizes, and arrays the information onto the ETA Form 232 and finally computes the prevailing hourly wage. The prevailing wage and analysis is then transmitted to DOL’s OFLC “for approval.”

In regards to the annual requirement for wage survey, DOL also observed that “the use of wage data from earlier surveys would result in inaccurate determinations, wage distortions, and potential legal issues form the farmworker advocacy groups and the employer community.”

Image 19

- 19 -

In-Season Wage Report, ETA Form 232
(EX 8)

On January 9, 2014, counsel for the certifying office provided the Employers' counsel a copy of an ETA Form 232 that was provided to him by OFLC, which appeared identical to EX 2 that he been furnished by the State agency with one exception. Instead, of "\$12.00" in Section 1c for interstate workers, this version contained the following, "No Finding."

15

PowerPoint Presentation Slides (EX 9)

According to the PowerPoint slides, titled "H-2A Program: Prevailing Wage and Prevailing Practice Training," dated August 2011, one of the purposes of the TLC process is to ensure the employment of non-immigrant foreign workers will not adversely affect the wages and working conditions of workers in the United States similarly employed. In turn, 20 C.F.R. § 655.122(l) requires an employer to offer, advertise, and pay a wage that is the highest of the AEWR, prevailing hourly wage, agreed-upon collective bargaining wage, or the Federal or State minimum wage.

The regulations do not establish how the prevailing wage is to be determined. Instead, those procedures are governed by ETA policy documents, as well as practices that have been developed and adopted by Federal, state, or local officials over time. The primary source document is the Handbook, "which was issued in 1981."

Approximately 400 annual wage surveys are conducted yearly by SWAs and the ETA National Office makes final determinations base on these surveys. Under 20 C.F.R. § 655.120, "in the event that a prevailing wage findings results in a higher wage rate than was previously certified, the employer is obligated to offer and pay the higher wage rate upon notification by the OFLC." DOL "will examine the results of the SWA wage surveys conducted throughout the year to determine if the hourly wage rate . . . is the highest" of the five possible wage

rates under
the regulation.

The presentation ends with a DOL web link on how to determine the prevailing wage rate.

PowerPoint Presentation Slides (EX 10)

According to the PowerPoint slides, titled “Foreign Labor Certification Training for SWAs,” dated November 28-29, 2006, the SWA plans and conducts prevailing wage surveys;
the ETA NPC (National Processing Center) approves survey plans and monitors progress; and,
the ETA National Office makes final determinations. The prevailing wage determination procedures in the Handbook have “withstood the test of time,” and the Handbook “remains the

15Ms. Harris indicated it was her handwriting. As later explained by Mr. Orona, under the Handbook instructions
(see EX 7), the 17 interstate workers represented less than 25% of the sample and thus precludes a wage rate determination.

Image 20

- 20 -

authority for conducting prevailing wage surveys.” The Handbook is “accepted as the benchmark/norm by all parties in the agricultural industry, including growers and workers.”

In creating an estimated survey universe, state labor market information, state agricultural representatives, state unemployment data base, the state department of agricultural, and job orders both open and closed should be considered.

The wage survey should be conducted during peak season or at the request of the NPC or National Office.

Wage survey information may be obtained by person, mail, telephone or e-mail.

In calculating the prevailing wage rate, the 25%, 40%, and 51% rules should be followed.

In one prevailing wage rate survey, the total number of domestic hired workers is 364. The sample size developed from 44% of total number employers in the crop activity is 201.

16 In

another example, the total number of domestic hired workers is 3,900. Based on information from 7% of all employers in the crop activity, a sample size of 171 was developed.

17 Finally, in

a third wage survey the total number of employees is 134. Based on information from 45% of the employers in the crop activity, the sample size is the same number, 134 workers.

18

F 3 S Partnership (CO 1)

On December 2, 2013, through its agent, the Employer filed with the DOL an ETA Form 790 (Agricultural and Food Processing Clearance form), and ETA Form 9142A (H-2A Application for Temporary Employment Certification), with attachments, for a "Farm/Irrigation/Livestock Worker" with seasonal employment from February 1 to December 1, 2014, 48 hours a week. In one attachment, the Employer set out the anticipated duties for a general farm worker, which included a variety of work related to the production of cattle, wheat, barley, alfalfa, and hay.

19 In the same attachment, the Employer guaranteed to pay the highest of

16 Nearly consistent with the Handbook's guidance for 350 to 499 workers of a sample size of 60%. In this case, 60% of 364 is 216. Neither the slide presentation nor the evidence in the record indicates whether this wage survey was approved or disapproved.

17 Inconsistent with the Handbook's guidance for 3,000 workers or more of a sample size of 15%. In this case, 15% of 3,900 is 585. Neither the slide presentation nor the evidence in the record indicates whether this wage survey was approved or disapproved.

18 Consistent with the Handbook's guidance for 100 to 349 workers of a sample size of 100%. However, since the only 45% of the employers were contacted, the total number of workers in the crop activity of 134 appears to be understated. Neither the slide presentation nor the evidence in the record indicates whether this wage survey was approved or disapproved.

19 Specifically, the various tasks included operating, maintaining, and repairing farm vehicles and equipment; removing undergrowth and rock; engaging in general clean-up; painting and repairing farm structures; repairing and replacing fencing; operating and maintaining irrigation systems; and, feeding and caring for livestock.

Image 21

- 21 -

the AEW, prevailing hourly wage, agreed upon collective bargaining agreement wage, or Federal/State minimum wage for new employees. The Employer also indicated that or workers with two to 18 years of continuous seasonal years, the offered hourly wage rate would be \$10.19.

Initially, during the processing of the application, on December 2, 2013, a DOL analyst (Ms. B. R.) filled out a worksheet to evaluate the application wage rate of "\$10.00."

20 On the form, the prevailing wage rate from the Agricultural Online Wage Library was listed as \$10.00

The minimum wages were \$7.25 (Federal) and \$7.50 (State). The AEWB was \$9.99.

21 And,

there was no collective bargaining agreement. As a result, the appropriate offered wage rate was
“\$10.00.”

However, on December 6, 2013, the same DOL analyst annotated, “Decision changed to NOD per TL (team leader)” based on “new PW (prevailing wage) in Montana.” The attached extract for Foreign Labor Certification, AOWL, contained the following three entries: a) “Farmworkers, General - \$10.00 Per Hour - 06/26/2012,” b) “General Farm Worker - \$12.50 Per Hour - 12/02/2013,” and c) “Irrigators - \$15.00 - 12/02/2013.”

On December 9, 2013, the DOL analyst sent by e-mail a NOD indicating that the application for temporary employment certification and/or job order failed to meet the criteria for acceptance in regards to the required wage under 20 C.F.R. § 655.120(a). The specific deficiency was the offered wage of \$10.19 for the job opportunity which included duties for general farm work, irrigation, and livestock when “the prevailing wage surveys in Montana for General Farm Worker and Irrigators are \$12.50 and \$15.00 per hour, respectively.” As a result, in order to comply with 20 C.F.R. § 655.120(a), the Employer had to offer, advertise in recruitment, and pay workers between \$12.50 and \$15.00 per hour, depending on the specific job duties.

22 The notice further indicated that a modification could be submitted within five business days. The Employer was also notified of its right to request a *de novo* hearing within five business days.

On December 13, 2013, through counsel, the Employer requested a *de novo* hearing.

20The application wage rate was actually \$10.19.

2178 Fed. Reg. 1259 (January 8, 2013).

22As previously noted, the portion of the notice of deficiency regarding the irrigator prevailing wage has been resolved in all eight cases.

Image 22

- 22 -

Robert J. Wueste

(CO 2)

23

On December 4, 2013, DOL received the Employer's ETA Forms 790 and 9142A, with attachments for a "Farm/Irrigation/Livestock Worker" with seasonal employment from February 1 to November 30, 2014, 48 hours a week, at an offered hourly wage of \$10.19.

On December 5, 2013, a DOL analyst (Mr. S. F.) filled out a worksheet to evaluate the application wage rate of \$10.19. The prevailing wage rates from the Agricultural Online Wage Library were listed as \$12.50 - farm worker and \$15.00 - irrigator. The Federal minimum wage was \$7.25. The AEWR was \$9.99. And, there was no collective bargaining agreement. Consequently, the highest of these wages were the prevailing wage rates of \$12.50 and \$15.00.

On December 5, 2013, the DOL analyst annotated, "NOD1 - Employer offering wage below recent surveys for farmworkers (\$12.50) and irrigators (\$15.00)." The analyst discussed the situation with the CO and was instructed to issue the NOD to give the Employer's agent an opportunity to specify a wage range of \$12.50 to \$15.00 and place the burden on the Employer to ensure the workers are being paid the appropriate hourly rate for their specific duties.

On December 9, 2013, after the CO's approval, the NOD was issued. The specific deficiency was a failure to comply with 20 C.F.R. § 655.120(a) by offering an hourly wage of \$10.19 for workers engaged in general farm work, irrigation, and livestock when the

prevailing
hourly rates for general farm workers and irrigators were \$12.50 and \$15.00.

On December 13, 2013, through counsel, the Employer requested a *de novo* hearing.

R Bar N Ranch (CO 3)

On November 27, 2013, DOL received the Employer's ETA Forms 790 and 9142A, with attachments for a "Farm/Irrigation/Livestock Worker" with seasonal employment from February 1 to October 1, 2014, 48 hours a week, at an offered hourly wage of \$10.00.

On November 29, 2013, a DOL analyst (Mr. J. L.) filled out a worksheet to evaluate the offered wage rate of \$10.00. The prevailing wage rate from the Agricultural Online Wage Library was \$10.00 for general farmworker. The Federal minimum wage was \$7.25; the State minimum wage was \$7.65. The AEWL was \$9.99. And, there was no collective bargaining agreement. Consequently, the highest of these wages were the offered and prevailing hourly wages of \$10.00.

On December 2, 2013, the DOL analyst annotated, "NOD for incorrect SOC code, incomplete contract impossibility language, and incomplete Section H.3."

23Since most portions of the administrative files are duplicative, I will only highlight the notable differences and associated dates.

Image 23

- 23 -

On December 2, 2013, after the CO's approval, the NOD was issued. The specific deficiencies were noncompliance with 20 C.F.R. § 655.141(a) for an incorrect SOC code since

the job opportunity involved working with cattle, and failure to complete Section H, Item 3 of the ETA Form 9142.

On December 5, 2013, in response to the NOD, the Employer submitted an amended ETA Form 790, noted that the workers' livestock duties were very minor, and completed the Section H deficiency.

On December 5, 2013, another DOL analyst (Mr. R. M.) indicated, "issue 2 and NOD for wage range in Montana."

On December 9, 2013, after the CO's approval, the second NOD was issued. The specific deficiency was a failure to comply with 20 C.F.R. § 655.120(a) by offering an hourly wage of \$10.00 for workers engaged in general farm work, irrigation, and livestock when the prevailing hourly rates for general farm workers and irrigators were \$12.50 and \$15.00,

On December 13, 2013, through counsel, the Employer requested a *de novo* hearing.

Huntsman Ranch (CO 4)

On November 21, 2013, DOL received the Employer's ETA Forms 790 and 9142A, with attachments for a "Farm/Irrigation/Livestock Worker" with seasonal employment from January 14 to September 15, 2014, 48 hours a week, at an offered hourly wage of \$10.00.

On November 25, 2013, a DOL analyst (Ms. T. S.) indicated, "NOD for inconsistent SOC code/title." After the CO's approval, the NOD was issued on November 26, 2013 for failure to comply with 20 C.F.R. § 655.141(a) due to the use of inconsistent SOC codes in the application.

On November 26, 2013, the Employer responded with an amendment correcting the

inconsistency.

On November 27, 2013, after accepting the modification, the same DOL analyst issued a NOA.

On December 5, 2013, the DOL analyst noted a wage increase for irrigator to \$15.00. A December 5, 2013 offered wage worksheet showed no values for “Step 4 - Prevailing Wage” and “Step 7 – Offered Wage.”

24

24The worksheet in the administrative file appears to be a copy of two different work sheets taped together with the separation cut in the “Step 4 - Prevailing Wage Rate” row, which contains no value. Likewise, as noted above, “Step 7 - Offered Wage” is blank.

Image 24

- 24 -

On December 9, 2013, the DOL analyst annotated, “There is a new wage survey with a higher wage. Therefore, an NOD after Acceptance must be issued.” After the CO’s approval and his observation, “resetting to allow NOD to be issued for new wage,” the second NOD was issued. The specific deficiency was a failure to comply with 20 C.F.R. § 655.120(a) by offering an hourly wage of “\$10.19”

25 for workers engaged in general farm work, irrigation, and livestock when the prevailing hourly rates for general farm workers and irrigators were \$12.50 and \$15.00,

On December 13, 2013, through counsel, the Employer requested a *de novo* hearing.

George Stoltz (Stoltz Land and Cattle Co.)
(CO 5)

On December 6, 2013, DOL received the Employer's ETA Forms 790 and 9142A, with attachments for a "Farm/Irrigation/Livestock Worker" with seasonal employment from February 1 to November 1, 48 hours a week, at an offered hourly wage of \$10.00.

On December 11, 2013, the DOL analyst (Ms. E. I.) completed her review of the application, prepared an NOA and forward the NOA to "Leads." On the same day, another DOL analyst (Mr. C. F.) annotated, "There is a new PW in MT for general farm worker of \$12.50/hour. This will have to be a NOD."

On December 12, 2013, the wage worksheet was completed. The prevailing wage rates from the Agricultural Online Wage Library were listed as \$12.50 - farm worker and \$15.00 - irrigator. The Federal minimum wage was \$7.25. The AEW was \$9.99. And, there was no collective bargaining agreement. Step 7 - Offered Wage indicated \$10.00.

26

On December 13, 2013, after the CO's approval, the NOD was issued. The specific deficiency was a failure to comply with 20 C.F.R. § 655.120(a) by offering an hourly wage of "\$10.19"

27 for workers engaged in general farm work, irrigation, and livestock when the prevailing hourly rates for general farm workers and irrigators were \$12.50 and \$15.00,

On the same day, through counsel, the Employer requested a *de novo* hearing.

25The Employer's actual offered hourly wage was \$10.00.

26Since the instructions for Step 7 state, "Highest of Step 3, Step 4, Step 5, and Step 6," the actual values should have been \$12.50 and \$15.00.

27The Employer's actual offered hourly wage was \$10.00.

Image 25

- 25 -

Santana Ranch (CO 6)

On November 27, 2013, DOL received the Employer's ETA Forms 790 and 9142A, with attachments for a "Farm/Irrigation/Livestock Worker" with seasonal employment from February 1 to December 1, 2014, 48 hours a week, at an offered hourly wage of \$10.19.

On December 4, 2013, an NOD was issued. The specific deficiencies were noncompliance with 20 C.F.R. § 655.141(a) for inconsistent SOC codes and failure to complete Section H, Item 3 of the ETA Form 9142.

On December 9, 2013, the Employer amended and corrected the noted deficiencies.

However, on December 10, 2013, a DOL analyst (Ms. T. S.) noted, "The employer has made all requested amendments. However, this will be a second NOD because the wage has changed due to a new survey." In the wage worksheet completed the same day, the application rate was \$10.19; the Federal minimum wage was \$7.25; the AEWWR was \$9.99; and, the prevailing wages were \$12.50 for farmworker and \$15.00 for irrigator. There was no collective bargaining agreement. Consequently, the application hourly rate of \$10.19 was "TOO LOW" which required an NOD since the appropriate hourly wages were \$12.50 and \$15.00

Also, on December 10, 2013, after the CO's approval, the second NOD was issued. The specific deficiency was a failure to comply with 20 C.F.R. § 655.120(a) by offering an hourly wage of \$10.19 for workers engaged in general farm work, irrigation, and livestock when the

prevailing hourly rates for general farm workers and irrigators were \$12.50 and \$15.00.

On December 13, 2013, through counsel, the Employer requested a *de novo* hearing.

5 L Ranch Corp.
(CO 7)

On December 17, 2013, DOL received the Employer's ETA Forms 790 and 9142A, with attachments for a "Farm/Irrigation/Livestock Worker" with seasonal employment from February 1 to November 14, 2014, 48 hours a week, at an offered hourly wage of \$10.00.

The December 19, 2013 wage application worksheet contained the following: application rate - \$10.00; AEWR - \$9.99; prevailing wage for farmworker - \$12.50; Federal minimum wage - \$7.25; State minimum wage - \$7.80; and appropriate offered rate - \$12.50.

There was no collective bargaining wage rate. A DOL analyst (Mr. R. M.) noted that an NOD

was necessary due in part to an incorrect wage rate for farmworkers in Montana. The next day, a team leader also observed that since the application included irrigation duties, the prevailing wage for irrigators needed to be included in the NOD.

Image 26

- 26 -

On December 23, 2013, after the CO's approval, the NOD was issued. The specific deficiency was a failure to comply with 20 C.F.R. § 655.120(a) by offering an hourly wage of \$10.00 for workers engaged in general farm work, irrigation, and livestock when the prevailing hourly rates for general farm workers and irrigators were \$12.50 and \$15.00,

On December 27, 2013, through counsel, the Employer requested a *de novo* hearing.

McCoy Cattle

(CO 8)

On December 23, 2013, DOL received the Employer's ETA Forms 790 and 9142A, with attachments for a "Farm/Irrigation/Livestock Worker" with seasonal employment from February 8 to December 8, 2014, 48 hours a week, at an offered hourly wage of \$10.00.

The December 27, 2013 wage application worksheet contained the following: application rate - \$10.00; AEWR - \$9.99; prevailing wage for farmworker - \$12.50; Federal minimum wage - \$7.25; State minimum wage - \$7.80; and appropriate offered rate - \$10.00.

28

There was no collective bargaining wage rate. A DOL analyst (Ms. V. S.) noted two deficiencies.

First, three of the seven worksites were more than one mile from the first worksite.

Second, the

Employer offered \$10.00 an hour when the prevailing wages were \$12.50 for general farm work

and \$15.00 for irrigation work.

On December 30, 2013, after the CO's approval, the NOD was issued. The specific deficiencies were failures: a) to meet the regulatory requirement of area of intended employment, and b) failure to comply with 20 C.F.R. § 655.120(a) by offering an hourly wage of

\$10.00 for workers engaged in general farm work, irrigation, and livestock when the prevailing

hourly rates for general farm workers and irrigators were \$12.50 and \$15.00.

On December 27, 2013, through counsel, the Employer requested a *de novo* hearing.

29

State of Montana Application for Federal Assistance

(CX 9)

On July 22, 2013, the state of Montana filed an application for Federal Assistance in the form of an Alien Labor Certification Grant for Fiscal Year 2013 (October 1, 2012 through September 30, 2013) in the amount of \$80,722.00. The foreign labor certification workload included 412 H-2A temporary labor certifications processed with 60 applications pending. The number of prevailing wage surveys completed was 151. The prevailing wage surveys were to be conducted in accordance with ET Handbook No. 385. The average cost associated with the prevailing wage survey was \$42.77. The grant would fund "1" Full Time Equivalent staff member.

28Since the instructions for Step 7 state, "Highest of Step 3, Step 4, Step 5, and Step 6," the actual value should have been \$12.50.

29As previously noted, Employer's counsel did not contest the area of intended employment deficiency.

Image 27

- 27 -

Attachment 1 – Grant Solicitation (CX 10)

The grant solicitation attachment sets out the procedures, and requirement for the grant application process. As a condition of the grant, the SWA agrees to "carry out responsibilities supporting the Federal administration of foreign labor certification programs in accordance with all applicable regulations, policies, procedures, handbooks, manuals, and other directives." Additionally, regarding the agricultural prevailing wage survey report, a critical component of OFLC's ability to grant a labor certification under the H-2A program is the determination

concerning an appropriate wage rate. As part of that process, the “SWAs collect and provide vital information to the OFLC with respect to whether a prevailing hourly wage . . . exists for the occupation or crop in the area of intended employment.” This prevailing wage information is “collected through survey instruments designed by the SWA, conducted in accordance with the ETA Handbook No. 385, and transmitted to OFLC.”

Stipulation of Fact

The parties stipulated that CO’s determination that the Employers are not offering the prevailing wage rate in their applications for temporary labor certification is based solely on the information provided by Mr. Orona in the Office of Foreign Labor Certification. TR, p. 21.

Image 28

- 28 -

Discussion

As an initial step in this case, I must determine the applicable standard, of proof in this case. Following that determination, I will address the specific issue before me.

Standard of Proof

As demonstrated by their respective closing briefs, the parties disagree on the standard of proof the Employers must meet to satisfy their burden of proof. According to counsel for the certifying officer, the Employers must demonstrate that the CO’s decision to issue the NODs in this case was arbitrary and capricious. Employers’ counsel asserts the Employers need only

present sufficient evidence to establish a *prima facie* case supporting their position which then must be rebutted by the CO.

In considering this conflict, I first turn to the 20 C.F.R. § 655.171, which is captioned “appeals.” Under its provisions, an employer may request an administrative review of a CO’s decision for the purpose of obtaining administrative relief from that decision through reversal, modification, and or remand. Consequently, as the party seeking administrative relief, an employer bears the burden of proof.

Next, in terms of the applicable standard, the parties’ disparate positions are essentially based on the two separate means by which an employer may obtain administrative relief - administrative review under subsection (a) or a *de novo* hearing under subsection (b). Based on an administrative law judge decision,

30 the CO’s attorney asserts the Employers must establish

the CO’s use of the prevailing wage determined by Mr. Orona was arbitrary and capricious.

Employers’ counsel maintains that the high arbitrary and capricious standard of proof that has been applied by other administrative law judges during administrative reviews 31 is not applicable

when an employer elects to proceed with a *de novo* hearing. In that situation, based on other administrative law judge decisions,

32 and the Supreme Court decision in *Director, OWCP v.*

Greenwich Collieries, et al., 512 U.S. 267 (1994), counsel asserts that the proof standard under

the Administrative Procedures Act (“APA”) applies, and that standard only requires a *prima*

30 *Zirkle Fruit Co.*, 2008 TLC 35 and 36 (July 7, 2008). Following his *de novo* hearing, the administrative law judge indicated that he would apply the legal sufficiency standard used in an administrative review proceeding. At the

time of his decision, the regulatory provision for an administrative review proceeding, then 20 C.F.R. § 655.112(a), limited an administrative law judge's decision to a review for "legal sufficiency," while the *de novo* hearing provision, 20 C.F.R. § 655.112(b), was silent regarding the standard of proof. Notably, however, in the current regulation, neither the administrative review provision, 20 C.F.R. § 655.171(a), nor the *de novo* hearing subsection, 20 C.F.R. § 655.171(b), specifies a standard of proof or references legal sufficiency.

³¹See *Bolton Spring Farm*, 2008 TLC 28 (May 16, 2008); *Jay R. Debadts & Sons Fruit Farm*, 2008 TLC 38 (July 10, 2008). Again, I note that at the time of these decisions, the regulatory provision for an administrative review proceeding, then 20 C.F.R. § 655.112(a), limited the review to legal sufficiency, which led the administrative law judge to apply an arbitrary and capricious standard of proof. The present administrative review provision, 20 C.F.R. § 655.171(a), no longer limits the review to legal sufficiency.

³²See *Barry's Ground Cover*, 2012 TL 11, *et al.* (Feb. 23, 2012).

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facie showing of credible evidence.

³³ However, with due difference to predecessor and

contemporary administrative law judges,

³⁴ I believe the only significant difference between an

administrative review and a *de novo* hearing relates to evidentiary record upon which an employer may base its appeal under 20 C.F.R. § 655.171. That is, in an administrative review,

for the purpose of expediency, the evidentiary record is limited to the administrative file;

whereas, with a *de novo* hearing, the evidentiary record consists of documents and testimony

offered by both parties and admitted into the record during the course of the proceeding.

Consequently, from my perspective, regardless of how the evidentiary record is acquired,

as the proponent party seeking DOL acceptance of its labor certification application, an employer must prove by the preponderance of the probative evidence that its labor certification application is sufficient for acceptance under the criteria established by 20 C.F.R. §§ 655.161 because the CO's NOD was based on facts that are materially inaccurate, inconsistent, unreliable, or invalid, and/or the CO's conclusions and resulting deficiency determination were inconsistent with the underlying established facts and/or legally impermissible. If an employer meets that standard of proof, the CO's NOD must be reversed, modified, or remanded. Otherwise, the CO's NOD must be affirmed.

Certifying Officer's NODs

Background

The H-2A labor certification program was established to ensure that the pay, conditions, and terms of the employment of foreign, nonimmigrant workers does not disadvantage domestic workers in the United States. One means to achieve that purpose is to require an employer who seeks to employ foreign, nonimmigrant workers to demonstrate that the wage offered and paid to a foreign, nonimmigrant worker is not less than the wage a similarly situated domestic worker would be expected to receive. As a result, under 20 C.F.R. §655.161(a), an employer bears the burden of establishing eligibility for temporary labor certification under the Act and must in part comply with offered wage rate criteria in 20 C.F.R. §655.120.

According to 20 C.F.R. §655.120, an employer "must offer, advertise in its recruitment, and pay a wage that is the highest of the AEWR, the prevailing hourly wage, the agreed-upon collective bargaining wage or the Federal or State minimum wage . . ." Four of these five wages are readily determined through regulatory determination – AEWR; legislation – Federal or State

minimum wage, and collective bargaining agreement. However, the fifth type of wage, the prevailing wage, must be determined locally through the collection and analysis of information

³³In *Director, OWCP, v. Greenwich Collieries, et al.*, 512 U.S. 267, 275 (1994), the court determined that under Section 7 of the APA, which indicates that unless otherwise provided by statute the proponent of a rule or order has the burden of proof, claimants in black lung and longshoreman disability compensation claims bear the burden of proof/persuasion. The court also indicated that under the APA, if the proponent establishes a *prima facie* case supported by credible evidence, it must either be rebutted or accepted as true. *Id.* at 280. However, subsequent cases have clarified that under this shifting burden of production process, if evidence is presented in response to the *prima facie* case, the proponent retains the ultimate burden of proof/persuasion.

³⁴Some administrative law judges have also applied an abuse of discretion standard in a *de novo* proceedings. See *Greenbank, Inc.*, 2013 TLC 35 (July 22, 2013).

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from local employers of the wages they actually pay to domestic workers engaged in a specific crop activity within a defined agricultural area.

For decades, that process for determining an applicable prevailing wage has been guided by the Handbook promulgated by DOL because “[a]ccurate farm wage data” is “essential to the effective operation of the Public Employment Service in serving farm employers and farm workers and in implementing the Secretary’s regulations on the intra/interstate recruitment of farm workers.” Although not a published regulation, the Handbook “remains the authority for conducting prevailing wage surveys,” and is “accepted as the benchmark/norm by all

parties in the agricultural industry, including growers and workers.” The wage data is collected locally through SWAs under federal grants. According to Mr. Orona, and as set out in the federal grants, the SWAs are required to follow the Handbook procedures in order that the prevailing wage may be determined accurately because an understated prevailing wage adversely affects domestic workers, while an overstated prevailing wage requires employers to pay more than necessary to eliminate any adverse effect on similarly employed domestic workers. In other words, foreign non-immigrant workers, domestic workers, employers and the public all have a stake in the determination of an accurate prevailing wage.

As set out in the Handbook, the principal component for establishing an accurate prevailing wage is a survey sample of worker wages of sufficient size to produce a representative prevailing wage for the U.S. domestic workers engaged in the particular crop activity upon which the respective parties may place their confidence. And, the key factor for ensuring a survey sample is actually representative is knowing the total number of workers in the crop activity population being sampled because as Dr. Bronars testified due to the direct correlation between the sample size and the universe population, as the sample size increases in comparison to the universe population, confidence that the sample is representative of the universe population also increases up to a point of diminishing returns.

Prevailing Wage Determinations Guidelines

Under the Handbook’s provisions and according to the training provided by DOL, determination of a prevailing wage for a particular crop activity requires several steps by local SWAs and DOL employees.

First, the wage data upon which a prevailing wage is based for a specific crop activity in a particular agricultural reporting area, which may be state-wide, or a subdivision of a

state is collected through a survey of wages paid to U.S. domestic employees working in the same crop activity. In planning the survey, the SWA should review seasonal crops “well in advance of the anticipated farm labor needs.” Usually, when foreign workers were employed in the previous season and employers are expected to request foreign workers in the current season, a wage rate survey should be conducted at least once per season. The survey should be conducted during peak season, usually at least once a year, or at the request of the Chicago NPC or the National Office, and “normally” completed “within 3 days unless there is prior regional office approval, the survey period should not exceed 1 week.”

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Since the accuracy of the prevailing wage in terms of being a representative prevailing wage depends on obtaining wage information from a sufficient sample of workers as defined by the Handbook, after determining the number of employers in the agricultural reporting area who have employees working in crop activity to be surveyed, the SWA must calculate the total number of U.S. domestic workers who are employed in the crop activity, in both in-state and interstate categories. In creating an estimated survey universe, state labor market information, state agricultural representatives, state unemployment data base, the state department of agricultural, and job orders both open and closed should be considered.

After the total workers universe established, the SWA then is required to survey employers to obtain actual wages of its employees at the time of the survey. Although the 1981 Handbook indicates the survey must “include a substantial number of personal employer

interviews,” in recent SWA training, DOL has updated that requirement and instructs that wage information may be obtained by person, mail, telephone or e-mail.

The wage information gathering process continues until the SWA has wage information for the number of workers in the appropriate sample size. Specifically, the SWA “should assure itself that the planned sample will yield data which will be representative of the wages paid in the crop activity.” As a result, in gathering wages for the survey sample size, the SWA should observe the following “guide”: for 100 to 349 workers in the crop activity in the area, the sample size should be 100% of the workers; for 350 to 499 workers, the sample size should be 60% of the workers; for 500 to 799 workers, the sample size should be 50% of the workers; for 800 to 999 workers, the sample size should be 40% of the workers; for 1,000 to 1,299 workers, the sample size should be 35% of the workers, and continuing in increments up to 3,000 or more workers, in which the sample size is 15% of the workers.

At this stage, in order to verify the wage information furnished by the employers, the SWA must also interview “10 percent of the workers included in the sample.” These workers “should be drawn from as many as possible” of the interviewed employer.

In the second step of the prevailing wage determination process, upon completion of the survey, the SWA will make a prevailing wage rate finding based on the collected wage information by applying two methods in order. First, under the “40 percent rule,” if a single wage rate is paid to 40% or more of the workers in the crop activity, then that rate is the prevailing wage rate. Second, if no single wage rate accounts for 40% or more of workers, the workers and their associated rates are arrayed in descending order. Then, starting with the lowest rate, the workers are cumulatively counted until 51% of the workers in the survey are covered. The rate at that point in the count becomes the prevailing wage rate. And, until November 2013, if the number of workers in either category of in-state and interstate is less than 25% of the sample size, then a prevailing wage for that category can not be made and

result is annotated as “No Finding.”

The third, and final, step involves the participation of Chicago National Processing Center which monitors the wage data collection and analysis process, and the DOL OFLC which approves the determined prevailing wage and publishes the prevailing wage in the AOWL.

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Montana General Farmworker Prevailing Wage Determination

Between February 11 and March 4, 2013, Ms. Harris conducted a prevailing wage survey for the occupation of general farmworker in Montana, state-wide agricultural reporting area. After determining that 360 employers employed general farmworkers, she attempted to obtain wage information for the U.S. domestic workers employed at that time from 220 out of the 360 employers. Subsequently, 43 employers responded and provided their respective wages for 204 domestic general farmworkers. Several of the employers specified varying rates of pay based on job activity, which included 10 supervisors who earned between \$16.00 and \$27.50 per hour, and 41 individuals engaged in fertilizing operations with hourly wages ranging from \$10.00 to \$20.00.

On March 8, 2013, after assembling the wage information from the employer interviews, ETA Form 232A, EX 3, Ms. Harris calculated the prevailing wage by first excluding supervisors and then “adding the 30 wage responses” and dividing the sum by 30, which produced a prevailing wage rate of \$12.46. The prior year prevailing wage was \$10.00. In regards to

variables affecting rates, Ms. Harris noted that a lot more fertilizing was conducted “this year” which led to higher wages.

35 Upon completion, Ms. Harris forwarded the ETA Form 232, EX 5, to the National Office.

On May 20, 2013, Mr. Orona responded to the submitted ETA Form 232. After requesting the survey questionnaires, he noted that the 10 supervisors would have to go on a different survey. Mr. Orona also inquired about how she calculated the \$12.46 hourly prevailing rate.

On May 22, 2013, Ms. Harris indicated that the ETA Form 232A was used as the questionnaire, provided a separate survey for supervisors, and explained how she calculated the prevailing wage rate of \$12.46.

Subsequently, Ms. Harris worked with Mr. Orona to put the wage data in the manner specified on the ETA Form 232 and recalculate the prevailing wage rate as \$12.50, EX 2.

Specifically, Ms. Harris indicated that the estimated number of employers with domestic general farmworkers was 360. Of those employers, 43 were “contacted,” which represented 12% of the estimated number of employers in the crop activity. Then, in Subsection 2c, Ms. Harris entered 195 as the estimated total of domestic hired workers, consisting of 178 local and intrastate workers and 17 interstate workers. Then, based on the 51% rule, Ms. Harris concluded that the prevailing hourly wage rate for all U.S. workers was \$12.50. Likewise, under the 51% rule, \$12.50 was the prevailing wage rate for intrastate U.S. workers. Finally, using the 40% rule, and based on the 17 interstate workers in the survey, Ms. Harris determined that the prevailing wage rate for interstate U.S. workers was \$12.00. Finally, without comment, Ms. Harris noted the prevailing wage the previous season was \$10.00.

On June 24, 2013, Ms. Harris forwarded the revised prevailing wage determination, ETA Form 232, EX 2 and EX 8, to Mr. Orona.

35Of the 41 workers engaged in fertilizing, all but three of the individuals received an hourly wage greater than \$10.00, EX 3.

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Sometime later, because the number of interstate workers in the survey, 17, was less than 25% of the 195 surveyed workers, Ms. Harris changed the prevailing wage finding for interstate general farmworkers from \$12.00 to “no finding,” EX 8.

Eventually, as part of his capacity in OFLC, and based on his review of the revised ETA Form 232, EX 2 and EX 8, which showed a survey sample size of 195, which was 100% of estimated workers in the state’s general farmworkers population, Mr. Orona determined the Montana prevailing wage determination of \$12.50 for general farmworkers was valid, which led to the publication of that prevailing wage rate in the AOWL on December 2, 2013.

Handbook Deviations

In support of their labor certification applications, and to establish that the CO’s NODs were based an invalid and inaccurate prevailing wage \$12.50, the Employers have highlighted numerous deviations from the Handbook during determination of that prevailing wage rate for Montana general farmworkers, relating to the timing and duration of the prevailing wage survey, collection methodology/verification, crop activity/occupation designation, and survey sample size.

Timing/Duration

According to the Handbook, and associated training, a prevailing wage determination for a crop activity should be conducted during peak season and completed within three days, absent prior regional office approval. Even with approval, the survey should not exceed one week.

Ms. Harris conducted the prevailing wage survey in February and March of 2013, over the course of three weeks.

In terms of timing, Dr. Bronars opined that the timing of the prevailing wage determination for general farmworkers in Montana during February and March may have affected the reliability of the SWA prevailing wage survey because according to the USDA survey of farmworkers which is conducted quarterly and used to set the AEW for the employment of temporary or seasonal non-immigrant foreign workers for agricultural labor or services, about half as many workers work half as many hours in the winter than in the summer. Further, the composition of the farming workforce is “pretty different” between the early spring and summer. There may be higher paid workers in the early spring such that the sample workers may not be representative of the workers who would be employed in the summer. As a result, conducting the Montana general farmworker survey in Montana in the middle of winter “at best, is an unusual time to be surveying farm workers.”

On the other hand, Ms. Harris testified that several of the functions of a general farmworker in Montana involve livestock. Consequently, in the winter months, including February and March, many of the ranch workers who fall within the category of general farmworker would be busy with calving. Mr. Orona also noted that use of a peak season survey was usually more appropriate when the workers’ wages are based on piece rates for a specific crop.

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Upon consideration of the peak season issue, and in addition to Ms. Harris' explanation, I first note that almost all of the Employers' labor certification applications cover an employment period from January/February 2014 to the late fall of 2014. So, the prevailing wage survey Ms. Harris conducted falls within the period of intended employment. Second, and more significant, Dr. Bronars based his critique on the peak season issue and associated possible errors in accuracy on a brief review of the USDA survey and acknowledged a lack of certainty without further study about the actual effects of conducting the prevailing wage survey in February and March. As a result, Dr. Bronars' concerns about peak season lacks sufficient probative force to establish that the determined prevailing wage was invalid or inaccurate due to the timing of the survey.

As to the three week duration of the survey, the record contains little probative evidence about any detrimental effect on the accuracy of this prevailing wage survey due to its three week duration. To the contrary, Ms. Harris provided a justifiable explanation for the additional two week departure from the Handbook's guideline for the duration of a prevailing wage survey. Notably, during the first week of the survey, only 17 employers had responded, EX 3. Due to this low response rate, and in order to develop additional wage information, Ms. Harris understandably extended the duration of the prevailing wage survey in an effort to acquire more employer responses. And, that two week extension produced another 26 employer responses, EX 3. Additionally, Mr. Orona indicated that the duration of a survey does not adversely affect a prevailing wage survey and DOL would prefer that SWA not rush a survey just to meet

the Handbook criteria. Consequently, the three week duration of the Montana general farmworkers' prevailing wage survey, appears to have actually enhanced its potential for accuracy.

Collection Method/Verification

According to the Handbook, apparently in order to ensure the wage information being provided is representative of the wages actually being paid to U.S. domestic workers in a particular crop activity, the prevailing wage survey "must include a substantial number of personal employer interviews," with limited use of the telephonic contacts and the mail. The Handbook also requires personal interviews of 10% of the workers in the survey sample as an apparent safeguard against an employer providing approximate, rather than actual, wages.

In her prevailing wage determination survey, Ms. Harris relied on wage information obtained during telephonic responses from employers. No personal interviews of workers were conducted.

As the evidentiary record makes clear, departure from the Handbook's use of personal interviews in this case is not a significant issue for two reasons. First, since at least 2006, in recognition of changing communication technology, and increasing fiscal constraints, DOL no longer trains SWAs to use personal interviews, EX 10. Instead, as recently incorporated into instructions for the wage survey forms, wage survey information may now be obtained by person, mail, telephone or e-mail. Second, as Ms. Harris reasonably explained, the size of

36F 3 S: February 1 to December 1 (CO 1); Wueste: February 1 to November 30 (CO 2); R Bar N: February 1 to October 1 (CO 3); Huntsman: January 14 to September 15 (CX 4); Stoltz: February 1 to November 1 (CO 5); Santana: February 1 to December 1 (CO 6); 5 L: February 1 to November 14 (CO 7); and McCoy: February 8 to

December 8, (CO 8).

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Montana renders personal interviews of employers throughout the state impractical in terms of time, effort, and funding.

Concerning the 10% verification guideline, Dr. Bronars described its use in general terms

as means to establish the accuracy of employer-furnished wage information. However, Dr.

Bronars did not also state this Handbook deviation adversely affected general farmworkers'

prevailing wage determination, and the evidentiary record contains no probative evidence that

the employers actually provided estimated, rather than actual, wages. To the contrary, most of

the ETA Forms 232A, contained specific wage rates that were: a) paid according to the workers'

function (general worker - \$10.00; fertilizer worker - \$12.00; grain harvester - \$14.00; and grain

elevator worker - \$16.00), and b) at times detailed down to the half dollar (\$11.50 and \$14.50),

EX 2 and EX 3. Consequently, I find insufficient probative evidence to establish that the lack of

verification through contact with 10% of workers employed by the sampled employers adversely

affected the validity of the general farmworkers' prevailing wage determination.

Occupation/Crop Activity

In general terms, the Handbook provides guidelines for conducting prevailing wage determinations by crop activity in an identifiable agricultural reporting area.

Ms. Harris conducted her survey based on the occupation of general farmworkers which

encompassed a wide array of functions, such as handling livestock, and was not limited to a specific crop.

Dr. Bronars expressed concern over this Handbook deviation because distinctions based on crop activity are appropriate given the different activities associated with each crop. The failure to make such a distinction would “muddle” the collected wage information by grouping disparate workers together. Specifically, with the use of occupation as a survey category, a person would find it difficult to determine from a wage survey whether the collected wages reflected different wages for the different crop activities or that the same workers engaged at different times of year in different activities. As a result, it was possible the Montana general farmworkers prevailing wage survey may have included workers doing work outside of usual farm activities, which might have inflated the wage rate.

Mr. Orona responded that for more than a decade, occupations have been a part of the prevailing wage process. Based on his experience at OFLC, there has never been a time when general farmworker was not a prevailing wage survey category.

In determining whether DOL’s apparent practice of conducting prevailing wage rate surveys for the occupation of general farmworkers in contrast to the Handbook’s guidance to use crop activity had a material adverse effect on the validity of the Montana prevailing wage survey, I simply note that Dr. Bronars’ expressed concerns have diminished probative value in light of his acknowledgement that he didn’t know if using the occupation of general farmer workers in departure from the Handbook’s guidance was “adequate or not.”

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Survey Sample Size

As previously discussed, in order to ensure that a prevailing wage determination is reliable and representative, which are the key factors for acceptance of a prevailing wage by all the parties involved in the process, the Handbook establishes specific survey sample sizes which are based on the total population of the employee universe. By incorporation in the Handbook, DOL has determined that these specified survey sample sizes will provide a sufficient level of confidence that the survey will indeed produce a reliable and representative prevailing wage. In estimating the total worker population upon which the appropriate Handbook sample size will be determined, DOL trains SWAs to use state labor market information, state agricultural representatives, state unemployment data, state department of agriculture information, and job orders.

In preparing the ETA Form 232 for the general farmworker prevailing wage survey, Ms.

Harris reported that the total worker population was 195.

In addressing the Employers' challenge to the prevailing wage determination based on this survey sample size of 195 workers, I must consider the hearing testimony of Ms. Harris, Mr.

Orona, and Dr. Bronars, assess the associated probative value of that testimony, review the June

24, 2013, ETA Form 232 under the Handbook's guidelines, and determine the preponderance of the probative evidence.

Ms. Harris

Ms. Harris testified that she thought Section 2c on ETA Form 232 was asking for the number of workers in the sample size.

³⁷ As a result, the number "195" in Section 2c was not the

total number of U.S. workers in the general farmworkers population in Montana at the

time of survey. Instead, it was the number of employees working for the 43 employers who responded.

At the hearing, having learned that Section 2c was suppose to be the “total domestic hired

workers in Montana for general farmworkers,” Ms. Harris estimated that the actual number of general farmworkers in the state at the time of the survey was “roughly 500.” She based this estimate on her first hand experience with employers and employees for the past three years, unemployment insurance numbers, and the State Department of Revenue numbers for reported wages. Based on her estimate of the total worker population, Ms. Harris believed that the June 24, 2013 prevailing wage survey was valid and the prevailing wage was representative of the wage paid to domestic hired general farm workers in Montana at that time.

37She thought she “was supposed to fill in the total number of domestic hired workers that we got a response from” and “that is what I did.”

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Mr. Orona

According to Mr. Orona, DOL requires the SWAs to follow the Handbook in conducting

prevailing wage surveys because it is essential that the prevailing wage be determined accurately.

And, an OFLC H-2A analyst, during his review and validation of prevailing wage surveys, he

ensures the surveys are conducted in compliance with the Handbook, which includes specific sample sizes.

Upon his review of the Montana prevailing wage determination in the fall of 2013, Mr. Orona had “no probable cause” to question the information on the ETA Form 232. Yet, Mr. Orona also agreed that if the total worker population was actually 500, rather than the 195 workers indicated on the form, the survey would not explicitly meet the Handbook’s sample survey size of 50%, or 250 workers. However, the Handbook sample size is not a fixed number and represents a “general guide.” Considering that the Montana prevailing wage survey contained 17 different wage rates from 43 employers for 195 domestic workers, and even though the survey sample size was less than the recommended 250 workers, Mr. Orona concluded that the June 24, 2013 prevailing wage rate survey contained “enough information” to support the determined prevailing wage rate determination of \$12.50.

Dr. Bronars

Consistent with the Handbook’s specific guidance about survey sample size, Dr. Bronars stressed the importance of determining a statistical sample size that will provide a sufficient level of confidence that the prevailing wage calculated from the wage information in that sample size will actually be representative of the usual prevailing wage paid to similarly situated domestic workers. In that regard, “the number of workers that need to be included in the sample depends on the population number of workers in the crop activity in the state.” For example, if the total population is 3,000 or more workers, the Handbook indicates that a sample size consisting of 15% of the total worker population will produce a reliable and representative prevailing wage determination for the entire population.

However, the Montana prevailing wage survey used the number of workers employed by

the 43 employers who were contacted as the figure for the total worker population being sampled. Not only does the Handbook not base the appropriate survey sample size on the number of employers surveyed, the 43 sampled employers had an average of five to six workers, while the most recent census data from 2007 for Montana indicated “there were 393 employers in agricultural with 10 or more employees; and 816 employers that had 5 to 9; and there were over 20,000 hired farmworkers.” Additionally, the sample of 195 employees was “inadequate” according to the Handbook unless the 195 workers provided by 43 employers represented “100% of the workers in this category in the state.” Consequently, under the Handbook’s guidelines, Dr. Bronars believed the sample size of 195 employees was too small to be reliable. At the same time, since only hypothetical population sizes were available, Dr. Bronars was unable to definitively state that the \$12.50 prevailing wage was not representative for the total population of general farmworkers in Montana.

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Finally, Dr. Bronars observed that the determined prevailing wage rate of \$12.50 represented a 25% increase over the prior year’s prevailing wage of \$10.00. In comparison, the AEWR only increased from \$9.99 to \$10.69. While the 25% increase in the prevailing wage alone didn’t establish the general farmworkers prevailing wage was based on an inadequate survey, the substantial increase in one year does raise a question about whether the determined prevailing wage was actually representative.

Testimony Probative Value

Due to the somewhat conflicting testimony, I must assess the respective probative value of the testimony of Dr. Bronars, Ms. Harris, and Mr. Orona in terms of supporting documentation, reasoning, and recognized expertise.

As an expert in labor economics, Dr. Bronars provided very probative testimony on the importance of having a statistically sound survey sample size to produce a reliable and representative prevailing wage. His credible testimony also supports the importance of, and compliance with, the Handbook's survey methodology and specified survey sample sizes based on the total population of the workers in a specific crop activity.

However, Dr. Bronars' conclusion that the sample size of 195 workers in the general farmworkers prevailing wage survey was inadequate has diminished probative value because Dr. Bronars also acknowledged that without knowing the actual total population of general farmworkers, he could not definitively state that the prevailing wage of \$12.50 based on a sample size of 195 workers was not representative or reliable.

As the individual in the Montana SWA who conducted the general farmworker prevailing wage survey, Ms. Harris was well positioned to provide a probative assessment on the reliability of the prevailing wage determination. However, while recognizing the fiscal constraints facing Ms. Harris and her considerable workload in the SWA, and noting her deliberative and thoughtful responses during the telephonic hearing, I nevertheless find her conclusion that the prevailing wage survey is valid, and the resulting prevailing wage rate of \$12.50 is representative of the wage rate paid to domestic hired general farm workers in Montana, suffers a loss of probative value for several reasons.

First, Ms. Harris provided insufficient specificity regarding the underlying documentary support for her conclusion. That is, to support her estimate of roughly 500 workers in the total population, Ms. Harris only indicated that she recently reviewed workers numbers from unemployment insurance and the State Department of Revenue, and did not provide the actual numbers of general farmworkers those two sources disclosed. This shortfall is significant

given

Dr. Bronars' testimony that his review of recent census data showed over 1,200 employers with over 20,000 hired farmworkers in the state. Even though the general farmworkers covered in the prevailing wage survey represents only a subset of all agricultural workers in Montana, Dr. Bronars' referenced 2007 census figure of 20,000 hired farmworkers certainly suggests that Ms. Harris' estimation of 500 general farmworkers is understated.

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Second, Ms. Harris' reliance on her three year work experience with general farmworkers and their employers is not an adequate substitute for a statistically sound survey process that is based on a sample size which is sufficient in relation to a specific total worker population to establish a reasonable degree of confidence in the resulting prevailing wage.

Third, even if her "rough" estimation of a total general farmworker population of 500 is accurate, the Handbook indicates that appropriate sample size is 50% for that total population, or 250 workers; whereas, the June 24, 2013 prevailing wage determination only contained 195 workers, about 39% of Ms. Harris' estimated total population. Given this sample size deviation for 500 workers in the total population, Ms. Harris did not explain why she nevertheless believed the prevailing wage survey remained valid.

In his capacity as an H-2A analyst at OFLC who reviews and validates prevailing wage determinations, Mr. Orona was also well positioned to provide a probative assessment concerning the validity of the survey and representative nature of the \$12.50 prevailing wage. Yet, although he provided credible testimony regarding the importance of determining an

accurate prevailing wage, and his hearing responses were generally straightforward and earnest, his testimony supporting the sufficiency to the Montana prevailing wage survey and the reliability of the associated prevailing wage of \$12.50 has diminished probative value on multiple grounds.

During the initial portion of his testimony, Mr. Orona emphasized the importance of both determining an accurate prevailing wage and compliance with the Handbook's guidance. He also stated, that he only finds a prevailing wage survey deficient if the "deficiency impacts the data obtained through the survey." In finding the general farmworker prevailing wage survey still valid if the total population of the general farmworkers was 500 rather than the indicated 195, Mr. Orona implicitly concluded that the difference between Handbook recommended sample size of 250 workers for a total population of 500 workers, and the actual sample size of 195 was not a deficiency that impacted the survey data. However, the difference between the recommended and actual sample sizes becomes significant upon consideration that: a) the sample size of 195 actually represents only about 40% of the total population of 500, and b) the Handbook only permits a 40% level of sampling to establish a sufficient level of confidence in the prevailing wage developed from the sampled workers if the total worker population is at least greater than 800 workers. From that perspective, I consider the absence of 55 wage data points when the total population is only 500 workers to be a deficiency that adversely impacts the prevailing wage survey data – the determined prevailing wage.

Mr. Orona's acceptance of the June 24, 2013 prevailing wage survey is also specifically predicated on the assumption that the total population of general farmworkers is exactly 500.

Yet, Ms. Harris actually estimated the number was "roughly 500," which undermines Mr.

Orona's conclusion. Specifically, Mr. Orona was unable to state at what level of total

worker
population above 500 he would be able to conclude the sample size of 195 became insufficient.
Similarly, if the total worker population was less than 500, than the Handbook's sample size becomes 100%, causing the Montana prevailing wage survey sample size of 195 to fall well

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short of the Handbook's recommendation.

38 And, most significantly, for reasons previously

discussed, I do not consider Ms. Harris' estimate of the total number of general farmworkers to

be particularly probative. Consequently, Mr. Orona's ad hoc determination that the prevailing

wage of \$12.50 remains reliable and representative based on a speculative estimation of, rather

than probative empirical data for, a total worker population of 500 is clearly inconsistent with the

Handbook's stated purpose of requiring the SWAs to use survey methodology that will consistently establish a representative prevailing wage upon which all parties may rely.

Finally, and closely related, as Dr. Bronars acknowledged, in order to determine whether

a prevailing wage survey sample size is of sufficient size to produce a representative prevailing

wage, the total number of workers in the universe that is being sampled has to be known.

In his

testimony, Mr. Orona never represented that he knew the actual, total number of domestic

workers in the state of Montana. And, without knowing the actual number of general farmworkers employed in Montana, Mr. Orona had no reasonable basis upon which to determine

that the 195 farmworker wage data points in the prevailing wage survey were sufficient to have

confidence that \$12.50 is an accurate prevailing wage for general farmworkers in the state of

Montana. As a result, Mr. Orona's testimony does not support a finding that the survey sample size in the June 24, 2013 prevailing wage survey was sufficiently valid to determine a reliable and representative prevailing wage for general farmworkers in Montana of \$12.50.

June 24, 2013, ETA Form 232

Upon review, I find that on its face the June 24, 2013 ETA Form 232, EX 2 and EX 8, is a significantly, and given the importance of the deficient areas, fatally flawed prevailing wage survey. As a starting point, Section 2a indicates that the total number of employers with domestic workers in the general farmworker occupation is 360. Next, Section 3a discloses that of those 360 employers, 43 employers responded, and according to Section 4 provided wage information regarding 195 general farmworkers. Then, the form's glaring flaw appears in Section 2c which indicates that "TOTAL Domestic Workers" is "195"; a sum clearly derived from the 43 employers who responded to the survey, and not based on the sources set out in the SWA training for determining the total workers population to be sampled. Further, the entry of "195" in Section 2c could not possibly be correct because the 43 responding employers only compromised 12% of the 360 employers who have hired general farmworkers.

39 And, due to the

absence of an accurate estimate of the total number of domestic workers in the general farmworker occupation in Montana at the time of the survey, the sufficiency of the ETA Form 232's sample size can not be determined under the Handbook's guidelines, which in turn precludes validation of the survey for use in determining a reliable and representative prevailing wage rate for Montana general farmworkers. In other words, absent information about the total number of domestic general farmworkers who might be working for the other 317 employers in the state at the time of the survey, the number of "Total Domestic Hired Workers" in

Section 2c

38For example, if the actual total worker population was 475 workers, the Handbook survey sample size would be 475, significantly more than the 195 workers in the Montana prevailing wage survey sample.

39As recently discussed, Ms. Harris confirmed at the hearing that the “195” in Section 2c are not the total number of domestic workers.

Image 41

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is actually unknown.

40 And, without an accurate number for the whole state population of domestic general farmworkers in Section 2c, the June 24, 2013, ETA Form 232 is not sufficiently valid to demonstrate that \$12.50 is a reliable and representative prevailing wage for the entire population of general farmworkers in Montana in February/March 2013.

Preponderance

For diverse reasons, the opinions and conclusions of Dr. Bronars, Ms. Harris, and Mr. Orona regarding the sufficiency and validity of the June 24, 2013 prevailing wage survey based on survey sample size, and reliability and representative nature of the resulting \$12.50 prevailing wage have diminished probative value. The remaining probative evidence in the evidentiary record on survey sample size essentially consists of the Handbook, EX 1, and the June 24, 2013, ETA Form 232, EX 2 and EX 8. Consequently, for the reasons previously discussed, I find the preponderance of the probative evidence establishes that June 24, 2013 prevailing wage survey is not valid due to the absence of an accurate estimate of the size of the total population of general farmworkers in Montana at the time of survey which is required to establish the

Handbook's survey sample size for the determination of a reliable and representative prevailing wage determination. The invalidity of the June 24, 2013 prevailing wage survey establishes that the survey's prevailing wage determination of \$12.50 for general workers in Montana is not reliable or representative.

Conclusion

Several deviations from the Handbook guidelines occurred during the course of the Montana prevailing wage survey in the spring of 2013 and the preparation of the associated ETA Form 232. The preponderance of the probative evidence demonstrates that the variances associated with the timing/duration of the survey, the collection method, employee wage verification, and use of occupation rather than crop activity did not adversely affect the validity of the survey and the prevailing wage determination.

Regarding the remaining deviation, the preponderance of the probative evidence establishes that the Montana prevailing wage survey is invalid due to the absence of an accurate determination of the total population of general farmworkers upon which a sufficient sample size may be established. The invalidity of that survey in turn establishes that the prevailing wage determination of \$12.50 is not reliable or representative. As a result, the Employers have proven by the preponderance of the probative evidence that their labor certification applications were sufficient for acceptance under the criteria established by 20 C.F.R. §§ 655.161 because the CO's determination to issue Notices of Deficiencies for their H-2A Applications for Temporary Employment Certification with offered hourly wages of \$10.00 to \$10.19 for general farmworkers in the state of Montana was based on a prevailing wage determination of \$12.50 that is not reliable or representative. Accordingly, the CO's NODs for the eight labor certification applications must be reversed.

40Ms. Harris also testified that in the process of attempting to obtain wage information from 220 employers, some employers did not have any current workers and were entered as a non-response. However, Ms. Harris could not provide an actual number of “no responses,” and acknowledged that she did not hear back from many employers and did not attempt to contact all the employers in the state.

Image 42

- 42 -

ORDER

41

The CO’s eight Notices of Deficiencies concerning the named Employers are **REVERSED** and the associated labor certification applications are **REMANDED** for further processing.

SO ORDERED:

RICHARD T. STANSELL-GAMM

Administrative Law Judge

Date Signed: January 29, 2013
Washington, D.C.

41Under 20 C.F.R. 655 § 655.171 this order represents the final determination of the Secretary, U.S. Department of Labor.

Digitally signed by Preview
DN: CN=Preview, OU=Preview,
O=Office of Administrative Law

Judges, L=Preview, S=Preview,

C=US

Location: Preview Preview

Message: SWA Contact List 02/28/2014**Case Information:**

Message Type: Exchange
 Message Direction: External, Inbound
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:21 PM
 Item ID: 40861627
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

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 28, 2014
 1:39 PM

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 [SWA Contact List Compiled 02-28-2014.xls](#) (203 Kb HTML)

Good Afternoon,

Attached please find the latest SWA Contacts List. Please review the list for changes to your staff that may have taken place recently.

Corrections have been made in **PINK** print to the SWA Contact List based on notifications from the SWAs since the last list (01/30/2014).

As always, changes for this list should be emailed to this address.

Thank you,

Chicago National Processing Center

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801-526-4369
Fax
512-463-3055 or 512-475-2403
Fax
801-526-9633
PRIMARY EMAIL
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mromero@utah.gov
Secondary email
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H-2A Back Up
Melissa Atkin

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Norma Martinez
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Fax
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Wanda Mosley
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*Cells in PINK represent changes since the last list was distributed.

Message: RE: UI PAYROLL**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:50 PM
 Item ID: 40862220
 Policy Action: Not Specified

Mark History:

Date	Action Status	Reviewer
7/17/2014 1:42:39 PM	Reviewed	Koonce, Kerry

Policies:

No Policies attached

✉ RE: UI PAYROLL

From Gomez, Carmen [IWD] **Date** Thursday, March 13, 2014 11:34 AM

To Wilkinson, Michael [IWD]; Boten, Brenda [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

Cc

 **image001.png** (5 Kb HTML)

Thanks for the update.

From: Wilkinson, Michael [IWD]
Sent: Thursday, March 13, 2014 11:33 AM
To: Gomez, Carmen [IWD]; Boten, Brenda [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: FW: UI PAYROLL

FYI. We are good to go. Now we just need to handle the calls....if they come.

From: Brietske, Trina [DAS]
Sent: Thursday, March 13, 2014 11:27 AM
To: Nwizu, Hyginus [IWD]; Wilkinson, Michael [IWD]; Moreland, Joyce [DAS]
Cc: Cleveland, Jay [DAS]; Sims, Kathy [DAS]; Windust, Stephanie [IWD]; Budrevich, Steven [IWD]
Subject: RE: UI PAYROLL

We got the warrant counts figured out.-thanks
 The Bank file has been sent to the bank and confirmation received with a posting date of 3/14/14.

From: Nwizu, Hyginus [IWD]
Sent: Thursday, March 13, 2014 9:35 AM
To: Wilkinson, Michael [IWD]; Moreland, Joyce [DAS]; Brietske, Trina [DAS]
Cc: Cleveland, Jay [DAS]; Sims, Kathy [DAS]; Windust, Stephanie [IWD]; Budrevich, Steven [IWD]
Subject: RE: UI PAYROLL

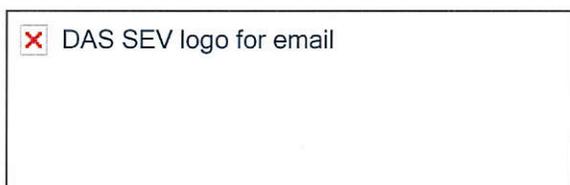
I don't know where 35 came from but the form that operations filled had the right number of cut sheet warrant (F7). See the attachment. The F1s are offsets/overpayment recovery that are addressed to IWD.

From: Wilkinson, Michael [IWD]
Sent: Thursday, March 13, 2014 9:15 AM
To: Moreland, Joyce [DAS]; Brietske, Trina [DAS]
Cc: Cleveland, Jay [DAS]; Sims, Kathy [DAS]; Windust, Stephanie [IWD]; Nwizu, Hyginus [IWD]
Subject: RE: UI PAYROLL

Our IT Staff rechecked and it shows only one. I believe he is talking with DAS ITE.

From: Moreland, Joyce [DAS]
Sent: Thursday, March 13, 2014 9:08 AM
To: Brietske, Trina [DAS]; Wilkinson, Michael [IWD]
Cc: Cleveland, Jay [DAS]; Sims, Kathy [DAS]
Subject: RE: UI PAYROLL

29 warrants.



Joyce Moreland
Information Technology Specialist
Department of Administrative Services
Hoover State Office Building
Des Moines, IA 50319
(515) 281-6142

From: Brietske, Trina [DAS]
Sent: Thursday, March 13, 2014 8:42 AM
To: Wilkinson, Michael [IWD]; Moreland, Joyce [DAS]
Cc: Cleveland, Jay [DAS]; Sims, Kathy [DAS]
Subject: RE: UI PAYROLL

Joyce is running the file.

We have asked Stephanie to check the warrant count, on the paper work she sent it only shows 1 warrant, but Joyce said the file contains 30 warrants.

From: Wilkinson, Michael [IWD]
Sent: Thursday, March 13, 2014 8:41 AM
To: Brietske, Trina [DAS]; Moreland, Joyce [DAS]
Subject: FW: UI PAYROLL

Just wanted to let you know where we are at in the process. Let me know if you think we should be following up with anyone at ITE.

From: Windust, Stephanie [IWD]
Sent: Thursday, March 13, 2014 8:34 AM
To: Sigler, Donna [DAS]; Nwizu, Hyginus [IWD]; Allen, Sandi [DAS]; Mortvedt, Roger [DAS]
Cc: Brown, Lisa [IWD]; Budrevich, Steven [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]; Thielman, Richard [IWD]; Bateman, Gary [IWD]; Sparks, Vicki [DAS]
Subject: UI PAYROLL

Mike,

Payroll information has just been sent to DAS to process.

Steph

From: Sigler, Donna [DAS]
Sent: Thursday, March 13, 2014 8:26 AM
To: Nwizu, Hyginus [IWD]; Windust, Stephanie [IWD]; Allen, Sandi [DAS]; Mortvedt, Roger [DAS]
Cc: Brown, Lisa [IWD]; Budrevich, Steven [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]; Thielman, Richard [IWD]; Bateman, Gary [IWD]; Sparks, Vicki [DAS]
Subject: RE: Please do not run special today if you have not already done so

I did fill out the UI payroll forms and sent them.

Donna Sigler
281-3650

From: Nwizu, Hyginus [IWD]
Sent: Thursday, March 13, 2014 7:21 AM
To: Windust, Stephanie [IWD]; Sigler, Donna [DAS]; Allen, Sandi [DAS]; Mortvedt, Roger [DAS]
Cc: Brown, Lisa [IWD]; Budrevich, Steven [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]; Thielman, Richard [IWD]; Bateman, Gary [IWD]; Sparks, Vicki [DAS]
Subject: RE: Please do not run special today if you have not already done so

The payroll was submitted early today by IWD IT and pre-issue file to Revenue and Finance created. Roger or Sandi or Donna needs to send out the payroll forms as soon as possible so that Stephanie can complete her part.

(1) There is no WINCETA today

(2) There is no special payroll today

Vicki Sparks, we ran JKCK037P without removing the Xs so you may need to reset the job. Also, we changed the temporary time to 6:30/7:00 so we can run the jobs earlier.

From: Nwizu, Hyginus [IWD]

Sent: Thursday, March 13, 2014 6:48 AM

To: Windust, Stephanie [IWD]

Cc: Brown, Lisa [IWD]; Budrevich, Steven [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

Subject: Please do not run special today if you have not already done so

Inform whoever runs special not to submit the transmission until tomorrow. We have already done payroll for today.

Hyginus Chuks Nwizu

IT Specialist

1000 E Grand Ave

Des Moines, IA 50319-1020

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Web: <http://iowaworkforce.org>

[Preview is not available (conversion excluded for this file type).]

Message: FW: UI PAYROLL**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:50 PM
 Item ID: 40862219
 Policy Action: Not Specified

Mark History:

Date	Action Status	Reviewer
7/17/2014 1:42:39 PM	Reviewed	Koonce, Kerry

Policies:

No Policies attached

 **FW: UI PAYROLL**

From Gomez, Carmen [IWD] **Date** Thursday, March 13, 2014 11:34 AM
To Koonce, Kerry [IWD]
Cc

 [image001.png](#) (5 Kb HTML)

I am sure that you probably receive the updates but just in case you haven't received this one.

From: Wilkinson, Michael [IWD]
Sent: Thursday, March 13, 2014 11:33 AM
To: Gomez, Carmen [IWD]; Boten, Brenda [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
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FYI. We are good to go. Now we just need to handle the calls....if they come.

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Subject: RE: UI PAYROLL

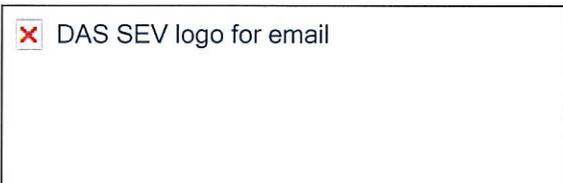
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To: Windust, Stephanie [IWD]; Sigler, Donna [DAS]; Allen, Sandi [DAS]; Mortvedt, Roger [DAS]

Cc: Brown, Lisa [IWD]; Budrevich, Steven [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]; Thielman, Richard [IWD]; Bateman, Gary [IWD]; Sparks, Vicki [DAS]

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To: Windust, Stephanie [IWD]

Cc: Brown, Lisa [IWD]; Budrevich, Steven [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

Subject: Please do not run special today if you have not already done so

Inform whoever runs special not to submit the transmission until tomorrow. We have already done payroll for today.

Hyginus Chuks Nwizu
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Web: <http://iowaworkforce.org>

Message: OSHA 3115 - Labor Day 3

Case Information:

Message Type: Exchange
Message Direction: External, Outbound
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:28 PM
Item ID: 40861778
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **OSHA 3115 - Labor Day 3**

From DeHeer, Diana [IWD] **Date** Tuesday, November 19, 2013 3:05 PM
To IWD-Admin (IWD)
Cc

 **Labor Day 3.pdf** (7527 Kb HTML)

Diana

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Business Management
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FAX: (515) 281-3442

- [Image 1](#)
- [Image 2](#)
- [Image 3](#)
- [Image 4](#)
- [Image 5](#)
- [Image 6](#)
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 - [Image 144](#)
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Image 1

Day 3 - 3 scaffolds

E:\PowerPoint 7.0\Scaffolds-Safety Standard 1

OSHA Office of Training & Education 1

Scaffolds

OSHA Office of Training & Education 2

What Is A Scaffold?

An elevated, temporary work platform

Three basic types:

Supported scaffolds -- platforms supported by rigid, load bearing members, such as poles, legs,

frames, & outriggers

Suspended scaffolds -- platforms suspended by ropes or other non-

rigid, overhead support

Aerial Lifts -- such as "cherry pickers" or "boom trucks"

OSHA Office of Training & Education 3

Hazards

- **Falls from elevation** – caused by slipping, unsafe access, and the lack of fall protection
- **Struck by** falling tools / debris
- **Electrocution** – from overhead power lines
- **Scaffold collapse** - caused by instability or overloading
- **Bad planking** giving way

Employees working on scaffolds are exposed to these hazards:

Image 2

E:\PowerPoint 7.0\Scaffolds-Safety Standard 2

OSHA Office of Training & Education 4

Fall Hazards

- While climbing on or off the scaffold
- Working on unguarded scaffold platforms
- When scaffold platforms or planks fail

Falls may occur:

OSHA Office of Training & Education 5

Protecting Workers from Falls

- Guardrails, and/or
- Personal Fall Arrest

Systems (PFAS)

If a worker on a scaffold
can fall more than 10
feet, protect them by:

OSHA Office of Training & Education 6

Install along open sides & ends

**Front edge of platforms not
more than 14 inches from the
work, unless using guardrails
and/or PFAS**

Top rails - 38 to 45 inches tall

**Midrails halfway between
toprail and platform**

**Toeboards at least 3-1/2 inches
high**

Guardrails

Image 3

E:\PowerPoint 7.0\Scaffolds-Safety Standard 3

OSHA Office of Training & Education 7

Personal Fall Arrest Systems (PFAS)

You must be trained how to properly use PFAS

PFAS include anchorage, lifeline and body harness.

OSHA Office of Training & Education 8

Can use PFAS instead of

guardrails on some
scaffolds

Use PFAS & guardrails on

suspension scaffolds

Use PFAS on erectors and

dismantlers where feasible

Fall Protection Requirements

**The ends of this scaffold
are not properly guarded**

OSHA Office of Training & Education 9

Falling Object Protection

Wear hardhats

Barricade area below scaffold

to forbid entry into that area
Use panels or screens if

material is stacked higher than
the toeboard

Build a canopy or erect a net

below the scaffold that will
contain or deflect falling objects

Image 4

E:\PowerPoint 7.0\Scaffolds-Safety Standard 4

OSHA Office of Training & Education 10

Overhead Power Lines

The possibility of
electrocution is a
serious consideration
when working near
overhead power lines

Check the clearance
distances listed in the
standard

OSHA Office of Training & Education 11

Scaffold Support Examples

Good support Inadequate support –

in danger of collapse?

Base plate

Mud sills

OSHA Office of Training & Education 12

Essential Elements of Safe Scaffold Construction

- Use appropriate scaffold construction

methods

- Proper scaffold access
 - Properly use a competent person
-

Image 5

E:\PowerPoint 7.0\Scaffolds-Safety Standard 5

OSHA Office of Training & Education 13

Scaffold Platform Construction

Platforms must:

- be fully planked or decked with no more than 1 inch gaps
- be able to support its weight & 4 times maximum load
- be at least 18 inches wide

This is not a properly constructed scaffold

OSHA Office of Training & Education 14

- No large gaps in front edge of platforms
- Each abutted end of plank must rest on a

separate support surface

- Overlap platforms at least 12 inches over

supports, unless restrained to prevent movement

Scaffold Platform Construction

Planks not properly overlapped

OSHA Office of Training & Education 15

Scaffold Platform Construction

- No paint on wood platforms

- Use scaffold grade wood
 - Fully planked between front upright and guardrail support
 - Component pieces used must match and be of the same type
 - Erect on stable and level ground
 - Lock wheels and braces
-

Image 6

E:\PowerPoint 7.0\Scaffolds-Safety Standard 6

OSHA Office of Training & Education 16

Scaffold Height

The height of the scaffold should not be more than four times its minimum base dimension unless guys, ties, or braces are used

20'

5'

OSHA Office of Training & Education 17

Platform Ends

Each end of a platform, unless cleated or otherwise restrained by hooks, must extend over its support by at least 6 inches

No Cleats

OSHA Office of Training & Education 18

Supported Scaffolds

Platforms supported by legs, outrigger beams, brackets, poles, uprights, posts, & frames

Restrain from tipping by guys, ties, or braces

Scaffold poles, legs, posts, frames, and uprights must be

on base plates and mud sills or
other firm foundation

This support is not adequate!

Image 7

E:\PowerPoint 7.0\Scaffolds-Safety Standard 7

OSHA Office of Training & Education 19

Proper Scaffold Access

Provide access when scaffold
platforms are more than 2 feet
above or below a point of access

Permitted types of access:

- Ladders, such as portable, hookon, attachable, stairway type, and built-ins
- Stair towers
- Ramps and walkways

May use building stairs and come
out window

OSHA Office of Training & Education 20

Scaffold Access

- No access by crossbraces
- When using ladders, bottom rung no more than 24 inches high
- Can use some end frames
- Can access from another scaffold, structure or hoist
End Frame

**Do not access
by crossbraces**

OSHA Office of Training & Education 21

Suspension Scaffolds

Train employees to recognize hazards

Secure/tie to prevent swaying

Support devices must rest on surfaces
that can support four times the load

Competent person:

- evaluate connections to ensure the supporting surfaces can support load
- inspect ropes for defects before shift

PFAS must have anchors independent of the scaffold support system

Platforms suspended by ropes or wires. Rope must be capable of supporting 6 times the load

Image 8

E:\PowerPoint 7.0\Scaffolds-Safety Standard 8

OSHA Office of Training & Education 22

Moving Scaffolds

Employees can't be on a moving scaffold unless:

- Surface is level
- Height to base ratio is 2 to 1
- Outriggers are installed on both sides of scaffolds

Employees can't be on scaffold part beyond the wheels

Competent person must be on site to supervise

OSHA Office of Training & Education 23

Fatal Fact – Moving a Lift

Employee was operating an aerial lift, with an extendable boom rotating work platform

The boom was fully extended and the machine apparently ran over some bricks, causing the boom to flex or spring, throwing the employee from the basket

The employee fell 37 feet to a concrete surface

OSHA Office of Training & Education 24

Don't use Shore or Lean-to Scaffolds

Shore scaffold
supported scaffold which is placed against a building or structure and held in place with

props **Lean-to scaffold**

supported scaffold
which is kept erect
by tilting it toward
and resting it
against a building
or structure

Image 9

E:\PowerPoint 7.0\Scaffolds-Safety Standard 9

OSHA Office of Training & Education 25

Using Scaffolds

- Don't work on snow or ice covered platforms or during storms or high winds
- Use tag lines on swinging loads
- Protect suspension ropes from heat & acid

A covered scaffold has special wind load considerations

OSHA Office of Training & Education 26

Fatal Fact – Ice & No Guardrails

Laborer was working on the third level of a tubular welded frame scaffold which was covered with ice and snow

The scaffold was not fully decked, there was no guardrail and no access ladder

The worker slipped and fell head first 20 feet to the pavement below

OSHA Office of Training & Education 27

Overhand Bricklaying from Supported Scaffolds

A guardrail or personal fall arrest system is required on all sides except the side where the work is being done

Image 10

E:\PowerPoint 7.0\Scaffolds-Safety Standard 10

OSHA Office of Training & Education 28

Competent Person

Person capable of identifying and promptly correcting hazards

Determines if it's safe to work on a scaffold during storms or high winds

Trains workers to recognize hazards

Selects qualified workers to conduct work

OSHA Office of Training & Education 29

Scaffold Inspection

Competent person inspects scaffolds for visible defects before each shift and after any alterations

Defective parts must be immediately repaired

Deformed bearer

OSHA Office of Training & Education 30

Scaffold Erection

Scaffolds can only be erected, moved, dismantled or altered under the supervision of a competent person

Competent person selects & directs these workers and determines the feasibility of fall protection

Image 11

E:\PowerPoint 7.0\Scaffolds-Safety Standard 11

OSHA Office of Training & Education 31

Training Requirements

Train employees on scaffold hazards and procedures to control the hazards

The training must include:

- Nature of electrical, fall, and falling object hazards
- How to deal with electrical hazards and fall protection systems
- Proper use of the scaffold
- Scaffold load capacities

Retrain as necessary

OSHA Office of Training & Education 32

Training Erectors

Train employees involved in erecting, disassembling, moving, operating, repairing, maintaining, or inspecting a scaffold to recognize its hazards and the correct procedures to use

OSHA Office of Training & Education 33

Avoid the Main Hazards of Scaffolds

- Falls from elevation
- Bad planking
- Scaffold collapse

- Getting struck by falling tools or debris
- Electrocutation

Image 12

E:\PowerPoint 7.0\Scaffolds-Safety Standard 12

OSHA Office of Training & Education 34

Summary

- Use appropriate scaffold construction methods
 - Erect, move, or alter scaffold properly
 - Protect from falling objects or tools
 - Ensure stable access
 - Use a competent person
 - Train on scaffold construction and the hazards involved with scaffolds
- Inspect scaffold before each shift and after alterations
- Determine fall protection requirements

Remember to:

Image 13

Day 3 - 4 Course 3110 Post-Test Answers

Course 3110 Post-Test Answers Fall Arrest Systems

1

1. There is a flat roof that is 40 x 200 feet wide, 23 feet high and a contractor is applying a built-up roofing system; there are employees simultaneously performing hot tar application at each of the four corners of the roof (so 4 employees exposed at one time); the employers has elected to use a safety monitoring system for compliance with 1926.501(b)(10). How many safety monitors are required?

- A. 1
- B. 2
- C. 3
- D. 4**

2. Ironworkers bolt steel beams next to an atrium which is not adaptable to temporary floors, in a multi stored tiered building; what is the maximum distance they are allowed to fall?

- A. 10 feet

B. 25 feet

C. 30 feet

D. no fall protection required

3. Per 1926.502 and 1910.66, personal fall arrest systems shall, when stopping a fall, bring the employee to a complete stop and limit maximum deceleration distance an employee travels to _____ feet.

A. 2

B. 3

C. 3.5

D. 6

4. According to 1926.502 and 1910.66, the attachment point of the body harness for fall arrest shall not be located:

A. Above the wearer's head

B. In the center of the wearer's chest

C. in the center of the wearer's back

D. near the shoulder level

Image 14

Course 3110 Post-Test Answers Fall Arrest Systems

2

5. What are the four components of a PFAS?

1. Body holding device (e.g. full body harness)

2. Connecting means (e.g. a shock absorbing lanyard)

3. Anchor point / anchorage

4. Rescue plan

6. Define "Fall Restraint"?

A fall prevention system rigged so an employee using the system can not reach the point of fall exposure (e.g. "...a dog on a leash...")

7. Lifelines in construction must be secured to anchorages capable of supporting a dead weight of _____ lb.

A. 2,000

B. 4,200

C. 5,000

D. 5,400

8. Safety nets installed 28 feet below the working surface must extend outward a minimum of _____ feet beyond the work surfaces.

A. 4

B. 8

C. 10

D. 13

9. Safety nets must be installed no more than _____ feet below the work surfaces.

A. 10

B. 16

C. 25

D. 30

Image 15

**Course 3110 Post-Test Answers
Fall Arrest Systems**

3

10. Open sided floors require guardrails at _____ feet in construction and _____ feet in industry.

A. 4,4

B. 4,6

C. 6,4

D. 6,6

11. Fall protection is required on built-up roofing jobs starting at what height?

A. 6 feet

B. 10 feet

C. 16 feet

D. 25 feet

12. An employee engaged in overhand bricklaying within a limited access zone (CAZ) need conventional fall protection at what height?

A. 6

B. 10

C. 25

D. No additional requirements for fall protection required.

13. A connector (ironworker) is connecting an interior beam while exposed to an interior fall of 28 feet to the ground below; what OSHA standard section applies? The building is a non-tiered warehouse.

A. 1926.28

B. 1926.105

C. 1926.750

D. None, connectors are exempt from fall protection.

14. Carpenters, working in a controlled access zone under the auspices of a fall protection plan (e.g. sample fall plan contained in Subpart M, Appendix E), are installing 4 x 8 sheets of plywood onto roof trusses in order to make a roof deck which will have a pitch of 6/12; their fall is 30 feet ("ground to eave" height) to the ground below and their only fall protection is a 2" x 6" slide guard. What standard are they in violation of?

- A. 1926.28
- B. 1926.501
- C. 1926.451
- D. **None**

Image 16

Course 3110 Post-Test Answers Fall Arrest Systems

4

15. During inspection, investigation or assessment of workplace conditions, prior to the actual start of construction work or after all construction work has been completed, employees are required to be protected from fall hazards.

TRUE or FALSE

16. Specific fall protection requirements are contained in which of the following Subparts of 29 CFR 1926?

- A. Subpart – R
- B. Subpart – L
- C. Subpart - X
- D. Subpart – M
- E. **All of the above**

17. Hoist areas are _____ fall protection requirements as provided in Subpart

– M.

- A. Included in**
- B. Not subject to
- C. Exempt from
- D. Are a CAZ under

18. An employee at the edge of an excavation (other than a pit, well, caisson, or similar excavation) 6 feet or more in depth shall be protected from falling by guardrail systems, fences, or barricades when:

- A. The employer feels like it
- B. No covers are available
- C. The ground is unstable
- D. The excavation is obstructed or not readily seen**

19. When the test load is applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than _____ inches above the walking / working level.

- A. 36
- B. 39**
- C. 42
- D. 40

Image 17

Course 3110 Post-Test Answers Fall Arrest Systems

5

20. In hoist areas, when you use removable guardrails; when must they be replaced?

- A. At all times hoisting is not being done**
- B. Whenever a warning sign is not used

- C. At the end of the day
- D. When the safety monitor says so

21. Each safety net (or section of it) shall have a border rope or webbing with a minimum breakage strength of _____ pounds.

- A. 5000**
- B. 3000
- C. 4000
- D. 2000

22. Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than _____ inches apart.

- A. 5
- B. 10
- C. 6**
- D. 2

23. D-rings and snap hooks shall have minimum tensile strength of _____ pounds.

- A. 5000**
- B. 3000
- C. 4000
- D. 2000

24. Snaphooks shall not be engaged _____ unless they are of a locking type and are designed for specific connections.

- A. Directly to webbing, rope or wire rope
- B. To a horizontal lifeline
- C. To each other
- D. All of the above**

Image 18

Course 3110 Post-Test Answers
Fall Arrest Systems

6

25. Horizontal lifelines shall be designed, installed and used under the supervision of a _____ as part of a complete personal fall arrest system, which maintains a safety factor of two.

A. Qualified Person

- B. Supervisor
- C. Company Vice President
- D. Fellow Employee

26. Anchorages used for attachment to personal fall arrest equipment shall be independent of any anchorage being used to support or suspend platforms and capable of supporting at least _____ pounds per employee

attached, or be an engineered system with at least a 2x safety factor.

A. 3000

B. 5000

C. 4000

D. 6000

27. Positioning devices shall be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall or _____ pounds.

A. 2000

B. 3000

C. 4000

D. 5000

28. Lanyards and full body harness components (e.g. leg straps) shall have a minimum tensile strength of _____ pounds.

- A. 5000
- B. 3000
- C. 4000
- D. 2000

29. On roofing work, when mechanical equipment is being used, the warning line shall not be less than _____ feet from the roof edge in the direction perpendicular to mechanical equipment operation.

- A. 16
- B. 12
- C. 14
- D. 10

Image 19

Course 3110 Post-Test Answers Fall Arrest Systems

7

30. During low sloped roofing operations, when warning lines are used, points of access, materials handling areas, storage areas, and hoisting areas shall be connected to the work area by an access path formed by _____.

- A. Two warning lines
- B. Spray painted lines
- C. A safety monitor
- D. Flashing lights

31. The stanchions for warning lines shall be able to withstand _____ pounds of force pushed onto it at a point 30 inches high, without tipping over.

- A. 25
- B. 50
- C. 200
- D. 16**

32. In a control access zone, the control line shall be connected on each side to a guardrail system or _____.

- A. Floor
- B. A Georgia buggy holds it
- C. Wall**
- D. Fellow employee

33. According to 1926.502(k), "The fall protection plan shall identify each location where conventional fall protection methods cannot be used. These locations shall then be classified as _____.

- A. "Be Careful Zones"
- B. "Safe Alternative Work Zones"
- C. The state of Nebraska
- D. Control Access Zones**

34. All covers for holes in floors, roofs, and other walking / working surfaces shall be capable of supporting, without failure, at least _____ the total weight of employees, equipment, and materials that may be imposed on the cover at any one time.

- A. Half
- B. Twice**
- C. Three times
- D. One Third

Image 20

**Course 3110 Post-Test Answers
Fall Arrest Systems**

8

35. All covers shall be secured when installed so as to prevent accidental displacement by:

- A. Equipment
- B. Wind
- C. Employees
- D. All of the Above**

36. All covers shall be color coded or they shall be marked with the word "hole" or " _____ " to provide warning of the hazard.

A. Cover

- B. Watch your step
- C. Look out for opening
- D. Keep off

37. A "System" is only as strong as its **WEAKEST** link.

38. An Employee shall be trained as necessary by a competent person qualified in _____.

- A. The nature of fall hazards in the work area.
- B. Correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used.
- C. The role of employees in fall protection plans.
- D. All of the above**

39. The employer shall prepare a written certification record of fall protection training for each employee, and _____ training certification shall be maintained.

A. The latest

- B. All
- C. The Original
- D. 5 years of

40. If the employer relies on training conducted by another employer or

training completed prior to the effective date of Subpart – M, the certification record shall indicate the date _____ rather than the actual date of training.

A. The employee was hired

B. The employer determined the prior training was adequate

C. The training expires

D. None of the above

Image 21

Course 3110 Post-Test Answers Fall Arrest Systems

9

41. To minimize the impact forces on a structure and reduce the strength required for an anchor point, you should consider _____.

A. Shortening the fall distance with adjustable or retractable lanyards

B. Using shock absorbers in the system

C. Attaching the lanyards as high as possible above the height of your shoulder harnesses or waist belts.

D. All of the above

42. What OSHA Standard applies to exterior falls for steel erection activities

and the erection of telecommunication towers? (Note: Assume 8/6/98 exposure date)

A. 1926.753(a)

B. 1926.502(a)(2)

C. 1926.105(a)

D. § 5(a)(1) – General Duty Clause

43. Whether you are erecting a communication tower, tying rebar, or climbing a portable ladder; how high are you permitted to free climb? (Assume construction activity and 29 CFR 1926 applies)

A. 25 feet

B. 10 feet

C. 6 feet

D. 4 feet

44. An employee wearing a full body harness has a six foot lanyard attached to an anchor point in the concrete floor (e.g., swivel anchor, eye bolt, etc.); if the employee's D-ring is 5 feet above the floor and the anchor point is

located 5 feet back from the floor edge, can this worker reach the edge?
(Please show all work)

No. Refer to Pythagoras' theorem, a

$$2 + b$$

$$2 = c$$

2; **See the right triangle!**

a= height of D-ring above floor; b= distance of the anchor point from the floor edge; c= the length of the lanyard (e.g. "give 'em enough rope...") necessary to reach the edge

$$5$$

$$2 + 5$$

$$2 = c$$

$$2; 25 + 25 = c$$

$$2; 50 = c$$

$$2$$

$$\sqrt{50} = c; \text{ therefore } c \approx 7.07$$

If the lanyard length is less than "c", the worker can not reach the edge and is restrained from falling.

45. If workers are using a fall restraint system do they need to use shock absorbers in the system?

Image 22

**Course 3110 Post-Test Answers
Fall Arrest Systems**

10

No; if workers are using fall restraint they are not exposed to a fall hazard;

shock absorbers are needed to control the arresting forces, with a fall restraint system the forces are controlled by preventing the free fall.

46. As of January 1, 1998, what two (2) components are not allowed to be used as part of a PFAS?

- **Nonlocking snaphooks / carabineers**
- **Safety / body belts**

47. During the erection of scaffolding, if the scaffold meets the anchor point requirements of 1926.502(d)(15), can the scaffold erectors use the scaffold as an anchor point for their PFAS?

Yes

48. Define "infeasible"

Impossible

49. When using PFAS, what else must the employer plan for?

A. Lunch

B. Rescue

C. Winning the lotto

D. Employee bonuses

Image 23

Day 3 - 5 Course 3110 Post-Test

**Course 3110 Post-Test
Fall Arrest Systems**

1

1. There is a flat roof that is 40 x 200 feet wide, 23 feet high and a contractor

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- A. 1
- B. 2
- C. 3
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2. Ironworkers bolt steel beams next to an atrium which is not adaptable to temporary floors, in a multi stored tiered building; what is the maximum distance they are allowed to fall?

- A. 10 feet
- B. 25 feet
- C. 30 feet
- D. no fall protection required

3. Per 1926.502 and 1910.66, personal fall arrest systems shall, when stopping a fall, bring the employee to a complete stop and limit maximum deceleration distance an employee travels to _____ feet.

- A. 2
- B. 3
- C. 3.5
- D. 6

4. According to 1926.502 and 1910.66, the attachment point of the body harness for fall arrest shall not be located:

- A. Above the wearer's head
- B. In the center of the wearer's chest
- C. in the center of the wearer's back
- D. near the shoulder level

Image 24

Course 3110 Post-Test Fall Arrest Systems

2

5. What are the four components of a PFAS?

1.

2.

3.

4.

6. Define "Fall Restraint"?

7. Lifelines in construction must be secured to anchorages capable of supporting a dead weight of _____ lb.

A. 2,000

B. 4,200

C. 5,000

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Image 25

Course 3110 Post-Test Fall Arrest Systems

3

10. Open sided floors require guardrails at _____ feet in construction and _____ feet in industry.

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B. 4,6

C. 6,4

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11. Fall protection is required on built-up roofing jobs starting at what height?

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C. 16 feet

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- A. 1926.28
- B. 1926.105
- C. 1926.760
- D. None, connectors are exempt from fall protection.

14. Carpenters, working in a controlled access zone under the auspices of a fall protection plan (e.g. sample fall plan contained in Subpart M, Appendix E), are installing 4 x 8 sheets of plywood onto roof trusses in order to make a roof deck which will have a pitch of 6/12; their fall is 30 feet ("ground to eave" height) to the ground below and their only fall protection is a 2" x 6" slide guard. What standard are they in violation of?

- A. 1926.28
- B. 1926.501
- C. 1926.451
- D. None

Image 26

Course 3110 Post-Test Fall Arrest Systems

4

15. During inspection, investigation or assessment of workplace conditions, prior to the actual start of construction work or after all construction work has been completed, employees are required to be protected from fall

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16. Specific fall protection requirements are contained in which of the following Subparts of 29 CFR 1926?

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- D. Subpart – M
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17. Hoist areas are _____ fall protection requirements as provided in Subpart – M.

- A. Included in
- B. Not subject to
- C. Exempt from
- D. Are a CAZ under

18. An employee at the edge of an excavation (other than a pit, well, caisson, or similar excavation) 6 feet or more in depth shall be protected from falling by guardrail systems, fences, or barricades when:

- A. The employer feels like it
- B. No covers are available
- C. The ground is unstable
- D. The excavation is obstructed or not readily seen

19. When the test load is applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than _____ inches above the walking / working level.

- A. 36
- B. 39
- C. 42

D. 40

Image 27

Course 3110 Post-Test Fall Arrest Systems

5

20. In hoist areas, when you use removable guardrails; when must they be replaced?

- A. At all times hoisting is not being done
- B. Whenever a warning sign is not used
- C. At the end of the day
- D. When the safety monitor says so

21. Each safety net (or section of it) shall have a border rope or webbing with a minimum breakage strength of _____ pounds.

- A. 5000
- B. 3000
- C. 4000
- D. 2000

22. Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than _____ inches apart.

- A. 5
- B. 10
- C. 6
- D. 2

23. D-rings and snap hooks shall have minimum tensile strength of _____ pounds.

- A. 5000
- B. 3000
- C. 4000
- D. 2000

24. Snaphooks shall not be engaged _____ unless they are of a locking type and are designed for specific connections.

- A. Directly to webbing, rope or wire rope
 - B. To a horizontal lifeline
 - C. To each other
 - D. All of the above
-

Image 28

Course 3110 Post-Test Fall Arrest Systems

6

25. Horizontal lifelines shall be designed, installed and used under the supervision of a _____ as part of a complete personal fall arrest system, which maintains a safety factor of two.

- A. Qualified Person
- B. Supervisor
- C. Company Vice President
- D. Fellow Employee

26. Anchorages used for attachment to personal fall arrest equipment shall be independent of any anchorage being used to support or suspend platforms and capable of supporting at least _____ pounds per employee attached, or be an engineered system with at least a 2x safety factor.

- A. 3000
- B. 5000

- C. 4000
- D. 6000

27. Positioning devices shall be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall or _____ pounds.

- A. 2000
- B. 3000
- C. 4000
- D. 5000

28. Lanyards and full body harness components (e.g. leg straps) shall have a minimum tensile strength of _____ pounds.

- A. 5000
- B. 3000
- C. 4000
- D. 2000

29. On roofing work, when mechanical equipment is being used, the warning line shall not be less than _____ feet from the roof edge in the direction perpendicular to mechanical equipment operation.

- A. 16
- B. 12
- C. 14
- D. 10

Image 29

Course 3110 Post-Test

Fall Arrest Systems

7

30. During low sloped roofing operations, when warning lines are used, points of access, materials handling areas, storage areas, and hoisting areas shall be connected to the work area by an access path formed by _____.

- A. Two warning lines
- B. Spray painted lines
- C. A safety monitor
- D. Flashing lights

31. The stanchions for warning lines shall be able to withstand _____ pounds of force pushed onto it at a point 30 inches high, without tipping over.

- A. 25
- B. 50
- C. 200
- D. 16

32. In a control access zone, the control line shall be connected on each side to a guardrail system or _____.

- A. Floor
- B. A Georgia buggy holds it
- C. Wall
- D. Fellow employee

33. According to 1926.502(k), "The fall protection plan shall identify each location where conventional fall protection methods cannot be used. These locations shall then be classified as _____.

- A. "Be Careful Zones"
- B. "Safe Alternative Work Zones"
- C. The state of Nebraska
- D. Control Access Zones

34. All covers for holes in floors, roofs, and other walking / working surfaces shall be capable of supporting, without failure, at least _____ the total weight of employees, equipment, and materials that may be imposed on the cover at any one time.

- A. Half
- B. Twice
- C. Three times
- D. One Third

Image 30

Course 3110 Post-Test Fall Arrest Systems

8

35. All covers shall be secured when installed so as to prevent accidental displacement by:

- A. Equipment
- B. Wind
- C. Employees
- D. All of the Above

36. All covers shall be color coded or they shall be marked with the word "hole" or "_____ " to provide warning of the hazard.

- A. Cover
- B. Watch your step
- C. Look out for opening
- D. Keep off

37. A "System" is only as strong as its _____ link.

38. An Employee shall be trained as necessary by a competent person qualified in _____.

- A. The nature of fall hazards in the work area.
- B. Correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used.
- C. The role of employees in fall protection plans.
- D. All of the above

39. The employer shall prepare a written certification record of fall protection training for each employee, and _____ training certification shall be maintained.

- A. The latest
- B. All
- C. The Original
- D. 5 years of

40. If the employer relies on training conducted by another employer or training completed prior to the effective date of Subpart – M, the certification record shall indicate the date _____ rather than the actual date of training.

- A. The employee was hired
- B. The employer determined the prior training was adequate
- C. The training expires
- D. None of the above

Image 31

Course 3110 Post-Test Fall Arrest Systems

9

41. To minimize the impact forces on a structure and reduce the strength required for an anchor point, you should consider _____.

- A. Shortening the fall distance with adjustable or retractable lanyards
- B. Using shock absorbers in the system

- C. Attaching the lanyards as high as possible above the height of your shoulder harnesses or waist belts.
- D. All of the above

42. What OSHA Standard applies to exterior falls for steel erection activities

and the erection of telecommunication towers? (Note: Assume 8/6/98 exposure date)

- A. 1926.753(a)
- B. 1926.502(a)(2)
- C. 1926.105(a)
- D. § 5(a)(1) – General Duty Clause

43. Whether you are erecting a communication tower, tying rebar, or climbing a portable ladder; how high are you permitted to free climb? (Assume construction activity and 29 CFR 1926 applies)

- A. 25 feet
- B. 10 feet
- C. 6 feet
- D. 4 feet

44. An employee wearing a full body harness has a six foot lanyard attached to an anchor point in the concrete floor (e.g., swivel anchor, eye bolt, etc.); if the employee's D-ring is 5 feet above the floor and the anchor point is

located 5 feet back from the floor edge, can this worker reach the edge?
(Please show all work)

45. If workers are using a fall restraint system do they need to use shock absorbers in the system?

Image 32

Course 3110 Post-Test Fall Arrest Systems

10

46. As of January 1, 1998, what two (2) components are not allowed to be used as part of a PFAS?

47. During the erection of scaffolding, if the scaffold meets the anchor point requirements of 1926.502(d)(15), can the scaffold erectors use the scaffold as an anchor point for their PFAS?

48. Define "infeasible"

49. When using PFAS, what else must the employer plan for?

- A. Lunch
- B. Rescue
- C. Winning the lotto
- D. Employee bonuses

Image 33

Day 3 -1 Steel Erection

11/12/2013

1

Day Three
OSHA 3115 Course

Steel Erection--Subpart R

SUB-PART R FACTS

- Every year, an average of 35 ironworkers die during steel erection activities and 2,300 more suffer lost workday injuries.

- Expected to prevent 30 fatalities and 1,142 injuries annually & save employers \$40 million a year.

Image 34

11/12/2013

2

SUB-PART R FACTS

- The Steel Erection rule is the first OSHA safety standard developed under the Negotiated Rulemaking Act of 1990.

- SENRAC began negotiations June of 1994.

- The final rule became effective:

JANUARY 18, 2002

SUB-PART R FACTS

- The rule was developed by members of the [Steel Erection](#)

[Negotiated Rulemaking Advisory Committee \(SENRAC\)](#), representing employers and employees significantly affected by the standard.

- SENRAC included representatives of the Associated Builders and Contractors, Associated General Contractors, National Erectors Association, International Ironworkers, Union Steelworkers, U.S. Army Corps of Engineers, NIOSH, International Union of Operating Engineers, AFL-CIO Building and Construction Trades Department.

TABLE OF CONTENTS

• Who is Covered

- §1926.750 Scope

• Definitions

- §1926.751

• Site Preparation

- §1926.752 Site Layout and Construction Sequence

• Cranes

- §1926.753 Hoisting and Rigging

• Structural Stability

- §1926.754 Structural Steel Assembly
- §1926.755 Column Anchorage
- §1926.756 Beams and Columns
- §1926.757 Open Web Steel

Joists

• Metal Buildings

- 1926.758 Systems-engineered Metal Buildings §

• (Non-Hoist) Overhead Hazards

- §1926.759 Falling Object Protection

• Fall Protection

- §1926.760 Fall Protection (for connectors, deckers, and all others)

• Training

– §1926.761 Training (general and specialized)

Image 35

11/12/2013

3

Key Provisions Of The Revised Standard

- Requires fall protection at 15 feet
 - Exception: Connecting and Decking Zone
- Includes a Multiple Lift Rigging Procedure for up to five structural members
- Requires that shear connectors be installed after the structural member is erected
- Requires that decking holes and openings not be cut until essential to the construction process
- Requires a minimum of four anchor rods (anchor bolts) on all columns

Key Provisions Of The Revised Subpart Standard (cont.)

- Requires controlling contractors to notify steel erectors of repairs or modifications to anchor rods (anchor bolts)
- Requires controlling contractors to notify steel erectors of concrete's compressive strength (75%)
- Addresses “double connections,” installation of steel joists, and landing of loads to avoid collapses during steel erection
- Addresses slippery surfaces on beams and decking
- Contains a separate section on Systems Engineered Buildings

Key Provisions Of The Revised Standard (cont.)

- Requires controlling contractors to provide adequate site access and adequate storage space

to the steel erector

- Requires a stabilizer plate on columns for tie joist (TJ) and joist girders to provide an attachment point for guying or plumbing up of cables

- Provides guidelines for a non-mandatory site specific erection plan
 - Upgrades the perimeter safety cable system
-

Image 36

11/12/2013

4

Key Provisions Of The Revised Standard (cont.)

- Requires fall protection training for all employees exposed to fall hazards
- Allows a Controlled Decking Zone for decking installations at heights of 15-30 feet
- Requires controlling contractor to provide overhead protection or not allow construction underneath steel erection activities

Definitions

Ladder Access

1926.502(b)(13)

When guardrail system are used around holes which are used as points of access (such as ladder ways), they shall be provided with a gate, or be so off set that a person cannot walk directly into the hole

Image 37

11/12/2013

5

Leading edge

An unprotected side and edge of a floor, roof, or formwork for a floor or other walking/working surface which changes location as additional floor, roof, decking or formwork sections are placed, formed or constructed.

Metal Decking

- Decking gaps around columns
- Laid tightly
- Laid to ensure full support by

structural members

Opening

- A gap or void 12 inches or more in its least dimension in a

floor, roof or other walking/working surface.

- Skylights and smoke domes shall be regarded as openings.

Image 38

11/12/2013

6

Personal fall arrest system

A system used to arrest an employee in a fall from a working level. System consists of an anchorage, connectors, a body harness and may include a lanyard, deceleration device, lifeline or suitable combination of these. (The use of a body belt for fall arrest is prohibited.)

Positioning device

A body belt or body harness rigged to allow an employee to be supported on an elevated, vertical surface, such as a wall or column and work with both hands free while leaning

Perimeter Columns 756(e)(1)

- The perimeter columns extend a minimum of 48

inches above the finished floor to permit installation of perimeter safety cables prior to the erection of the next tier....

Image 39

11/12/2013

7

Perimeter Columns 756 (e)(2)

- The perimeter columns are supplied with holes or other devices in or attached to perimeter columns at 42" to 45" above the finished floor....

.760 FALL PROTECTION

1926.760 Fall Protection

- Between 15 and 30 feet: Fall protection required for all with exceptions for:
 - Deckers in controlled decking zone (CDZ) and
 - Connectors
 - Connectors must be provided and wear equipment necessary to be able to be tied-off, or be provided with other means of fall protection
 - All must be protected at heights greater than 2 stories or 30 feet, including connectors and deckers
-

Image 40

11/12/2013

8

§1926.760 Fall Protection (cont.)

- **Perimeter cables required—(Double course)**
 - Must be installed “as soon as the metal decking has been installed” 760 (a)(2)
- **Custody of Fall Protection Equipment: 760 (e)**
 - Controlling contractor must choose to either:
 - accept responsibility for maintaining fall protection equipment left by erector,
 - OR ensure that it is removed (.760(e))

1926.760 Fall Protection (cont.)

- **Controlled decking zone:**
 - For leading edge decking work
 - limited access
 - designated boundaries by control lines
 - Work practices for attaching deck:
 - install safety attachments from leading edge back
 - no final attachments allowed in CDZ
 - no shear connectors attached in CDZ
 - up to 3000 SF of unsecured decking
 - Specific training requirements

Controlled Deck Zone (CDZ)

Image 41

11/12/2013

9

§1926.760 Fall Protection (cont.)

- **Guardrail systems and safety net systems must meet 1926.502 criteria.**

Note: ladder not long enough

Guardrails and nets used at opening in back.

**Pro-Active Connectors/Ironworkers
100% Protected Above 6 Feet**

**Safety System Installed On Beams Prior
To Erection. "Horizontal Lifeline".**

Image 42

11/12/2013

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Image 43

11/12/2013

11

Tightening Guardrail

- **Cable Dogs** (*pork chops*)
- **Chain Come-a-long**
- **Hook 1 cable dog to**
dead end of cable and
the other cable dog to
the live end.

Warning Line System

Training

- **Provided by qualified person**
- **Must include**
 - Recognition and I.d. of fall hazards
 - Use of fall protection
- **Special training for**
 - Multiple Lift Rigging
 - Connector Procedures
 - Controlled Decking Zones (CDZ's)

Image 44

11/12/2013

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OSHA's Web Site

- The complete standard can be obtained from our web site at www.osha.gov.

PERSONAL FALL PROTECTION SYSTEM (PFAS)

- All Roofs Over 25' Ground to Eave
- All Roofs Over 8:12 Pitch
- Specific System Requirements

ALTERNATIVE FALL PROTECTION

- Installation of Roof Trusses and Erecting Rafters
- Roof Sheathing Operations
- Installation of Floor Joists Installation and

Floor Sheathing

- Erection of Exterior Walls
- Concrete and Block Foundation Walls and

Formwork

- Activities Performed in Attics and on Roofs
 - Roofing Work
-

Image 45

11/12/2013

13

CHOOSING THE PROPER FALL PROTECTION

Tile Roofs Fall Protection System

Shingled Roofs

Metal Roofs

Low Sloped Roofs

Tile Roofs 4:12 Through 6:12 Safety Monitoring
Tile Roofs Over 8:12 Personal Fall Arrest System

Shingled Roofs 4:12 Through 6:12 Slide Guards at Base of Roof
Shingled Roofs 6:12 Through 8:12
Slide Guards at Base of Roof & Every 8 Feet
Going Up the Roof

Shingled Roofs Over 8:12 Personal Fall Arrest System

Metal Roofs 4:12 Through 8:12 Safety Monitoring
Metal Roofs Over 8:12 Personal Fall Arrest System

All Low Sloped Roofs less than 4:12 Warning line and Safety Monitoring

TILE AND METAL ROOFS

- Name a Competent Person
 - Safety Monitor Warns Employees
 - On the Same Working Level As Employees
 - Can See and Talk to the Employees
 - Is Not Distracted by Other Work
 - Limit the Employees on the Roof
 - No Mechanical Equipment is Stored or Used on the Roof
 - Listen to the Safety Monitor's Commands
-

Image 46

11/12/2013

14

FLAT ROOFS

- Warning Lines
- Erected Around All Sides of the Roof

Work Area

- Not Less Than 6 Feet From the Roof

Edge

- Meet Strength Criteria

ALTERNATIVE FALL PROTECTION

- Group 1 – Installing Roof Trusses and Rafters
 - Roof Sheathing Operations
 - Installation of Floor Joists and Floor Sheathing
 - Erection of Exterior Walls
 - Group 2 - Foundation Walls and Formwork
 - Group 3 - Attic and Roof Work
 - Group 4 - Roofing Work
-

Image 47

11/12/2013

15

INSTALLING ROOF TRUSSES AND RAFTERS

- Training
- Implementation/ Supervision by Designated Individuals
- Controlled Access Zones (CAZ)
- Plan Administration - Required for All

Group 1 Activities

TRUSSING OR RAFTERING

- Use Ladders, Scaffolds When Feasible and Safe
 - Restrict Access to Authorized Workers
 - Brace Properly Before Using Them as Support
 - Limit Duties of Top Plate Workers
 - Set the First Two From Ladders
 - Keep Top Plate Workers on Plate Stabilized
-

Image 48

11/12/2013

16

WORKING THE PEAK

- Workers Can Be at the Peak or Ridge Beam if That is Only Way
 - Must Be in Stable Position
 - Siting
 - Within Webs or Trusses
 - Get Them Down ASAP
-

Image 49

11/12/2013

17

ROOF SHEATHING OPERATIONS

- Have Secure Footing
 - Stop During Bad Weather
 - Stage Materials Properly
 - Limit Access to Those Required
 - Slide Guards
 - Lean Out of Sheathing for 1st Set
 - 13' Intervals < 9:12 Pitch
 - 4' Intervals > 9:12
-

Image 50

11/12/2013

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FLOOR JOISTS AND SHEATHING

- Stage Materials & Restrict Access
 - Roll First From Ground, Ladder or Scaffolds
 - Roll Remaining From Plywood Platform
 - Install First Row of Sheathing From Ground, Ladders or Scaffolds
 - Others From Established Deck
-

Image 51

11/12/2013

19

ERECTION OF EXTERIOR WALLS

- Paint 6' Line From Deck Edge
- Stage Materials Properly
- Limit Work Done on the Edge
- Protect Floor and Wall Holes ASAP

GROUP 2 - FOUNDATION WALLS AND FORMWORK

- Trained and Authorized Workers
 - Support Formwork Properly
 - Stop During Bad Weather
 - Stage Materials Properly
 - Control Impalement Hazards
-

Image 52

11/12/2013

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GROUP 3

ATTIC AND ROOF WORK

- Trained & Authorized Workers
- Stage Materials Properly
- Control Impalement Hazards
- Stop During Bad Weather

GROUP 4

ROOFING WORK

- Trained & Authorized Workers
- Limit Slipping Hazards
- Stop During Bad Weather
- Fix Damaged Areas ASAP
- Keep Away Form the Rake Edge
- Stage Material Properly
- Control Impalement Hazards

ROOFING SLIDEGUARDS

- 4:12 Through 6:12
 - 2x6 Slideguards at Eave
 - @ 90 to Roof
 - After Three Row of Shingles
 - 6:12 Through 8:12
 - Slideguards Every 8'
 - Stand on Existing to Install
-

Image 53

11/12/2013

21

TRAINING

- Fall Protection

- For Each Employee Exposed
 - How to Identify and Control Hazards
 - **General**
 - In the Avoidance of Hazards
 - Equipment Operators Must Have Training and Experience
-

Image 54

11/12/2013

22

Scaffolding

Related Injuries and Fatalities

- Scaffolds account for 9% of workplace fatalities
- 79 fatalities a year
- 9,750 injuries per year
- 72% - Support or planking failed - employee fell or

struck by falling object

- 25% - Employees had not training
- 70% - Employees had on the job training
- 67% - Scaffolds had no guardrails

1926.451(g) Fall Protection

- **Personal Fall Arrest Systems or Guardrails**
 - Required at 10ft
 - PFAS in lieu of guardrails, on some scaffolds
 - PFAS & guardrails on suspension scaffolds
 - PFAS required for erectors and dismantlers were feasible after September 2, 1997
 - Toprails after 1/1/00, 38" to 45" high
 - Use crossbracing in lieu of top or midrails in some cases
-

Image 55

11/12/2013

23

Competent

Provide safe access?

Provide fall protection?

Inspect before each work shift

Inspect after occurrence

Train "support"

employees

Qualified

Must design

Must train

employees who work

while on scaffold

**Scaffold Safety - Subpart L
Scaffolds and the Competent or
Qualified Person**

Image 56

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Organization of Standard

- 1926.450 Scope, application and definitions applicable to subpart
- 1926.451 General

requirements

- 1926.452 Additional requirements applicable to

specific types of scaffolds

- 1926.453 Aerial Lifts
- 1926.454 Training
- Appendix A - Scaffold

Specifications

- Appendix B - (Reserved)

Criteria for Determining the

Feasibility of Providing Safe
Access and Fall Protection for
Scaffold Erectors and
Dismantlers

- Appendix C -List of
National Consensus
Standards

- Appendix D -List of
Training Topics for Scaffold
Erectors and Dismantlers

- Appendix E - Drawings and
Illustrations

Image 57

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§1926.451 General Requirement For All Scaffolds

451(b)(1)(ii) Fully planked between front upright and guardrail
support

Presented by KCS L.L.C.

(b)(1)(i) (b)(1)(ii)

1" MAX 9 1/2 "

Presented by KCS L.L.C.

(b)(2)

18"

Minimum

-Walkway-Erect/Dismantle-

Image 58

11/12/2013

26

Presented by KCS L.L.C.

(b)(3)

14"
MAX

18"

**OR MUST HAVE GUARDRAIL
OR FALL PROTECTION**

Presented by KCS L.L.C.

NOT TIED OR CLEATED (b)(4)

No Maximum or Minimum 6" Min

Presented by KCS L.L.C.

NOT TIED OR CLEATED (b)(5)(i)

Less than 10 feet 12" Max

Image 59

11/12/2013

27

§1926.451 (e) Access

Presented by KCS L.L.C.

(g)(4)(ii)
<2000 36" to 45"
>2000 38" to 45"

(g)(4)(vii)
200#

(g)(4)(ix)
150#

Midway

Presented by KCS L.L.C.

(g)(4)(xv)

48" Max

Mid
20"- 30"

Top
38"- 40"

Image 60

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28

Cross bracing in Guardrail Systems

Employee constructing the third level of a tubular welded frame scaffold while standing on the second level. The scaffold was constructed on a poured concrete floor and had been leveled. Each section was 6'5" high.

The working surface was solidly planked.

When the employee tried to set the third level frame into the pins of the second level, the frame he was trying to *position* flipped to one side. The momentum of the frame thrust the employee backward off the second level. He fell to the

ground, sustaining a fatal blow to his head.

Fatal fact

Construction crew was preparing to pour concrete into forms. A laborer climbed up a ladder on one side of the forms and stepped over the form to stand on an unguarded scaffold on the opposite side. He was carrying two hand trowels and a brush to be used by other workers after the concrete was poured. He fell striking his head on a concrete slab at ground level and sustained fatal injuries.

Fatal fact

Image 61

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Bricklaying crew working on the upper floor of a threestory building built a six-foot platform spanning a gap between two scaffolds. The platform was correctly constructed of two 2"X12" planks with standard guardrails; however, one of the planks was not scaffold grade lumber and also had extensive dry rot in the center. when a bricklayer stepped on the plank it disintegrated and he fell 30 feet to his death.

Fatal fact

Hazard Recognition

- The following slides show various

scaffolding operations. There are also violations that include other subparts of the construction standards.

- What are the hazards?
 - What standards are applicable ?
-

Image 62

11/12/2013

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Image 63

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31

Image 64

11/12/2013

32

Image 65

11/12/2013

33

OSHA says....

- "The employer shall provide for **prompt** rescue of employees in the event of a fall or shall assure that

employees are able to rescue themselves."

Rescue Plan

- Each worksite or facility must have a rescue plan
- Employees must be trained on the plan
- Limit hanging/suspension time

Fall Rescue Planning

- Workers who fall in a harness may not be able to rescue themselves. So set up a rescue plan for each possible fall situation.
 - Make sure ladder trucks will be able to reach hanging workers. Or plan ahead for other ways to rescue them.
 - Be sure medical and rescue teams will get there fast, if needed.
-

Image 66

11/12/2013

34

Who do you call??...Ghostbusters?

- "high angle" rescue skills are sometimes limited in fire departments.

- Often the most significant problem, especially in rural areas, is response time.

Traditionally, high angle rescuers are trained to an advanced level in knot tying, pulley design, equalizing anchor systems, and descent control methods.

Day Three

OSHA 3110 Course

Image 67

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35

“Tie” or “OSHA” Joists

Why Have A Fall Protection Program?

Gary Kemper-Dorral-1991 Dave Hustedde-Guarrantee-1992 Scott Hall-Coors Field-1993

Rob Jostes-Soundtrack-1996 Mike Kerrick-Inverness-1996 Jake Hernandez-Quantum-1996

Mike Kerrick-Quantum-1997 Todd Bohmont-Adams Mark-1997 Steve Harrison-Chiller-1998

Allen Shuey-Granby-1998 Rudy Runko-Poudre Valley-1999 Dan Pittman-New Frontier-1999

Jim Pineda-Lucent-1999 Ki Soo Lee-Auraria-1999 Dan Pittman-Poudre Valley-1999

James Besel-Poudre V.-1999 Josh Coble-Flatirons Mall-1999 Emil Schmeige-Gennessee-2000

Jon Mailander-Zangs-2000 Jeremy Basamania-Plaza-2000 Blue Boyce-XilinX-2000

Scott Seppers-Shea II-2000 Dave Deimer-Shea II-2000 Eric Peterson-Hunter Doug.-2000

Steve Fry-AMC-2001 Don Conyac-AMC-2001

Image 68

Day 3 -2 residential const

11/12/2013

1

OSHA - Region IV

OSHA - Region IV

OSHA's Mission

• To Assure So Far

as Possible Every

Working Man and

Woman in the

Nation Safe and

Healthful Working
Conditions...

OSHA - Region IV

Hierarchy of Fall Protection

• The less human effort for fall protection,
the more effective the fall protection

EFFECTIVENESS

Most Effective

Least Effective

HUMAN EFFORT

Least Effort

Most Effort

Eliminate
Engineered
Warning
Training

PPE

Image 69

11/12/2013

2

OSHA - Region IV

Fall Protection - *General Requirements*

• Where workers on a construction site are exposed to vertical drops of 6 feet or more, OSHA requires that employers provide conventional fall protection in one of three ways before work begins:

- Placing guardrails around the hazard area
- Deploying safety nets
- Providing personal fall arrest systems for each employee

OSHA - Region IV

Alternative Procedures

- Directive STD 3-0.1A - Plain Language Revision of OSHA Instruction STD 3.1, "Interim Fall Protection Compliance Guidelines for Residential Construction"

- Permits employers engaged in certain residential construction activities to use alternative procedures routinely instead of conventional fall protection

OSHA - Region IV

Residential

- Must be engaged in

residential

construction and

performing one of listed activities

- Not Exempted!

- Still obligated to comply with other OSHA standards and conventional fall protection if

alternative procedures are not used

Image 70

11/12/2013

3

OSHA - Region IV

Residential Construction

- Working environment, materials, methods and procedures are essentially same as single-family homes or townhouses

- **Characterized by:**

- Materials: wood framing

(not steel or concrete);

Wooden floor joists and

roof structures

- Methods: traditional wood frame construction techniques

- Discrete part of a large commercial building

OSHA - Region IV

Listed Activities

- **GROUP 1** - floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting & bracing roof trusses and rafters
- **GROUP 2** - concrete and block foundation walls and related formwork.
- **GROUP 3** - when performed in attics and on roofs: installing drywall, insulation, HVAC systems, electrical systems (including alarms, telephone lines, and cable TV), plumbing and carpentry
- **GROUP 4** - Roofing work - removal, repair, or installation of weatherproofing roofing materials such as shingles, tile and tar paper

OSHA - Region IV

STD 3-0.1A

- Do not need to show conventional fall protection is infeasible
- Fall protection plan is still required, but
 - does not have to be written
 - not specific to the jobsite
- Each activity has its own set of alternative

procedures

Image 71

11/12/2013

4

OSHA - Region IV

GROUP 1- *Alternative Procedures*

- Fall protection plan found in Appendix E of Subpart M
- Height limitation
 - Structures up to 3 1/2 stories
 - or 48 feet (including basement, two finished levels, attic)
 - Measured from the base of the

building, at the lowest ground

level (including any excavation), to the point of greatest height

- Plan communicated to all employees on site subject to fall hazards

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

OSHA - Region IV

GROUP 1- *Alternative Procedures*

- Employee training coverage of the Fall Protection Plan must include:

- Requirements of the plan
- Understand procedures and follow instructions of

supervisor or foreman

- Able to recognize unsafe/hazardous conditions and report them to the employer

- Recognize when compliance with the Plan would create a greater hazard and inform the Competent Person before proceeding

- Concerns raised by employees must be addressed

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

OSHA - Region IV

- Employer must designate:

- Competent Person
- Qualified Person
- Crew Supervisor or

Foreman

- Supervisor and/or foreman can be the competent and qualified person

GROUP 1- *Alternative Procedures*

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

Image 72

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OSHA - Region IV

GROUP 1- *Alternative Procedures*

- "Competent person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

Ref.1926.32(f)

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

OSHA - Region IV

GROUP 1- *Alternative Procedures*

- Competent person will:
 - be charged with implementing the plan
 - continually monitor

compliance with the

plan including:

- provision of training
- the proper use of

controlled access zones

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

OSHA - Region IV

GROUP 1- *Alternative Procedures*

- "Qualified" person means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

Ref. 1926.32(m)

- Person is designated
- Reviews & approves any changes to the plan

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

Image 73

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OSHA - Region IV

GROUP 1- *Alternative Procedures*

- Designated crew supervisor or foreman
– responsible for the immediate correction of any unsafe practice or condition

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

Unstable footing, scaffold re-erected with proper mud sill placement

OSHA - Region IV

GROUP 1- *Alternative Procedures*

- Controlled access zone (CAZ) - restricts access to a clearly designated area where a Group 1 activity is taking place

- The CAZ must meet the following requirements:

- **Boundaries** - clearly marked

eg. signs, wires, tapes, ropes

or chains

- Crew supervisor/foreman **monitors**
- **Restricted access** to authorized (trained) entrants
- **Final check** - before work begins, the competent

person must ensure that all protective measures in the plan have been implemented

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

OSHA - Region IV

GROUP 1- *Alternative Procedures*

- **Plan Administration**
– Employer Enforcement
- Crew supervisor/foreman, Safety and Personnel department have the right to issue disciplinary

warnings

- Unsafe practices or conditions must be corrected immediately

floor joists, floor sheathing, and roof sheathing; erecting

exterior walls; setting and bracing roof trusses and rafters

Image 74

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OSHA - Region IV

GROUP 1- *Alternative Procedures*

• Plan Administration

- Plan Changes/Review To The Plan
- Qualified person approves changes to Plan
- Review Plan as the job progresses to determine

the need for additional practices, procedures or training

- Retrain employees on any new procedures

– Accident Investigation

- All accidents reported and investigated
- Investigation documented
- Review Plan in event of falls or other serious

incidents

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

OSHA - Region IV

GROUP 1- *Alternative Procedures*

Installing Roof Trusses and Erecting Rafters

Additional Requirements

- Walls Up To 8 Feet
- Use interior scaffolds, below the area where the

trusses/rafters will be located

- Sawhorse scaffolds acceptable
- Walls Over 8 Feet
- Falling Objects - restricted access during truss

installation

- Brace trusses before being used as a support
- Designate the trained workers for top plate and peak

work

- Top plate workers have no other duties during truss erection

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

OSHA - Region IV

GROUP 1- *Alternative Procedures*

Working on top plate - *Additional Requirements*

- First two trusses set from supported ladders
- Once set, worker will climb ladder onto the interior top plate to secure peaks
- Use previously stabilized trusses as support

while other trusses/rafters are erected

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

Image 75

11/12/2013

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OSHA - Region IV

GROUP 1- *Alternative Procedures*

Working at peak- *Additional Requirements*

- While detaching trusses from cranes or securing trusses at the peaks, worker may:
 - be positioned at the peak of the trusses/rafters
 - be stationed on the top of the ridge beam when it is the only feasible way to secure rafters to the ridge beam
- Workers at the peak, in the web of trusses, or on top of the ridge beam must work from a stable position
 - sit on a ridge seat (or the equivalent) or
 - position themselves in previously stabilized trusses/rafters,

and lean into and reach through the trusses/rafters

- Do not remain on or in the peak/ridge any longer than necessary

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

OSHA - Region IV

GROUP 1- *Alternative Procedures*

Roof Sheathing Operations *Additional Requirements*

- Competent person must determine when the roof system is stable enough to support conventional fall protection system anchorage
- **Once roof system is stable enough for anchorage, personal fall arrest systems**

must be used

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

OSHA - Region IV

GROUP 1- *Alternative Procedures*

Roof Sheathing Operations - *Additional Requirements*

– Provisions that can be apply until the roof system is stable:

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

Qualified Workers Staging of Materials

Secure Footing/Weather Slide Guards

Falling Objects/Restricted Access

Image 76

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OSHA - Region IV

GROUP 1- *Alternative Procedures*

Roof Sheathing Operations - *Additional Requirements*

- Only qualified workers
 - Secure Footing/Weather
- remove slip hazards

– suspend roof sheathing

when wet

– suspend roof sheathing

when winds > 40 mph

- Stage materials for quick access

- Falling Objects - restricted access during

sheathing installation

- Provide 4 inch slide guards

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

Slide guard requirements for roof sheathing are different from those for roof work (Group 4 Activity)

Roof Type Slide Guard Intervals

All roofs with
pitch
On bottom row of roof
sheathing install guard

the full length of roof

Up to and
including 9 in 12

13 foot intervals

Over 9 in 12

4 foot intervals

OSHA - Region IV

Installation of Floor Joists and Floor Sheathing

Additional Requirements

- Designate trained workers
- Stage materials for quick

access

- Restricted access of

those not assisting - do

not permit within

6 feet from the leading

edge

GROUP 1- *Alternative Procedures*

floor joists, floor sheathing, and roof sheathing; erecting
exterior walls; setting and bracing roof trusses and rafters

Image 77

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OSHA - Region IV

GROUP 1- *Alternative Procedures***Installation Process of Floor Joists *Additional Requirements***

– First floor joist or truss rolled into position and secured by workers on the ground, ladders, or sawhorse scaffolds

– Successive joists/trusses must be rolled into place and secured from platform

– Platform is built by laying a sheet of plywood over the previously secured floor joists or trusses

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

OSHA - Region IV

GROUP 1- *Alternative Procedures*

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

Installation Process of Floor Sheathing***Additional Requirements***

- First row of floor sheathing installed by workers on the ground, ladders, or sawhorse scaffolds
- After the first row of sheathing has been installed, workers shall

work from the

established deck

OSHA - Region IV

GROUP 1- *Alternative Procedures***Erection of Exterior Walls- *Additional Requirements***

- Designate trained workers
- Stage materials for quick access
- Limit fall hazard exposure by cutting material

away from edge of deck
– Paint warning line 6 feet

from the perimeter before

any wall erection activities

and provide monitor for

those working near the

unprotected edge

floor joists, floor sheathing, and roof sheathing; erecting exterior walls; setting and bracing roof trusses and rafters

Image 78

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OSHA - Region IV

GROUP 2- *Alternative Procedures*

- Procedures for protecting employees working at the top surface of block foundation walls, concrete foundation walls and related form work

concrete and block foundation walls and related formwork

OSHA - Region IV

GROUP 2- *Alternative Procedures*

- Only trained workers allowed to work on the top of the foundation wall/form work, and only as necessary to complete the construction of the wall

- All formwork shall be adequately supported before any worker

may work on top of

the form work

concrete and block foundation walls and related formwork

OSHA - Region IV

GROUP 2- *Alternative Procedures*

- When adverse weather creates a hazardous condition, operations shall be suspended

- Impalement hazards shall be cleared from the area below workers or shall be properly guarded

- Stage materials for quick access

concrete and block foundation walls and related formwork

Image 79

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OSHA - Region IV

GROUP 3- *Alternative Procedures*

- Procedures for activities when performed in attics and on roofs: installing drywall, insulation, HVAC systems, electrical systems (including alarms, telephone lines, and Cable TV), plumbing and carpentry

activities when performed in attics and on roofs
drywall, insulation, HVAC systems, electrical systems, plumbing and carpentry

OSHA - Region IV

GROUP 3- *Alternative Procedures*

- Only trained workers allowed to work in attics and roofs, and only as necessary to complete system being installed
- Stage materials for quick access
- Impalement hazards shall be kept out of the area below workers or shall be properly guarded
- Restrict access to areas below openings in ceilings to reduce falling object hazards
- When adverse weather creates a hazardous condition, operations shall be suspended

activities when performed in attics and on roofs
drywall, insulation, HVAC systems, electrical systems, plumbing and carpentry

OSHA - Region IV

GROUP 4- *Alternative Procedures*

- Procedures for activities in roofing work (removal, repair, or installation of

weatherproofing
roofing materials
such as shingles,
tile and tar paper) roofing work (removal, repair, or installation of weatherproofing

roofing materials such as shingles, tile and tar paper

Image 80

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OSHA - Region IV

GROUP 4- *Alternative Procedures*

- **Roofs with eave height over 25 feet**

- Any Slope
- Any Roof Type

–**Alternatives to the**

Requirements of

the Standards are

not Available

roofing work (removal, repair, or installation of weatherproofing
roofing materials such as shingles, tile and tar paper

OSHA - Region IV

GROUP 4- *Alternative Procedures*

- **General requirements:**

- Only workers trained to be proficient in the alternative methods of fall protection shall be allowed onto the roof
- Affected employees shall be trained in

specific awareness of fall hazards associated
with work on roofs with rake edges

- Inspect for and eliminate any slipping hazards
or take effective measures to have workers

avoid slipping hazards

- Workers must wear appropriate footwear

roofing work (removal, repair, or installation of weatherproofing
roofing materials such as shingles, tile and tar paper

OSHA - Region IV

GROUP 4- *Alternative Procedures***• General requirements:**

- When adverse weather creates a hazardous condition, operations shall be suspended
- Repair any roof deck

damage

- Cover or guard any

holes, including

skylight openings

roofing work (removal, repair, or installation of weatherproofing roofing materials such as shingles, tile and tar paper)

Image 81

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OSHA - Region IV

GROUP 4- *Alternative Procedures***• General requirements:**

- Erect and maintain ladders or scaffolds in accordance to Subparts X and L
- Trained employees in accordance with the

requirements of Subparts X & L

- Do not ascend or descend

the roof's slope within 6 ft

of the rake edge except

where limitation would

prevent work process

roofing work (removal, repair, or installation of weatherproofing roofing materials such as shingles, tile and tar paper)

OSHA - Region IV

GROUP 4- *Alternative Procedures***• General requirements:**

- Do not store supplies and materials within 6 feet of the rake edge or three feet where tile roof systems are being

installed

– Keep area below eaves and rakes clear of impalement hazards or properly

guard hazards

roofing work (removal, repair, or installation of weatherproofing roofing materials such as shingles, tile and tar paper

OSHA - Region IV

GROUP 4- *Alternative Procedures*

- For Roofs With Eave Height of **up to 25 Feet**
- Roof Slope (Any Roof Type): Up to 4 in 12

- Use either safety monitoring system that complies with 1926.502 or roofing slide guards

- Roof Slope (Except Tile or Metal Roofs): Over 4 in 12 and up to 8 in 12:

- Slide guards are required

- Tile or Metal Roofs - safety monitoring system may be used instead of slide guards

- Roof Slope over 8 in 12 - Alternatives not available

roofing work (removal, repair, or installation of weatherproofing roofing materials such as shingles, tile and tar paper

Image 82

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OSHA - Region IV

GROUP 4- *Alternative Procedures*

- **Slide Guards:**

- Roof Slope: 6 in 12 or less

- Constructed of 2"x 6" (nominal) stock

- No more than three rows of roofing material

(installed across the lower eave) shall be applied before installing the slide guards

- Roof jacks (or similar supports) shall be installed using nails long enough to

withstand an employee sliding into the guard

- Face of the slide guard must be perpendicular to the surface of the roof

- Continuous slide guards along the eave

roofing work (removal, repair, or installation of weatherproofing roofing materials such as shingles, tile and tar paper

OSHA - Region IV

GROUP 4- *Alternative Procedures*

• Slide Guards:

- Roof Slope: Over 6 in 12 (up to and including 8 in 12):
- Constructed of 2"x 6" (nominal) stock

- Continuous slide guards shall be installed along the eave
- Install additional slide guards below each work area at intervals not to exceed eight feet
- Slide guards at the eave must be at about 90

degrees to the roof surface

- Additional slide guards need not be continuous or at 90 degrees to the roof surface

roofing work (removal, repair, or installation of weatherproofing roofing materials such as shingles, tile and tar paper

OSHA - Region IV

INTERIM FALL PROTECTION COMPLIANCE

GUIDELINE FOR RESIDENTIAL ROOFING WORK

SLOPE EAVE TO

LOWER LEVEL
FALL
DISTANCE

MINIMUM /REQUIREMENTS COMMENTS

4 in 12 or
LESS

25 FEET or
LESS
Can use safety monitoring
system or roofing slide

guards

MUST COMPLY WITH 1926.502(h) NOTE: See
specific reqt's. for roofing slide guards which
depend on roof slope (next 2 categories)

6 in 12 or
LESS

With

SLIDE
GUARDS

25 FEET or
LESS
Slide guards with roof jacks
or equiv. Supports with min.

2"x 6" (nom.) Planks

Slide guards shall be installed continuously along the eave. Angle of guard shall be 90 deg. to roof

More than

6 in 12

up to & including

8 in 12

25 feet or less Slide guards with roof jacks or equiv. Supports with min. 2"x 6" (nom.) Planks

Continuous eave slide guards shall be installed plus slide guards shall be placed below work areas every 8 feet maximum (90 deg 10 deg)

Prepared by Parsippany A.O., 3/1/96

Slide guard requirements for roofing are different from those for roof sheathing (Group 1 Activity)

Image 83

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OSHA - Region IV

INTERIM FALL PROTECTION COMPLIANCE

GUIDELINE FOR RESIDENTIAL ROOFING WORK

SLOPE EAVE TO

**LOWER LEVEL
FALL
DISTANCE**

MINIMUM /REQUIREMENTS COMMENTS

**8 in 12 or
LESS**

**(TILE &
METAL
ROOFS ONLY)**

25 FEET or
LESS
Can use safety monitoring
system

May use safety monitoring system alone but, must
comply with 1926.502(h)

Greater than

8 in 12

All roofs (over 6
feet)
Conventional fall protection
shall be used. I.e: safety

nets, guardrails or personal
fall arrest systems

Must comply with 1926.502(d), 1926.502(c) or
1926.502(b)

Greater than

4 in 12

Greater than 25
feet
Conventional fall protection
shall be used. I.e: safety

nets, guardrails or personal
fall arrest systems

Must comply with 1926.502(d), 1926.502(c) or
1926.502(b)

Prepared by Parsippany A.O., 3/1/96

Slide guard requirements for roofing are different from those for roof sheathing (Group 1 Activity)

OSHA - Region IV

CITATION POLICY

- The compliance officer must determine if STD 3-0.1A provides alternative procedures for the activity in question
- If there is a deficiency in the implementation of the alternative procedures
- Violation of 1926.501(b)(13) – duty to have fall protection –residential
- Possible violation of 1926.20 – construction, general safety and health program
- Other standards as applicable: scaffold, ladder, tools, electrical, PPE, etc.

OSHA - Region IV

QUESTIONS?

Please visit the OSHA website at www.osha.gov or call your local OSHA office

To print slides, remove background

Image 84

Ref 1 Why is fall protection important

Why is fall protection important?

Falls are among the most common causes of serious work related injuries and deaths. Employers must set up the work place to prevent employees from falling off of overhead platforms, elevated work stations or into holes in the floor and walls.

What can be done to reduce falls?

Employers must set up the work place to prevent employees from falling off of overhead platforms, elevated work stations or into holes in the floor and walls. OSHA requires that fall protection be provided at elevations of four feet in general industry workplaces, five feet in shipyards, six feet in the construction industry and eight feet in longshoring operations. In addition, OSHA requires that fall protection be provided when working over dangerous equipment and machinery, regardless of the fall distance.

To prevent employees from being injured from falls, employers must:

- Guard every floor hole into which a worker can accidentally walk (using a railing and toe-board or a floor hole cover).
- Provide a guard rail and toe-board around every elevated open sided platform, floor or runway.
- Regardless of height, if a worker can fall into or onto dangerous machines or equipment (such as a vat or acid or a conveyor belt) employers must provide guardrails and toe-boards to prevent workers from falling and getting injured.
- Other means of fall protection that may be required on certain jobs include safety and harness and line, safety nets, stair railings and hand rails.

OSHA requires employers to:

- Provide working conditions that are free of known dangers.
 - Keep floors in work areas in a clean and, so far as possible, a dry condition.
 - Select and provide required personal protective equipment at no cost to workers.
 - Train workers about job hazards in a language that they can understand.
-

Image 85

Ref 2 fall_protection_qc

QUICK CARD

TM

Fall Protection Tips

- Identify all potential tripping and fall hazards before work starts.
- Look for fall hazards such as unprotected floor openings/edges, shafts, skylights, stairwells, and roof openings/edges.
- Inspect fall protection equipment for defects before use.
- Select, wear, and use fall protection equipment appropriate for the task.
- Secure and stabilize all ladders before climbing

them.

- Never stand on the top rung/step of a ladder.
- Use handrails when you go up or down stairs.
- Practice good housekeeping. Keep cords, welding leads and air hoses out of walkways or adjacent work areas.

OSHA 3257-11R-05

U.S. Department of Labor
www.osha.gov (800) 321-OSHA

For more complete information:

**Occupational
Safety and Health
Administration**

Image 86

Ref 3 Introduction to Const Fall Prot

INTRODUCTION

In the construction industry in the U.S., falls are the leading cause of worker fatalities. Each year, on average, between 150 and 200 workers are killed and more than 100,000 are injured as a result of falls at construction sites. OSHA recognizes that accidents involving falls are generally complex events frequently involving a variety of factors. Consequently the standard for fall protection deals

with both the human and equipment-related issues in protecting workers from fall hazards. For example, employers and employees need to do the following:

- Where protection is required, select fall protection systems appropriate for given situations.
- Use proper construction and installation of safety systems.
- Supervise employees properly.
- Use safe work procedures.
- Train workers in the proper selection, use, and maintenance of all protection systems.

SCOPE AND APPLICATION

OSHA has revised its construction industry safety standards (29 Code of Federal Regulations, [Subpart M](#), Fall Protection, [1926.500](#), [1926.501](#), [1926.502](#), and [1926.503](#)) and developed systems and procedures designed to prevent employees from falling off, onto, or through working levels and to protect employees from being struck by falling objects (Federal Register, August 9, 1994, pp.

40672-40753). The performance-oriented requirements make it easier for employers to provide the necessary protection.

The rule covers most construction workers except those inspecting, investigating, or assessing workplace conditions prior to the actual start of work or after all work has been completed.

The rule identifies areas or activities where fall protection is needed. These include, but are not limited to, ramps, runways, and other walkways; excavations; hoist areas; holes; formwork and reinforcing steel; leading edge work; unprotected sides and edges; overhand bricklaying and related work; roofing work; precast concrete erection; wall openings; residential construction; and other

walking/working surfaces. The rule sets a uniform threshold height of 6 feet (1.8 meters), thereby providing consistent protection. This means that construction employers must protect their employees from fall hazards and falling objects whenever an affected employee is 6 feet (1.8 meters) or more above a lower level. Protection must also be provided for construction workers who are exposed to the hazard of falling into dangerous equipment.

Under the new standard, employers will be able to select fall protection measures compatible with the type of work being performed. Fall protection generally can be provided through the use of guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, and warning line systems, among others.

The OSHA rule clarifies what an employer must do to provide fall protection for employees, such as identifying and evaluating fall hazards and providing specific training. Requirements to provide fall protection for workers on scaffolds and ladders and for workers engaged in steel erection of

buildings are covered in other subparts of OSHA regulations.

PROVISIONS OF THE STANDARD

The new standard prescribes the duty to provide fall protection, sets the criteria and practices for fall protection systems, and requires training. It covers hazard assessment and fall protection and safety monitoring systems. Also addressed are controlled access zones, safety nets, and guardrail, personal fall arrest, warning line, and positioning device systems.

Image 87

DUTY TO HAVE FALL PROTECTION

Employers are required to assess the workplace to determine if the walking/working surfaces on which employees are to work have the strength and structural integrity to safely support workers. Employees are not permitted to work on those surfaces until it has been determined that the surfaces have the requisite strength and structural integrity to support the workers. Once employers have determined that the surface is safe for employees to work on, the employer must select one of

the options listed for the work operation if a fall hazard is present.

For example, if an employee is exposed to falling 6 feet (1.8 meters) or more from an unprotected

side or edge, the employer must select either a guardrail system, safety net system, or personal fall arrest system to protect the worker. Similar requirements are prescribed for other fall hazards as follows.

Controlled Access Zones

A Controlled access zone is a work area designated and clearly marked in which certain types of work (such as overhand bricklaying) may take place without the use of conventional fall protection systems—guardrail, personal arrest or safety net—to protect the employees working in the zone.

Controlled access zones are used to keep out workers other than those authorized to enter work areas from which guardrails have been removed. Where there are no guardrails, masons are the only workers allowed in controlled access zones.

Controlled access zones, when created to limit entrance to areas where leading edge work and other operations are taking place, must be defined by a control line or by any other means that restrict access. Control lines shall consist of ropes, wires, tapes or equivalent materials, and supporting stanchions, and each must be:

- Flagged or otherwise clearly marked at not more than 6-foot (1.8 meters) intervals with high-visibility material;
- Rigged and supported in such a way that the lowest point (including sag) is not less than 39 inches (1 meter) from the walking/working surface and the highest point is not more than 45 inches (1.3 meters)—nor more than 50 inches (1.3 meters) when overhand bricklaying operations are being performed—from the walking/working surface;
- Strong enough to sustain stress of not less than 200 pounds (0.88 kilonewtons). Control lines shall extend along the entire length of the unprotected or leading edge and shall be approximately parallel to the unprotected or leading edge.

Control lines also must be connected on each side to a guardrail system or wall.

When control lines are used, they shall be erected not less than 6 feet (1.8 meters) nor more than 25 feet (7.6 meters) from the unprotected or leading edge, except when precast concrete members are being erected. In the latter case, the control line is to be erected not less than 6 feet (1.8 meters) nor more than 60 feet (18 meters) or half the length of the member being erected, whichever is less, from the leading edge.

Controlled access zones when used to determine access to areas where **overhand bricklaying** and **related work** are taking place are to be defined by a control line erected not less than 10 feet (3 meters) nor more than 15 feet (4.6 meters) from the working edge. Additional control lines must be erected at each end to enclose the controlled access zone. Only employees engaged in overhand bricklaying or related work are permitted in the controlled access zones.

On floors and roofs where guardrail systems are not in place prior to the beginning of overhand bricklaying operations, controlled access zones will be enlarged as necessary to enclose all points of access, material handling areas, and storage areas. On floors and roofs where guardrail systems are

Image 88

in place, but need to be removed to allow overhand bricklaying work or leading edge work to take place, only that portion of the guardrail necessary to accomplish that day's work shall be removed.

Excavations

Each employee at the edge of an excavation 6 feet (1.8 meters) or more deep shall be protected from falling by guardrail systems, fences, barricades, or covers. Where walkways are provided to permit employees to cross over excavations, guardrails are required on the walkway if it is 6 feet

(1.8 meters) or more above the excavation.

Formwork and Reinforcing Steel

For employees, while moving vertically and/or horizontally on the vertical face of rebar assemblies built in place, fall protection is not required when employees are moving. OSHA considers the multiple hand holds and foot holds on rebar assemblies as providing similar protection as that provided by a fixed ladder; consequently, no fall protection is necessary while moving point to point

for heights below 24 feet (7.3 meters). An employee must be provided with fall protection when climbing or otherwise moving at a height more than 24 feet (7.3 meters), the same as for fixed ladders.

Hoist Areas

Each employee in a hoist area shall be protected from falling 6 feet (1.8 meters) or more by guardrail systems or personal fall arrest systems. If guardrail systems (or chain gate or guardrail) or portions thereof must be removed to facilitate hoisting operations, as during the landing of materials, and a worker must lean through the access opening or out over the edge of the access

opening to receive or guide equipment and materials, that employee must be protected by a personal fall arrest system.

Holes

Personal fall arrest systems, covers, or guardrail systems shall be erected around holes (including skylights) that are more than 6 feet (1.8 meters) above lower levels.

Leading Edges

Each employee who is constructing a leading edge 6 feet (1.8 meters) or more above lower levels shall be protected by guardrail systems, safety net systems, or personal fall arrest systems. If the employer can demonstrate that it is infeasible or creates a greater hazard to implement these systems, he or she must develop and implement a fall protection plan that meets the requirements

of [29 CFR 1926.502\(k\)](#).

Overhand Bricklaying and Related Work

Each employee performing overhand bricklaying and related work 6 feet (1.8 meters) or more above lower levels shall be protected by guardrail systems, safety net systems, or personal fall arrest systems, or shall work in a controlled access zone. All employees reaching more than 10 inches (25 cm) below the level of a walking/working surface on which they are working shall be protected by a guardrail system, safety net system, or personal fall arrest system.

Precast Concrete Erection and Residential Construction

Each employee who is 6 feet (1.8 meters) or more above lower levels while erecting precast concrete members and related operations such as grouting of precast concrete members and each employee engaged in residential construction, shall be protected by guardrail systems, safety net systems, or personal fall arrest systems. Where the employer can demonstrate, however, that it is

Image 89

infeasible or creates a greater hazard to use those systems, the employer must develop and implement a fall protection plan that meets the requirements of [29 CFR 1926.502\(k\)](#).

Ramps, Runways, and Other Walkways

Each employee using ramps, runways, and other walkways shall be protected from falling 6 feet (1.8 meters) or more by guardrail systems.

Roofing

Low-slope Roofs

Each employee engaged in roofing activities on low-slope roofs with unprotected sides and edges 6 feet (1.8 meters) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems or a combination of a warning line system and guardrail system, warning line system and safety net system, warning line system and personal fall arrest system, or warning line system and safety monitoring system. On roofs 50 feet (15.24 meters) or less in width, the use of a safety monitoring system without a warning line system is permitted.

Steep Roofs

Each employee on a steep roof with unprotected sides and edges 6 feet (1.8 meters) or more above lower levels shall be protected by guardrail systems with toeboards, safety net systems, or personal fall arrest systems.

Wall Openings

Each employee working on, at, above, or near wall openings (including those with chutes attached) where the outside bottom edge of the wall opening is 6 feet (1.8 meters) or more above lower levels and the inside bottom edge of the wall opening is less than 39 inches (1.0 meter) above the

walking/working surface must be protected from falling by the use of a guardrail system, a safety net system, or a personal fall arrest system.

FALL PROTECTION SYSTEMS CRITERIA AND PRACTICES

Guardrail Systems

If the employer chooses to use guardrail systems to protect workers from falls, the systems must meet the following criteria. Toprails and midrails of guardrail systems must be at least one-quarter inch (0.6 centimeters) nominal diameter or thickness to prevent cuts and lacerations. If wire rope is used for toprails, it must be flagged at not more than 6 feet intervals (1.8 meters) with high-visibility

material. Steel and plastic banding cannot be used as toprails or midrails. Manila, plastic, or synthetic rope used for toprails or midrails must be inspected as frequently as necessary to ensure strength and stability.

The top edge height of toprails, or (equivalent) guardrails must be 42 inches (1.1 meters) plus or minus 3 inches (8 centimeters), above the walking/working level. When workers are using stilts, the top edge height of the top rail, or equivalent member, must be increased an amount equal to the height of the stilts.

Screens, midrails, mesh, intermediate vertical members, or equivalent intermediate structural members must be installed between the top edge of the guardrail system and the walking/working surface when there are no walls or parapet walls at least 21 inches (53 centimeters) high. When midrails are used, they must be installed at a height midway between the top edge of the guardrail

Image 90

system and the walking/working level. When screens and mesh are used, they must extend from the top rail to the walking/working level and along the entire opening between top rail supports. Intermediate members, such as balusters, when used between posts, shall not be more than 19 inches (48 centimeters) apart.

Other structural members, such as additional midrails and architectural panels, shall be installed so that there are no openings in the guardrail system more than 19 inches (48 centimeters).

The guardrail system must be capable of withstanding a force of at least 200 pounds (890 newtons) applied within 2 inches of the top edge in any outward or downward direction. When the 200 pound (890 newtons) test is applied in a downward direction, the top edge of the guardrail must not

deflect to a height less than 39 inches (1 meter) above the walking/working level.

Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members shall be capable of withstanding a force of at least 150 pounds (667 newtons) applied in any downward or outward direction at any point along the midrail or other member.

Guardrail systems shall be surfaced to protect workers from punctures or lacerations and to prevent

clothing from snagging.

The ends of top rails and midrails must not overhang terminal posts, except where such overhang does not constitute a projection hazard.

When guardrail systems are used at hoisting areas, a chain, gate, or removable guardrail section must be placed across the access opening between guardrail sections when hoisting operations are not taking place.

At holes, guardrail systems must be set up on all unprotected sides or edges. When holes are used for the passage of materials, the hole shall have not more than two sides with removable guardrail sections. When the hole is not in use, it must be covered or provided with guardrails along all unprotected sides or edges.

If guardrail systems are used around holes that are used as access points (such as ladderways), gates must be used or the point of access must be offset to prevent accidental walking into the hole.

If guardrails are used at unprotected sides or edges of ramps and runways, they must be erected on each unprotected side or edge.

Personal Fall Arrest Systems

These consist of an anchorage, connectors, and a body belt or body harness and may include a deceleration device, lifeline, or suitable combinations. If a personal fall arrest system is used for fall protection, it must do the following:

- Limit maximum arresting force on an employee to 900 pounds (4 kilonewtons) when used with a body belt;

- Limit maximum arresting force on an employee to 1,800 pounds (8 kilonewtons) when used with a body harness;

- Be rigged so that an employee can neither free fall more than 6 feet (1.8 meters) nor

- contact any lower level;

- Bring an employee to a complete stop and limit maximum deceleration distance an employee travels to 3.5 feet (1.07 meters); and

- Have sufficient strength to withstand twice the potential impact energy of an employee free

- falling a distance of 6 feet (1.8 meters) or the free fall distance permitted by the system, whichever is less.

Image 91

As of January 1, 1998, the use of a body belt for fall arrest is prohibited.

Personal fall arrest systems must be inspected prior to each use for wear damage, and other deterioration. Defective components must be removed from service. Dee-rings and snaphooks must

have a minimum tensile strength of 5,000 pounds (22.2 kilonewtons). Dee-rings and snaphooks shall be proof-tested to a minimum tensile load of 3,600 pounds (16 kilonewtons) without cracking, breaking, or suffering permanent deformation.

Snaphooks shall be sized to be compatible with the member to which they will be connected, or shall be of a locking configuration.

Unless the snaphook is a locking type and designed for the following connections, they shall not be engaged (a) directly to webbing, rope or wire rope; (b) to each other; (c) to a dee-ring to which another snaphook or other connector is attached; (d) to a horizontal lifeline; or (e) to any object incompatible in shape or dimension relative to the snaphook, thereby causing the connected object to depress the snaphook keeper and release unintentionally.

OSHA considers a hook to be compatible when the diameter of the dee-ring to which the snaphook is attached is greater than the inside length of the snaphook when measured from the bottom (hinged end) of the snaphook keeper to the inside curve of the top of the snaphook. Thus, no matter how the dee-ring is positioned or moved (rolls) with the snaphook attached, the dee-ring cannot touch the outside of the keeper, thus depressing it open. As of January 1, 1998, the use of nonlocking snaphooks is prohibited.

On suspended scaffolds or similar work platforms with horizontal lifelines that may become vertical lifelines, the devices used to connect to a horizontal lifeline shall be capable of locking in both directions on the lifeline.

Horizontal lifelines shall be designed, installed, and used under the supervision of a qualified person, as part of a complete personal fall arrest system that maintains a safety factor of at least two. Lifelines shall be protected against being cut or abraded.

Self-retracting lifelines and lanyards that automatically limit free fall distance to 2 feet (0.61 meters) or less shall be capable of sustaining a minimum tensile load of 3,000 pounds (13.3 kilonewtons) applied to the device with the lifeline or lanyard in the fully extended position.

Self-retracting lifelines and lanyards that do not limit free fall distance to 2 feet (0.61 meters) or less, ripstitch lanyards, and tearing and deforming lanyards shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kilonewtons) applied to the device with the lifeline or lanyard in the fully extended position.

Ropes and straps (webbing) used in lanyards, lifelines, and strength components of body belts and body harnesses shall be made of synthetic fibers.

Anchorage shall be designed, installed, and used under the supervision of a qualified person, as part of a complete personal fall arrest system that maintains a safety factor of at least two, i.e., capable of supporting at least twice the weight expected to be imposed upon it. Anchorages used to attach personal fall arrest systems shall be independent of any anchorage being used to support or

suspend platforms and must be capable of supporting at least 5,000 pounds (22.2 kilonewtons) per person attached.

Lanyards and vertical lifelines must have a minimum breaking strength of 5,000 pounds (22.2 kilonewtons).

Positioning Device Systems

Image 92

These body belt or body harness systems are to be set up so that a worker can free fall no farther than 2 feet (0.6 meters). They shall be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall or 3,000 pounds (13.3 kilonewtons), whichever is greater. Requirements for snaphooks, dee-rings, and other connectors used with positioning device

systems must meet the same criteria as those for personal fall arrest systems.

Safety Monitoring Systems

When no other alternative fall protection has been implemented, the employer shall implement a safety monitoring system. Employers must appoint a competent person to monitor the safety of workers and the employer shall ensure that the safety monitor:

- Is competent in the recognition of fall hazards;
- Is capable of warning workers of fall hazard dangers and in detecting unsafe work practices;
- Is operating on the same walking/working surfaces of the workers and can see them;
- Is close enough to work operations to communicate orally with workers and has no other

duties to distract from the monitoring function.

Mechanical equipment shall not be used or stored in areas where safety monitoring systems are being used to monitor employees engaged in roofing operations on low-sloped roofs.

No worker, other than one engaged in roofing work (on low-sloped roofs) or one covered by a fall protection plan, shall be allowed in an area where an employee is being protected by a safety monitoring system.

All workers in a controlled access zone shall be instructed to promptly comply with fall hazard warnings issued by safety monitors.

Safety Net Systems

Safety nets must be installed as close as practicable under the walking/working surface on which employees are working and never more than 30 feet (9.1 meters) below such levels. Defective nets shall not be used. Safety nets shall be inspected at least once a week for wear, damage, and other deterioration. The maximum size of each safety net mesh opening shall not exceed 36 square inches

(230 square centimeters) nor be longer than 6 inches (15 centimeters) on any side, and the openings, measured center-to-center, of mesh ropes or webbing, shall not exceed 6 inches (15 centimeters). All mesh crossings shall be secured to prevent enlargement of the mesh opening. Each safety net or section shall have a border rope for webbing with a minimum breaking strength of

5,000 pounds (22.2 kilonewtons). Connections between safety net panels shall be as strong as integral net components and be spaced no more than 6 inches (15 centimeters) apart.

Safety nets shall be installed with sufficient clearance underneath to prevent contact with the surface or structure below.

When nets are used on bridges, the potential fall area from the walking/working surface to the net shall be unobstructed.

Safety nets must extend outward from the outermost projection of the work surface as follows:

Vertical distance from working level to horizontal plane of net.

Minimum required horizontal distance of outer edge of net from the edge of

the working surface.

Up to 5 feet (1.5 meters) 8 feet (2.4 meters)

Image 93

More than 5 feet (1.5 meters) up to 10 feet
(3 meters)
10 feet (3 meters)

More than 10 feet (3 meters) 13 feet (3.9 meters)

Safety nets shall be capable of absorbing an impact force of a drop test consisting of a 400-pound (180 kilogram) bag of sand 30 inches (76 centimeters) in diameter dropped from the highest walking/working surface at which workers are exposed, but not from less than 42 inches (1.1 meters) above that level.

Items that have fallen into safety nets including—but not restricted to, materials, scrap, equipment, and tools—must be removed as soon as possible and at least before the next work shift.

Warning Line Systems

Warning line systems consist of ropes, wires, or chains, and supporting stanchions and are set up as follows:

Flagged at not more than 6-foot (1.8 meters) intervals with high-visibility material;
Rigged and supported so that the lowest point (including sag) is no less than 34 inches (0.9

meters) from the walking/working surface and its highest point is no more than 39 inches (1 meter) from the walking/working surface.

Stanchions, after being rigged with warning lines, shall be capable of resisting, without tipping over, a force of at least 16 pounds (71 newtons) applied horizontally against the stanchion, 30 inches (0.8 meters) above the walking/working surface, perpendicular to the warning line and in the direction of the floor, roof, or platform edge;

The rope, wire, or chain shall have a minimum tensile strength of 500 pounds (2.22 kilonewtons) and after being attached to the stanchions, must support without breaking, the load applied to the stanchions as prescribed above.

Shall be attached to each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in the adjacent section before the stanchion tips over.

Warning lines shall be erected around all sides of roof work areas. When mechanical equipment is being used, the warning line shall be erected not less than 6 feet (1.8 meters) from the roof edge parallel to the direction of mechanical equipment operation, and not less than 10 feet (3 meters) from the roof edge perpendicular to the direction of mechanical equipment operation.

When mechanical equipment is not being used, the warning line must be erected not less than 6 feet (1.8 meters) from the roof edge.

Covers

Covers located in roadways and vehicular aisles must be able to support at least twice the maximum axle load of the largest vehicle to which the cover might be subjected. All other covers must be able to support at least twice the weight of employees, equipment, and materials that may be imposed on the cover at any one time. To prevent accidental displacement resulting from wind, equipment,

or workers' activities, all covers must be secured. All covers shall be color coded or bear the markings "HOLE" or "COVER."

PROTECTION FROM FALLING OBJECTS

When guardrail systems are used to prevent materials from falling from one level to another, any openings must be small enough to prevent passage of potential falling objects. No materials or

Image 94

equipment except masonry and mortar shall be stored within 4 feet (1.2 meters) of working edges. Excess mortar, broken or scattered masonry units, and all other materials and debris shall be kept clear of the working area by removal at regular intervals.

During roofing work, materials and equipment shall not be stored within 6 feet (1.8 meters) of a roof edge unless guardrails are erected at the edge, and materials piled, grouped, or stacked near a roof edge must be stable and self-supporting.

Canopies

When used as protection from falling objects canopies must be strong enough to prevent collapse and to prevent penetration by any objects that may fall onto them.

Toeboards

When toeboards are used as protection from falling objects, they must be erected along the edges of the overhead walking/working surface for a distance sufficient to protect persons working below. Toeboards shall be capable of withstanding a force of at least 50 pounds (222 newtons) applied in any downward or outward direction at any point along the toeboard. Toeboards shall be a minimum

of 3.5 inches (9 centimeters) tall from their top edge to the level of the walking/working surface, have no more than 0.25 inches (0.6 centimeters) clearance above the walking/working surface, and be solid or have openings no larger than 1 inch (2.5 centimeters) in size.

Where tools, equipment, or materials are piled higher than the top edge of a toeboard, panelling or screening must be erected from the walking/working surface or toeboard to the top of a guardrail system's top rail or midrail, for a distance sufficient to protect employees below.

TRAINING

Employers must provide a training program that teaches employees who might be exposed to fall hazards how to recognize such hazards and how to minimize them. Employees must be trained in the following areas: (a) the nature of fall hazards in the work area; (b) the correct procedures for erecting, maintaining, disassembling,

and inspecting fall protection systems; (c) the use and operation of controlled access zones and guardrail, personal fall arrest, safety net, warning line, and safety monitoring systems; (d) the role of each employee in the safety monitoring system when the system is in use; (e) the limitations on

the use of mechanical equipment during the performance of roofing work on low-sloped roofs; (f) the correct procedures for equipment and materials handling and storage and the erection of overhead protection; and, (g) employees' role in fall protection plans.

Employers must prepare a written certification that identifies the employee trained and the date of the training. The employer or trainer must sign the certification record. Retraining also must be provided when necessary.

GLOSSARY

Anchorage-A secure point of attachment for lifelines, lanyards or deceleration devices.

Body belt-A strap with means both for securing it about the waist and for attaching it to a lanyard, lifeline, or deceleration device.

Body harness -Straps that may be secured about the person in a manner that distributes the fall arrest forces over at least the thighs, pelvis, waist, chest, and shoulders with a means for attaching

the harness to other components of a personal fall arrest system.

Image 95

Connector-A device that is used to couple (connect) parts of a personal fall arrest system or positioning device system together.

Controlled access zone-A work area designated and clearly marked in which certain types of work (such as overhand bricklaying) may take place without the use of conventional fall protection systems—guardrail, personal arrest or safety net—to protect the employees working in the zone.

Deceleration device-Any mechanism—such as rope, grab, ripstitch lanyard, specially-woven lanyard, tearing or deforming lanyards, automatic self-retracting lifelines/lanyards—which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limits the energy imposed on an employee during fall arrest.

Deceleration distance-The additional vertical distance a falling person travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which a deceleration device begins to operate.

Guardrail system-A barrier erected to prevent employees from falling to lower levels.

Hole-A void or gap 2 inches (5.1 centimeters) or more in the least dimension in a floor, roof, or other walking/working surface.

Lanyard-A flexible line of rope, wire rope, or strap that generally has a connector at each end for connecting the body belt or body harness to a deceleration device, lifeline, or anchorage.

Leading edge-The edge of a floor, roof, or formwork for a floor or other walking/working surface (such as the deck) which changes location as additional floor, roof, decking, or formwork sections are placed, formed or constructed.

Lifeline-A component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline) and that serves as a means for connecting other components of a personal fall arrest system to the anchorage.

Low-slope roof-A roof having a slope less than or equal to 4 in 12 (vertical to horizontal).

Opening-A gap or void 30 inches (76 centimeters) or more high and 18 inches (46 centimeters) or more wide, in a wall or partition, through which employees can fall to a lower level.

Personal fall arrest system-A system including but not limited to an anchorage, connectors, and a body belt or body harness used to arrest an employee in a fall from a working level. As of January 1, 1998, the use of a body belt for fall arrest is prohibited.

Positioning device system-A body belt or body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free while leaning backwards.

Rope grab-A deceleration device that travels on a lifeline and automatically, by friction, engages the lifeline and locks to arrest a fall.

Safety-monitoring system-A safety system in which a competent person is responsible for recognizing and warning employees of fall hazards.

Self-retracting lifeline/lanyard-A deceleration device containing a drum-wound line which can be slowly extracted from, or retracted onto, the drum under minimal tension during normal employee movement and which, after onset of a fall, automatically locks the drum and arrests the

Image 96

fall.

Snaphook-A connector consisting of a hook-shaped member with a normally closed keeper, or similar arrangement, which may be opened to permit the hook to receive an object and, when released automatically closes to retain the object.

Steep roof-A roof having a slope greater than 4 in 12 (vertical to horizontal).

Toeboard-A low protective barrier that prevents material and equipment from falling to lower levels and which protects personnel from falling.

Unprotected sides and edges-Any side or edge (except at entrances to points of access) of a walking/working surface (e.g. floor, roof, ramp, or runway) where there is no wall or guardrail system at least 39 inches (1 meter) high.

Walking/working surface-Any surface, whether horizontal or vertical, on which an employee walks or works, including but not limited to floors, roofs, ramps, bridges, runways, formwork, and concrete reinforcing steel. Does not include ladders, vehicles, or trailers on which employees must be located to perform their work duties.

Warning line system-A barrier erected on a roof to warn employees that they are approaching an unprotected roof side or edge and which designates an area in which roofing work may take place without the use of guardrail, body belt, or safety net systems to protect employees in the area.
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Construction Fall Protection (29CFR 1926) Subparts L, M, R, X, & CC

- 1926 Subpart L - Scaffolds

1926.450 - Scope, application and definitions applicable to this subpart.

1926.451 - General requirements.

1926.452 - Additional requirements applicable to specific types of scaffolds.

1926.453 - Aerial lifts.

1926.454 - Training requirements.

1926 Subpart L App B - Criteria for Determining the Feasibility of Providing Safe Access and Fall Protection for Scaffold Erectors and Dismantlers

- 1926 Subpart M - Fall Protection

1926.500 - Scope, application, and definitions applicable to this subpart.

1926.501 - Duty to have fall protection.

1926.502 - Fall protection systems criteria and practices.

1926.503 - Training requirements.

- 1926 Subpart R - Steel Erection

1926.760 - Fall protection.

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- 1926 Subpart X - Ladders

1926.1060 - Training requirements.

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Ref 5 Subpart M Fall Protection Introduction

Fall Protection

Construction Safety and Health Outreach Program U.S. Department of Labor

OSHA Office of Training and
Education

INTRODUCTION

In the construction industry in the U.S., falls are the leading cause of worker fatalities. Each year, on average, between 150 and 200 workers are killed and more than 100,000 are injured as a result of falls at construction sites. OSHA recognizes that accidents involving falls are generally complex events frequently involving a variety of factors. Consequently the standard for fall protection deals with both the human and equipment-related issues in protecting workers from fall hazards. For example, employers and employees need to do the following:

- Where protection is required, select fall protection systems appropriate for given situations. ·
- Use proper construction and installation of safety systems. ·
- Supervise employees properly. ·
- Use safe work procedures. ·
- Train workers in the proper selection, use, and maintenance of all protection systems.

SCOPE AND APPLICATION

OSHA has revised its construction industry safety standards (29 Code of Federal Regulations, [Subpart M](#), Fall

Protection, 1926.500, 1926.501, 1926.502, and 1926.503) and developed systems and procedures designed to prevent employees from falling off, onto, or through working levels and to protect employees from being struck by falling objects (Federal Register, August 9, 1994, pp. 40672-40753). The performance-oriented requirements make it easier for employers to provide the necessary protection.

The rule covers most construction workers except those inspecting, investigating, or assessing workplace conditions prior to the actual start of work or after all work has been completed.

The rule identifies areas or activities where fall protection is needed. These include, but are not limited to, ramps, runways, and other walkways; excavations; hoist areas; holes; formwork and reinforcing steel; leading

edge work; unprotected sides and edges; overhand bricklaying and related work; roofing work; precast concrete erection; wall openings; residential construction; and other walking/working surfaces. The rule sets a

uniform threshold height of 6 feet (1.8 meters), thereby providing consistent protection. This means that construction employers must protect their employees from fall hazards and falling objects whenever an

affected employee is 6 feet (1.8 meters) or more above a lower level. Protection must also be provided for construction workers who are exposed to the hazard of falling into dangerous equipment.

Under the new standard, employers will be able to select fall protection measures compatible with the type of

work being performed. Fall protection generally can be provided through the use of guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, and warning line systems, among others.

The OSHA rule clarifies what an employer must do to provide fall protection for employees, such as identifying

and evaluating fall hazards and providing specific training. Requirements to provide fall protection for workers

on scaffolds and ladders and for workers engaged in steel erection of buildings are covered in other subparts of

OSHA regulations.

PROVISIONS OF THE STANDARD

Image 99

The new standard prescribes the duty to provide fall protection, sets the criteria and practices for fall protection systems, and requires training. It covers hazard assessment and fall protection and safety monitoring systems. Also addressed are controlled access zones, safety nets, and guardrail, personal fall arrest, warning line, and positioning device systems.

DUTY TO HAVE FALL PROTECTION

Employers are required to assess the workplace to determine if the walking/working surfaces on which employees are to work have the strength and structural integrity to safely support workers. Employees are not permitted to work on those surfaces until it has been determined that the surfaces have the requisite strength and structural integrity to support the workers. Once employers have determined that the surface is safe for employees to work on, the employer must select one of the options listed for the work operation if a fall hazard is present.

For example, if an employee is exposed to falling 6 feet (1.8 meters) or more from an unprotected side or edge, the employer must select either a guardrail system, safety net system, or personal fall arrest system to

protect the worker. Similar requirements are prescribed for other fall hazards as follows.

Controlled Access Zones

A Controlled access zone is a work area designated and clearly marked in which certain types of work (such as

overhand bricklaying) may take place without the use of conventional fall protection systems—guardrail, personal arrest or safety net—to protect the employees working in the zone.

Controlled access zones are used to keep out workers other than those authorized to enter work areas from which guardrails have been removed. Where there are no guardrails, masons are the only workers allowed in

controlled access zones.

Controlled access zones, when created to limit entrance to areas where leading edge work and other operations are taking place, must be defined by a control line or by any other means that restrict access. Control lines shall consist of ropes, wires, tapes or equivalent materials, and supporting stanchions, and each must be:

- Flagged or otherwise clearly marked at not more than 6-foot (1.8 meters) intervals with high-visibility material; ·
- Rigged and supported in such a way that the lowest point (including sag) is not less than 39 inches (1 meter) from the walking/working surface and the highest point is not more than 45 inches (1.3

meters)—nor more than 50 inches (1.3 meters) when overhand bricklaying operations are being performed—from the walking/working surface; ·

- Strong enough to sustain stress of not less than 200 pounds (0.88 kilonewtons). Control lines shall extend along the entire length of the unprotected or leading edge and shall be approximately parallel

to the unprotected or leading edge. ·

- Control lines also must be connected on each side to a guardrail system or wall.

When control lines are used, they shall be erected not less than 6 feet (1.8 meters) nor more than 25 feet (7.6

meters) from the unprotected or leading edge, except when precast concrete members are being erected.

In

the latter case, the control line is to be erected not less than 6 feet (1.8 meters) nor more than 60 feet (18 meters) or half the length of the member being erected, whichever is less, from the leading edge.

Controlled access zones when used to determine access to areas where **overhand bricklaying** and **related work** are taking place are to be defined by a control line erected not less than 10 feet (3 meters) nor more than 15 feet (4.6 meters) from the working edge. Additional control lines must be erected at each end to enclose the controlled access zone. Only employees engaged in overhand bricklaying or related work are permitted in the controlled access zones.

Image 100

On floors and roofs where guardrail systems are not in place prior to the beginning of overhand bricklaying operations, controlled access zones will be enlarged as necessary to enclose all points of access, material handling areas, and storage areas. On floors and roofs where guardrail systems are in place, but need to be

removed to allow overhand bricklaying work or leading edge work to take place, only that portion of the guardrail necessary to accomplish that day's work shall be removed.

Excavations

Each employee at the edge of an excavation 6 feet (1.8 meters) or more deep shall be protected from falling by guardrail systems, fences, barricades, or covers. Where walkways are provided to permit employees to cross over excavations, guardrails are required on the walkway if it is 6 feet (1.8 meters) or more above the excavation.

Formwork and Reinforcing Steel

For employees, while moving vertically and/or horizontally on the vertical face of rebar assemblies built in place, fall protection is not required when employees are moving. OSHA considers the multiple hand holds and

foot holds on rebar assemblies as providing similar protection as that provided by a fixed ladder; consequently,

no fall protection is necessary while moving point to point for heights below 24 feet (7.3 meters). An employee

must be provided with fall protection when climbing or otherwise moving at a height more than 24 feet (7.3 meters), the same as for fixed ladders.

Hoist Areas

Each employee in a hoist area shall be protected from falling 6 feet (1.8 meters) or more by guardrail systems or personal fall arrest systems. If guardrail systems (or chain gate or guardrail) or portions thereof must be removed to facilitate hoisting operations, as during the landing of materials, and a worker must lean through the access opening or out over the edge of the access opening to receive or guide equipment and materials, that employee must be protected by a personal fall arrest system.

Holes

Personal fall arrest systems, covers, or guardrail systems shall be erected around holes (including skylights) that are more than 6 feet (1.8 meters) above lower levels.

Leading Edges

Each employee who is constructing a leading edge 6 feet (1.8 meters) or more above lower levels shall be protected by guardrail systems, safety net systems, or personal fall arrest systems. If the employer can demonstrate that it is infeasible or creates a greater hazard to implement these systems, he or she must develop and implement a fall protection plan that meets the requirements of [29 CFR 1926.502\(k\)](#).

Overhand Bricklaying and Related Work

Each employee performing overhand bricklaying and related work 6 feet (1.8 meters) or more above lower levels shall be protected by guardrail systems, safety net systems, or personal fall arrest systems, or shall work in a controlled access zone. All employees reaching more than 10 inches (25 cm) below the level of a walking/working surface on which they are working shall be protected by a guardrail system, safety net system, or personal fall arrest system.

Precast Concrete Erection and Residential Construction

Each employee who is 6 feet (1.8 meters) or more above lower levels while erecting precast concrete members and related operations such as grouting of precast concrete members and each employee engaged in residential construction, shall be protected by guardrail systems, safety net systems, or personal fall arrest systems. Where the employer can demonstrate, however, that it is infeasible or creates a greater hazard to use

Image 101

those systems, the employer must develop and implement a fall protection plan that meets the requirements of [29 CFR 1926.502\(k\)](#).

Ramps, Runways, and Other Walkways

Each employee using ramps, runways, and other walkways shall be protected from falling 6 feet (1.8 meters) or more by guardrail systems.

Roofing

Low-slope Roofs

Each employee engaged in roofing activities on low-slope roofs with unprotected sides and edges 6 feet (1.8 meters) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems or a combination of a warning line system and guardrail system, warning line system and safety net system, warning line system and personal fall arrest system, or warning line system and safety monitoring system. On roofs 50 feet (15.24 meters) or less in width, the use of a safety monitoring system without a warning line system is permitted.

Steep Roofs

Each employee on a steep roof with unprotected sides and edges 6 feet (1.8 meters) or more above lower levels shall be protected by guardrail systems with toeboards, safety net systems, or personal fall arrest systems.

Wall Openings

Each employee working on, at, above, or near wall openings (including those with chutes attached) where the outside bottom edge of the wall opening is 6 feet (1.8 meters) or more above lower levels and the inside bottom edge of the wall opening is less than 39 inches (1.0 meter) above the walking/working surface must be protected from falling by the use of a guardrail system, a safety net system, or a personal fall arrest system.

FALL PROTECTION SYSTEMS CRITERIA AND PRACTICES

Guardrail Systems

If the employer chooses to use guardrail systems to protect workers from falls, the systems must meet the following criteria. Toprails and midrails of guardrail systems must be at least one-quarter inch (0.6 centimeters) nominal diameter or thickness to prevent cuts and lacerations. If wire rope is used for toprails, it must be flagged at not more than 6 feet intervals (1.8 meters) with high-visibility material. Steel and plastic banding cannot

be used as toprails or midrails. Manila, plastic, or synthetic rope used for toprails or midrails must be inspected

as frequently as necessary to ensure strength and stability.

The top edge height of toprails, or (equivalent) guardrails must be 42 inches (1.1 meters) plus or minus 3 inches (8 centimeters), above the walking/working level. When workers are using stilts, the top edge height of

the top rail, or equivalent member, must be increased an amount equal to the height of the stilts.

Screens, midrails, mesh, intermediate vertical members, or equivalent intermediate structural members must

be installed between the top edge of the guardrail system and the walking/working surface when there are no

walls or parapet walls at least 21 inches (53 centimeters) high. When midrails are used, they must be installed

at a height midway between the top edge of the guardrail system and the walking/working level. When

screens and mesh are used, they must extend from the top rail to the walking/working level and along the entire opening between top rail supports. Intermediate members, such as balusters, when used between posts, shall not be more than 19 inches (48 centimeters) apart.

Image 102

Other structural members, such as additional midrails and architectural panels, shall be installed so that there are no openings in the guardrail system more than 19 inches (48 centimeters).

The guardrail system must be capable of withstanding a force of at least 200 pounds (890 newtons) applied within 2 inches of the top edge in any outward or downward direction. When the 200 pound (890 newtons) test is applied in a downward direction, the top edge of the guardrail must not deflect to a height less than 39 inches (1 meter) above the walking/working level.

Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members shall

be capable of withstanding a force of at least 150 pounds (667 newtons) applied in any downward or outward direction at any point along the midrail or other member.

Guardrail systems shall be surfaced to protect workers from punctures or lacerations and to prevent clothing from snagging.

The ends of top rails and midrails must not overhang terminal posts, except where such overhang does not constitute a projection hazard.

When guardrail systems are used at hoisting areas, a chain, gate, or removable guardrail section must be placed across the access opening between guardrail sections when hoisting operations are not taking place.

At holes, guardrail systems must be set up on all unprotected sides or edges. When holes are used for the passage of materials, the hole shall have not more than two sides with removable guardrail sections. When the

hole is not in use, it must be covered or provided with guardrails along all unprotected sides or edges.

If guardrail systems are used around holes that are used as access points (such as ladderways), gates must be used or the point of access must be offset to prevent accidental walking into the hole.

If guardrails are used at unprotected sides or edges of ramps and runways, they must be erected on each unprotected side or edge.

Personal Fall Arrest Systems

These consist of an anchorage, connectors, and a body belt or body harness and may include a deceleration device, lifeline, or suitable combinations. If a personal fall arrest system is used for fall protection, it must do the following:

- Limit maximum arresting force on an employee to 900 pounds (4 kilonewtons) when used with a body belt; ·
- Limit maximum arresting force on an employee to 1,800 pounds (8 kilonewtons) when used with a body harness; ·
- Be rigged so that an employee can neither free fall more than 6 feet (1.8 meters) nor contact any lower level; ·
- Bring an employee to a complete stop and limit maximum deceleration distance an employee travels to 3.5 feet (1.07 meters); and ·
- Have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of 6 feet (1.8 meters) or the free fall distance permitted by the system, whichever is less.

As of January 1, 1998, the use of a body belt for fall arrest is prohibited.

Personal fall arrest systems must be inspected prior to each use for wear damage, and other deterioration. Defective components must be removed from service. Dee-rings and snaphooks must have a minimum tensile strength of 5,000 pounds (22.2 kilonewtons). Dee-rings and snaphooks shall be proof-tested to a minimum tensile load of 3,600 pounds (16 kilonewtons) without cracking, breaking, or suffering permanent deformation.

Snaphooks shall be sized to be compatible with the member to which they will be connected, or shall be of a

Image 103

locking configuration.

Unless the snaphook is a locking type and designed for the following connections, they shall not be engaged

- (a) directly to webbing, rope or wire rope;
- (b) to each other;
- (c) to a dee-ring to which another snaphook or other connector is attached;
- (d) to a horizontal lifeline; or
- (e) to any object incompatible in shape or dimension relative to the snaphook, thereby causing the connected object to depress the snaphook keeper and release unintentionally.

OSHA considers a hook to be compatible when the diameter of the dee-ring to which the snaphook is attached is greater than the inside length of the snaphook when measured from the bottom (hinged end) of the snaphook keeper to the inside curve of the top of the snaphook. Thus, no matter how the dee-ring is positioned or moved (rolls) with the snaphook attached, the dee-ring cannot touch the outside of the keeper,

thus depressing it open. As of January 1, 1998, the use of nonlocking snaphooks is prohibited.

On suspended scaffolds or similar work platforms with horizontal lifelines that may become vertical lifelines, the devices used to connect to a horizontal lifeline shall be capable of locking in both directions on the lifeline.

Horizontal lifelines shall be designed, installed, and used under the supervision of a qualified person, as part of a complete personal fall arrest system that maintains a safety factor of at least two. Lifelines shall be protected against being cut or abraded.

Self-retracting lifelines and lanyards that automatically limit free fall distance to 2 feet (0.61 meters) or less shall be capable of sustaining a minimum tensile load of 3,000 pounds (13.3 kilonewtons) applied to the device with the lifeline or lanyard in the fully extended position.

Self-retracting lifelines and lanyards that do not limit free fall distance to 2 feet (0.61 meters) or less, lanyards, and tearing and deforming lanyards shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kilonewtons) applied to the device with the lifeline or lanyard in the fully extended position.

Ropes and straps (webbing) used in lanyards, lifelines, and strength components of body belts and body harnesses shall be made of synthetic fibers.

Anchorage shall be designed, installed, and used under the supervision of a qualified person, as part of a complete personal fall arrest system that maintains a safety factor of at least two, i.e., capable of supporting at

least twice the weight expected to be imposed upon it. Anchorages used to attach personal fall arrest systems shall be independent of any anchorage being used to support or suspend platforms and must be capable of supporting at least 5,000 pounds (22.2 kilonewtons) per person attached.

Lanyards and vertical lifelines must have a minimum breaking strength of 5,000 pounds (22.2 kilonewtons).

Positioning Device Systems

These body belt or body harness systems are to be set up so that a worker can free fall no farther than 2 feet (0.6 meters). They shall be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall or 3,000 pounds (13.3 kilonewtons), whichever is greater. Requirements for snaphooks, dee-rings, and other connectors used with positioning device systems must meet the same criteria

as those for personal fall arrest systems.

Safety Monitoring Systems

When no other alternative fall protection has been implemented, the employer shall implement a safety monitoring system. Employers must appoint a competent person to monitor the safety of workers and the employer shall ensure that the safety monitor:

- Is competent in the recognition of fall hazards; ·
- Is capable of warning workers of fall hazard dangers and in detecting unsafe work practices;

Image 104

- Is operating on the same walking/working surfaces of the workers and can see them; ·
- Is close enough to work operations to communicate orally with workers and has no other duties to distract from the monitoring function.

Mechanical equipment shall not be used or stored in areas where safety monitoring systems are being used to monitor employees engaged in roofing operations on low-sloped roofs.

No worker, other than one engaged in roofing work (on low-sloped roofs) or one covered by a fall protection

plan, shall be allowed in an area where an employee is being protected by a safety monitoring system.

All workers in a controlled access zone shall be instructed to promptly comply with fall hazard warnings issued by safety monitors.

Safety Net Systems

Safety nets must be installed as close as practicable under the walking/working surface on which employees are working and never more than 30 feet (9.1 meters) below such levels. Defective nets shall not be used. Safety nets shall be inspected at least once a week for wear, damage, and other deterioration. The

maximum

size of each safety net mesh opening shall not exceed 36 square inches (230 square centimeters) nor be longer than 6 inches (15 centimeters) on any side, and the openings, measured center-to-center, of mesh ropes or webbing, shall not exceed 6 inches (15 centimeters). All mesh crossings shall be secured to prevent

enlargement of the mesh opening. Each safety net or section shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds (22.2 kilonewtons). Connections between safety net panels shall

be as strong as integral net components and be spaced no more than 6 inches (15 centimeters) apart.

Safety nets shall be installed with sufficient clearance underneath to prevent contact with the surface or structure below.

When nets are used on bridges, the potential fall area from the walking/working surface to the net shall be unobstructed.

Safety nets must extend outward from the outermost projection of the work surface as follows:

Vertical distance from working level to horizontal plane of net.
Minimum required horizontal distance of outer edge of net from the edge of the working surface.

Up to 5 feet (1.5 meters) 8 feet (2.4 meters)

More than 5 feet (1.5 meters) up to 10 feet (3 meters)
10 feet (3 meters)

More than 10 feet (3 meters) 13 feet (3.9 meters)

Safety nets shall be capable of absorbing an impact force of a drop test consisting of a 400-pound (180 kilogram) bag of sand 30 inches (76 centimeters) in diameter dropped from the highest walking/working surface at which workers are exposed, but not from less than 42 inches (1.1 meters) above that level.

Items that have fallen into safety nets including—but not restricted to, materials, scrap, equipment, and tools—

must be removed as soon as possible and at least before the next work shift.

Warning Line Systems

Warning line systems consist of ropes, wires, or chains, and supporting stanchions and are set up as follows:

Image 105

- Flagged at not more than 6-foot (1.8 meters) intervals with high-visibility material; ·
- Rigged and supported so that the lowest point (including sag) is no less than 34 inches (0.9 meters) from the walking/working surface and its highest point is no more than 39 inches (1 meter) from the walking/working surface.

- Stanchions, after being rigged with warning lines, shall be capable of resisting, without tipping over, a force of at least 16 pounds (71 newtons) applied horizontally against the stanchion, 30 inches (0.8 meters) above the walking/working surface, perpendicular to the warning line and in the direction of the floor, roof, or platform edge;

- The rope, wire, or chain shall have a minimum tensile strength of 500 pounds (2.22 kilonewtons) and after being attached to the stanchions, must support without breaking, the load applied to the stanchions as prescribed above.

- Shall be attached to each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in the adjacent section before the stanchion tips over.

Warning lines shall be erected around all sides of roof work areas. When mechanical equipment is being used, the warning line shall be erected not less than 6 feet (1.8 meters) from the roof edge parallel to the direction of mechanical equipment operation, and not less than 10 feet (3 meters) from the roof edge perpendicular to the direction of mechanical equipment operation.

When mechanical equipment is not being used, the warning line must be erected not less than 6 feet (1.8 meters) from the roof edge.

Covers

Covers located in roadways and vehicular aisles must be able to support at least twice the maximum axle load of the largest vehicle to which the cover might be subjected. All other covers must be able to support at least twice the weight of employees, equipment, and materials that may be imposed on the cover at any one time.

To prevent accidental displacement resulting from wind, equipment, or workers' activities, all covers must be

secured. All covers shall be color coded or bear the markings "HOLE" or "COVER."

PROTECTION FROM FALLING OBJECTS

When guardrail systems are used to prevent materials from falling from one level to another, any openings must be small enough to prevent passage of potential falling objects. No materials or equipment except masonry and mortar shall be stored within 4 feet (1.2 meters) of working edges. Excess mortar, broken or scattered masonry units, and all other materials and debris shall be kept clear of the working area by removal

at regular intervals.

During roofing work, materials and equipment shall not be stored within 6 feet (1.8 meters) of a roof edge unless guardrails are erected at the edge, and materials piled, grouped, or stacked near a roof edge must be stable and self-supporting.

Canopies

When used as protection from falling objects canopies must be strong enough to prevent collapse and to prevent penetration by any objects that may fall onto them.

Toeboards

When toeboards are used as protection from falling objects, they must be erected along the edges of the overhead walking/working surface for a distance sufficient to protect persons working below. Toeboards shall be capable of withstanding a force of at least 50 pounds (222 newtons) applied in any downward or outward

direction at any point along the toeboard. Toeboards shall be a minimum of 3.5 inches (9 centimeters) tall from their top edge to the level of the walking/working surface, have no more than 0.25 inches (0.6

Image 106

centimeters) clearance above the walking/working surface, and be solid or have openings no larger than 1 inch (2.5 centimeters) in size.

Where tools, equipment, or materials are piled higher than the top edge of a toeboard, panelling or screening

must be erected from the walking/working surface or toeboard to the top of a guardrail system's top rail or midrail, for a distance sufficient to protect employees below.

TRAINING

Employers must provide a training program that teaches employees who might be exposed to fall hazards how to recognize such hazards and how to minimize them. Employees must be trained in the following areas: (a)

the nature of fall hazards in the work area; (b) the correct procedures for erecting, maintaining, disassembling,

and inspecting fall protection systems; (c) the use and operation of controlled access zones and guardrail, personal fall arrest, safety net, warning line, and safety monitoring systems; (d) the role of each employee in

the safety monitoring system when the system is in use; (e) the limitations on the use of mechanical equipment during the performance of roofing work on low-sloped roofs; (f) the correct procedures for

equipment and materials handling and storage and the erection of overhead protection; and, (g) employees'

role in fall protection plans.

Employers must prepare a written certification that identifies the employee trained and the date of the training.

The employer or trainer must sign the certification record. Retraining also must be provided when necessary.

GLOSSARY

Anchorage-A secure point of attachment for lifelines, lanyards or deceleration devices.

Body belt-A strap with means both for securing it about the waist and for attaching it to a lanyard, lifeline, or deceleration device.

Body harness -Straps that may be secured about the person in a manner that distributes the fall-arrest forces

over at least the thighs, pelvis, waist, chest, and shoulders with a means for attaching the harness to other components of a personal fall arrest system.

Connector-A device that is used to couple (connect) parts of a personal fall arrest system or positioning device system together.

Controlled access zone-A work area designated and clearly marked in which certain types of work (such as overhand bricklaying) may take place without the use of conventional fall protection systems—guardrail, personal arrest or safety net—to protect the employees working in the zone.

Deceleration device-Any mechanism-such as rope, grab, ripstitch lanyard, specially-woven lanyard, tearing

or deforming lanyards, automatic self-retracting lifelines/lanyards-which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limits the energy imposed on an employee during fall arrest.

Deceleration distance-The additional vertical distance a falling person travels, excluding lifeline elongation

and free fall distance, before stopping, from the point at which a deceleration device begins to operate.

Guardrail system-A barrier erected to prevent employees from falling to lower levels.

Hole-A void or gap 2 inches (5.1 centimeters) or more in the least dimension in a floor, roof, or other walking/working surface.

Lanyard-A flexible line of rope, wire rope, or strap that generally has a connector at each end for connecting

Image 107

the body belt or body harness to a deceleration device, lifeline, or anchorage.

Leading edge-The edge of a floor, roof, or formwork for a floor or other walking/working surface (such as the deck) which changes location as additional floor, roof, decking, or formwork sections are placed, formed or constructed.

Lifeline-A component consisting of a flexible line for connection to an anchorage at one end to hang vertically

(vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline) and that serves as a means for connecting other components of a personal fall arrest system to the anchorage.

Low-slope roof-A roof having a slope less than or equal to 4 in 12 (vertical to horizontal).

Opening-A gap or void 30 inches (76 centimeters) or more high and 18 inches (46 centimeters) or more wide, in a wall or partition, through which employees can fall to a lower level.

Personal fall arrest system-A system including but not limited to an anchorage, connectors, and a body belt or body harness used to arrest an employee in a fall from a working level. As of January 1, 1998, the use of a body belt for fall arrest is prohibited.

Positioning device system-A body belt or body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free while leaning backwards.

Rope grab-A deceleration device that travels on a lifeline and automatically, by friction, engages the lifeline and locks to arrest a fall.

Safety-monitoring system-A safety system in which a competent person is responsible for recognizing and warning employees of fall hazards.

Self-retracting lifeline/lanyard-A deceleration device containing a drum-wound line which can be slowly extracted from, or retracted onto, the drum under minimal tension during normal employee movement and which, after onset of a fall, automatically locks the drum and arrests the fall.

Snaphook-A connector consisting of a hook-shaped member with a normally closed keeper, or similar arrangement, which may be opened to permit the hook to receive an object and, when released automatically closes to retain the object.

Steep roof-A roof having a slope greater than 4 in 12 (vertical to horizontal).

Toeboard-A low protective barrier that prevents material and equipment from falling to lower levels and which protects personnel from falling.

Unprotected sides and edges-Any side or edge (except at entrances to points of access) of a walking/working surface (e.g. floor, roof, ramp, or runway) where there is no wall or guardrail system at least 39 inches (1 meter) high.

Walking/working surface-Any surface, whether horizontal or vertical, on which an employee walks or works, including but not limited to floors, roofs, ramps, bridges, runways, formwork, and concrete reinforcing steel. Does not include ladders, vehicles, or trailers on which employees must be located to perform their work duties.

Warning line system-A barrier erected on a roof to warn employees that they are approaching an unprotected roof side or edge and which designates an area in which roofing work may take place without the use of guardrail, body belt, or safety net systems to protect employees in the area.

Image 108

Ref 6 Fall Construction Standards and Resources

Construction Standards and Resources

In 2010, the Bureau of Labor Statistics (BLS) reported that 751 construction workers died on the job, with 35 percent of those fatalities resulting from falls. [More...]

Standards

Fall protection is addressed in OSHA's standards for the construction industry. This section highlights some of the OSHA standards, Federal Registers (rules, proposed rules, and notices) preambles to final rules (background to final

rules), directives (instructions for compliance officers), standard interpretations (official letters of interpretation of the standards), example cases, and national consensus standards related to fall protection. Twentyfive states, Puerto Rico and the Virgin Islands have [OSHA-approved State Plans](#), which are required to be at least as effective as Federal OSHA, and may have adopted their own standards and enforcement policies. For the most part, these States adopt standards that are identical to Federal OSHA. However, some States have adopted different standards applicable to this topic or may have different enforcement policies. Other federal standards and consensus standards related to fall protection hazards are included for reference.

OSHA Standards

Construction Industry ([29 CFR 1926](#))

- [1926.451](#), General requirements (Scaffolding) [[related topic page](#)]
 - [1926.452](#), Additional requirements applicable to specific types of scaffolds
 - [1926.454](#), Training requirements (Scaffolding)
 - [1926.501](#), Duty to have fall protection
 - [1926.502](#), Fall protection systems criteria and practices
 - [1926.503](#), Training requirements (Fall protection)
 - [1926.760](#), Steel erection (Fall protection)
 - [1926.800](#), Underground construction
-

Image 109

- [1926.1051](#), General requirements (Stairways and ladders)
- [1926.1052](#), Stairways
- [1926.1053](#), Ladders
- [1926.1060](#), Training requirements (Stairways and ladders)
- [1926.1423](#), Cranes and derricks in construction (Fall protection)

Most Frequently Cited Standards

- [1926.501\(b\)\(13\)](#)
 - [1926.501\(b\)\(1\)](#)
 - [1926.501\(a\)\(1\)](#)
 - [1926.501\(b\)\(10\)](#)
 - [1926.501\(b\)\(11\)](#)
 - [1926.501\(b\)\(4\)\(i\)](#)
-

Image 110

Ref 7 Fall from ladders OSHA3625

Falling Off Ladders Can Kill: Use Them Safely

**Las caídas desde
escaleras pueden
ser mortales:
Úselas de forma
segura**

Falls from ladders, scaffolds and roofs can be prevented

Las caídas desde escaleras, andamios y techos pueden prevenirse

OSHA 3625-03 2013

www.osha.gov/stopfalls
www.osha.gov/stopfalls/spanish

Image 111

Disclaimer

This material is advisory in nature and informational in content. It is not a standard or regulation, and it neither creates new legal obligations nor alters existing obligations created by OSHA standards or the Occupational Safety and Health (OSH) Act. Pursuant to the OSH Act, employers must comply with safety and health standards and regulations issued and enforced either by OSHA or by an OSHA-approved state plan. In addition, the Act's general duty clause, section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

Descargo de responsabilidad

Este material es de carácter consultivo con contenido informativo. No es una norma o una regla y no crea ninguna obligación jurídica nueva ni modifica obligaciones existentes creadas por las normas de la OSHA o por la Ley de Seguridad y Salud Ocupaciones (OSH Act). De acuerdo con la Ley de Salud y Seguridad Ocupacionales, los empleadores deben cumplir las normas y reglas en materia de salud y seguridad promulgadas por la OSHA o por un estado que tiene un plan estatal aprobado por la OSHA. Además,

de conformidad con la Cláusula de Deberes Generales de dicha ley, artículo 5, párrafo a,

inciso 1, los empleadores deben proporcionar a los empleados un lugar de trabajo donde no haya peligros reconocidos que puedan causar la muerte o daños físicos graves.

Image 112

FALLING OFF LADDERS CAN KILL: **USE THEM SAFELY** 1

Introduction

Falls are the leading cause of death in construction and every year, falls from ladders make up nearly a third of those deaths. These deaths are preventable. Falls from ladders can be prevented and lives can be saved by following the safe work practices described in this booklet.

For more information about how to prevent fatal falls, visit: www.osha.gov/stopfalls.

For more information about OSHA's standard for ladders in construction, see 29 CFR 1926.1053.

Introducción

Las caídas son la causa principal de la muerte en la construcción y cada año, las caídas desde escaleras representan casi un tercio de esas muertes. Estas muertes pueden evitarse. Las caídas desde escaleras pueden evitarse y vidas pueden salvarse siguiendo las prácticas laborales seguras descritas en este folleto.

Para obtener más información

sobre cómo prevenir caídas mortales, visite www.osha.gov/stopfalls/spanish.

Para obtener más información sobre la norma de la OSHA sobre escaleras de mano en la construcción, véase 29 CFR 1926.1053.

Image 113

2 LAS CAÍDAS DESDE ESCALERAS PUEDEN SER MORTALES: ÚSELAS DE FORMA SEGURA

This booklet was adapted from *Falling off Ladders Can Kill: Use Them Safely*, developed by the Singapore Workplace Safety and Health Council in collaboration with the Ministry of Manpower. OSHA thanks both the Council and the Ministry for granting permission to use this information to educate employers and workers about how to use ladders safely to prevent fatal falls in construction.

Este folleto es una adaptación de *Las caídas desde escaleras pueden ser mortales: Úselas de forma segura (Falling off Ladders Can Kill: Use Them Safely)*, una publicación escrita en inglés) desarrollado por el Consejo de Seguridad del Lugar de Trabajo de Singapur en colaboración con el Ministerio de Mano de Obra. La OSHA agradece al Consejo y también al Ministerio por otorgar permiso para usar esta información para educar a empleadores y trabajadores sobre cómo usar las escaleras de manera segura y cómo prevenir caídas mortales en la construcción.

Image 114

FALLING OFF LADDERS CAN KILL: **USE THEM SAFELY** 3

When Should You Use a Ladder?

When you want to reach a higher work area, think about the best equipment to use. While a ladder or stepladder is commonly used, it may not always be the best option. Ask yourself these questions before deciding on a ladder:

- Will I have to hold heavy items while on the ladder?
- Is the elevated area high enough that it would require

a long ladder that can be unstable?

- Will I be working from this height for a long time?
- Do I have to stand on the ladder sideways in order to do

this work?

If your answer is yes to one of the above questions, consider using something other than a ladder. If possible, bring in other equipment like a scissor lift. If you have to use a ladder, use one that has a working platform with hand rail barricades on the sides (e.g., a platform step ladder).

Whenever you use a ladder or a stepladder, take note of the safety advice in this guide.

¿Cuándo se debe utilizar una escalera?

Cuando quiere llegar a un área de trabajo más alta, piense en el mejor equipo para usar. Mientras que una escalera o una escalera de tijera se usa

en general, no siempre puede ser la mejor opción. Hágase las siguientes preguntas antes de decidir sobre una escalera:

- ¿Tendré que agarrar cosas pesadas mientras estoy en la escalera?
- ¿Es el área elevada lo suficientemente alta que se requeriría una escalera alta que pueda ser inestable?
- ¿Estaré trabajando desde esta altura por mucho tiempo?
- ¿Tengo que estar parado de costado en la escalera para

hacer este trabajo?

Si su respuesta es afirmativa a una de las preguntas anteriores, considere el uso de algo distinto de una escalera. Si es posible, traiga otro equipo como un elevador de tijera. Si tiene que usar una escalera, use una con una plataforma adecuada que tiene pasamanos (por ejemplo, una escalera de plataforma).

Cada vez que usa una escalera o escalera de tijera, tome en cuenta los consejos de seguridad en esta guía.

Image 115

4 LAS CAÍDAS DESDE ESCALERAS PUEDEN SER MORTALES: ÚSELAS DE FORMA SEGURA

Use the right ladder for the job. For example, ensure the ladder is high enough for you to reach your work area without having to stand on the top rung.

Use la escalera correcta para el trabajo. Por ejemplo, asegúrese de que la escalera sea lo suficientemente alta para que pueda llegar al área de trabajo sin tener que estar parado en el peldaño superior.

When using ladders to access another level, secure and extend the ladder at

least 3 feet above the landing point to provide a safe handhold.

Cuando use escaleras para acceder a otro nivel, asegure y extienda la escalera a por lo menos 3 pies (1 metro) sobre el descanso para dar un agarre seguro.

Image 116

FALLING OFF LADDERS CAN KILL: **USE THEM SAFELY 5**

The base of the ladder should be secured.

La base de la escalera debe estar asegurada.

Wear proper footwear (e.g., non-slip flat shoes).

Use un calzado apropiado (por ejemplo, zapatos antideslizantes sin tacón).

Place the ladder on stable and level ground. DO NOT place it on an uneven surface.

Coloque la escalera sobre una superficie estable y nivelada. NO la coloque sobre una superficie desnivelada.

Ensure that the ladder is fully extended before starting work.

Asegúrese de que la escalera esté completamente extendida antes de empezar el trabajo.

Image 117

6 LAS CAÍDAS DESDE ESCALERAS PUEDEN SER MORTALES: **ÚSELAS DE FORMA SEGURA**

Prevent passersby from walking under or near ladders in use by using barriers (e.g., cones) or getting your coworker to act as a lookout.

Prevenga que transeúntes caminen debajo de o cerca de escaleras con el uso de barreras (por ejemplo, conos) o llamando a un compañero de trabajo para vigilar.

Do not work on the top rung of the ladder.

No trabaje en el peldaño superior de la escalera.

Maintain three points of contact with the ladder at all times.

Mantega tres puntos de contacto con la escalera en todo momento.

Image 118

FALLING OFF LADDERS CAN KILL: **USE THEM SAFELY 7**

Do not carry any tools or materials in your hands when climbing a ladder.

No lleve en la mano herramientas o materiales al subir la escalera.

Do not lean away from the ladder to carry out your task. Always keep your weight centered between the side rails.

No se incline lejos de la escalera para hacer su trabajo. Siempre mantenga su peso centrado entre las barandas laterales.

Do not use ladders near doorways. If you need to use a ladder near a doorway, make sure that the door is locked.

No use escaleras cerca de puertas. Si

necesita usar una escalera cerca de una, asegúrese de que la puerta esté cerrada con llave.

Image 119

8 LAS CAÍDAS DESDE ESCALERAS PUEDEN SER MORTALES: **ÚSELAS DE FORMA SEGURA**

Check, Maintain and Store Ladders Well

Before using a ladder, **check** it carefully to ensure there are no visible defects and that it is in good working condition. Check the ladder according to the manufacturer's instructions.

Maintain and **store** the ladder according to the manufacturer's instructions.

Revise, mantenga y almacene las escaleras bien

Antes de usar una escalera, **exámínela** cuidadosamente para asegurarse de que no haya defectos visibles y que esté en buenas condiciones. Revise la escalera de acuerdo a las instrucciones del fabricante.

Mantenga y almacene la escalera de acuerdo a las instrucciones del fabricante.

Do not use faulty ladders such as these:

No use escaleras defectuosas como estas:

Do not use the ladder if it is bent.

No use la escalera si está doblada.

Image 120

FALLING OFF LADDERS CAN KILL: **USE THEM SAFELY** 9

Do not use the ladder if it is missing a step.

No use la escalera si le falta un peldaño.

Do not use the ladder if the spreader bars do not have a locking device or mechanism.

No use la escalera si las barras de tensión no tienen un dispositivo de bloqueo o mecanismo.

Image 121

10 LAS CAÍDAS DESDE ESCALERAS PUEDEN SER MORTALES: **ÚSELAS DE FORMA SEGURA**

OSHA Assistance, Services and Programs

OSHA offers free compliance assistance to employers and workers. Several OSHA programs and services can help employers identify and correct job hazards, as well as improve their injury and illness prevention program.

Free On-site Safety and Health Consultation Services for Small Business

OSHA's On-site Consultation Program offers free and confidential advice to small and medium-sized businesses in all states across the country, with priority given to highhazard worksites. On-site consultation services are separate from enforcement and do not result in penalties or citations. Consultants from state agencies or universities work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing safety and health management programs. For more information, to find the local On-site Consultation office

in your state, or to request a brochure on Consultation Services, visit www.osha.gov/consultation, or call 1-800-321OSHA [6742].

Asistencia, servicios y programas de la OSHA

La OSHA ofrece asistencia gratuita con el cumplimiento de la normativa para empleadores y trabajadores. Varios programas y servicios de la OSHA pueden ayudar a empleadores a identificar y corregir peligros en el trabajo y también mejorar su programa de prevención contra lesiones y enfermedades.

Servicios gratuitos de consultas in situ sobre la seguridad y salud para pequeños negocios

El Programa de Consultas in situ de la OSHA ofrece asesoramiento gratuito y confidencial a empresas pequeñas y medianas en todos los estados del país y asigna prioridad a los lugares de trabajo con un elevado índice de peligros. Los servicios de consultas in situ son diferentes de la labor de aplicación de la normativa y no resultan en multas ni citaciones. Consultores de organismos estatales o universidades trabajan con los empleadores para detectar peligros en el lugar de trabajo, ofrecer asesoramiento sobre el cumplimiento de las normas de la OSHA y ayudar a establecer programas de gestión de la seguridad y la salud. Para obtener más información, encontrar la oficina de consultas local de su estado o pedir un folleto sobre estos servicios,

Image 122

FALLING OFF LADDERS CAN KILL: **USE THEM SAFELY** 11

*Compliance Assistance
Specialists:*

OSHA has compliance assistance specialists throughout the nation located in most OSHA offices. Compliance assistance specialists can provide information to employers and workers about OSHA standards, short educational programs on specific hazards or OSHA rights and responsibilities, and information on additional compliance assistance resources. For more details, visit www.osha.gov/dcsp/compliance_assistance/cas.html or call 1-800-321-OSHA [6742] to contact your local OSHA office.

visite: www.osha.gov/consultation
(en inglés) o llame al 1-800-321-OSHA [6742].

*Especialistas en la asistencia para el
cumplimiento de la normativa:*

La OSHA tiene especialistas en la asistencia para el cumplimiento en todo el país en la mayoría de las oficinas de la OSHA. Los especialistas en la asistencia pueden ofrecer información y asistencia a empleadores y trabajadores sobre las normas de la OSHA, programas educativos cortos sobre los peligros específicos o derechos y responsabilidades de la OSHA e información sobre recursos adicionales de asistencia para el cumplimiento. Para obtener más información, visite www.osha.gov/dcsp/compliance_assistance/cas.html (en inglés) o llame al 1-800-321-OSHA [6742] para comunicarse con la oficina de la OSHA más cercana.

Image 123

12 LAS CAÍDAS DESDE ESCALERAS PUEDEN SER MORTALES: ÚSELAS DE FORMA SEGURA**How to Contact OSHA**

For questions or to get information or advice, to report an emergency, report a fatality or catastrophe, order publications, sign up for OSHA's e-newsletter, or to file a confidential complaint, contact your nearest OSHA office, visit www.osha.gov or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627.

Cómo comunicarse con la OSHA

Si tiene preguntas o desea obtener más información o recibir asesoramiento, notificar respecto a una emergencia o catástrofe, pedir publicaciones, subscribirse para el boletín electrónico de la OSHA, o para presentar una queja confidencial, comuníquese con la oficina de la OSHA más cercana, visite www.osha.gov (www.osha.gov/espanol) o llame al 1-800-321-OSHA (6742), (TTY) 1-877-889-5627.

Image 124

**For assistance, contact us.
We are OSHA. We can help.**

**Si necesita ayuda, contáctenos.
Somos la OSHA. Podemos ayudarlo.**

Image 125

PLAN.

PLANIFIQUE.

PROVIDE.

PROPORCIONE.

TRAIN.

ADIESTRÉ.

Three simple steps to preventing falls.

Tres pasos sencillos para prevenir caídas.

For more information:

Para más información:

**Occupational Safety
and Health Administration**

**Administración de Seguridad
y Salud Ocupacional**

U.S. Department of Labor

Departamento de Trabajo de los EE. UU.

www.osha.gov (800) 321-OSHA (6742)

Image 126

Ref 8 Subpart CC Fall Protection Requirements .1423

Part Number: 1926

- **Part Title:** Safety and Health Regulations for Construction
- **Subpart:** CC
- **Subpart Title:** Cranes & Derricks in Construction
- **Standard Number:** 1926.1423
- **Title:** Fall protection.

1926.1423(a)

Application.

1926.1423(a)(1)

Paragraphs (b), (c)(3), (e) and (f) of this section apply to all equipment covered by this subpart except tower cranes.

1926.1423(a)(2)

Paragraphs (c)(1), (c)(2), (d), (g), (j) and (k) of this section apply to all equipment covered by this subpart.

1926.1423(a)(3)

Paragraphs (c)(4) and (h) of this section apply only to tower cranes.

1926.1423(b)

Boom walkways.

1926.1423(b)(1)

Equipment manufactured after November 8, 2011 with lattice booms must be equipped with walkways on the boom(s) if the vertical profile of the boom (from cord centerline to cord centerline) is 6 or more feet.

1926.1423(b)(2)

Boom walkway criteria.

1926.1423(b)(2)(i)

The walkways must be at least 12 inches wide.

1926.1423(b)(2)(ii)

Guardrails, railings and other permanent fall protection attachments along walkways are:

1926.1423(b)(2)(ii)(A)

Not required.

1926.1423(b)(2)(ii)(B)

Prohibited on booms supported by pendant ropes or bars if the guardrails/railings/attachments could be snagged by the ropes or bars. Ref 8 Subpart CC Fall Protection Requirements .1423

Image 127

1926.1423(b)(2)(ii)(C)

Prohibited if of the removable type (designed to be installed and removed each time the boom is assembled/disassembled).

1926.1423(b)(2)(ii)(D)

Where not prohibited, guardrails or railings may be of any height up to, but not more than, 45 inches.

1926.1423(c)

Steps, handholds, ladders, grabrails, guardrails and railings.

1926.1423(c)(1)

Section 1926.502(b) does not apply to equipment covered by this subpart.

1926.1423(c)(2)

The employer must maintain in good condition originally-equipped steps, handholds, ladders and guardrails/railings/grabrails.

1926.1423(c)(3)

Equipment manufactured after November 8, 2011 must be equipped so as to provide safe access and egress between the ground and the operator work station(s), including the forward and rear positions, by the provision of devices such as steps, handholds, ladders, and guardrails/railings/grabrails. These devices must meet the following criteria:

1926.1423(c)(3)(i)

Steps, handholds, ladders and guardrails/railings/grabrails must meet the criteria of SAE J185 (May 2003) (incorporated by reference, see § 1926.6) or ISO 11660-2:1994(E) (incorporated by reference, see § 1926.6) except where infeasible.

1926.1423(c)(3)(ii)

Walking/stepping surfaces, except for crawler treads, must have slip-resistant features/properties (such as diamond plate metal, strategically placed grip tape, expanded metal, or slip-resistant paint).

1926.1423(c)(4)

Tower cranes manufactured after November 8, 2011 must be equipped so as to provide safe access and egress between the ground and the cab, machinery platforms, and tower (mast), by the provision of devices such as steps, handholds, ladders, and guardrails/railings/grabrails. These devices must meet the following criteria:

1926.1423(c)(4)(i)

Steps, handholds, ladders, and guardrails/railings/grabrails must meet the criteria of ISO 11660-1:2008(E) (incorporated by reference, see § 1926.6) and ISO 11660-3:2008(E) (incorporated by reference, see § 1926.6) or SAE J185 (May 2003) (incorporated by reference, see § 1926.6) except where infeasible.

1926.1423(c)(4)(ii)

Walking/stepping surfaces must have slip-resistant features/properties (such as diamond plate metal, strategically placed grip tape, expanded metal, or slip-resistant paint).

Image 128

1926.1423(d)

Personal fall arrest and fall restraint systems. Personal fall arrest system components must be used in personal fall arrest and fall restraint systems and must conform to the criteria in § 1926.502(d) except that § 1926.502(d)(15) does not apply to components used in personal fall arrest and fall restraint systems. Either body belts or body harnesses must be used in personal fall arrest and fall restraint systems.

1926.1423(e)

For non-assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 6 feet above a lower level as follows:

1926.1423(e)(1)

When moving point-to-point:

1926.1423(e)(1)(i)

On non-lattice booms (whether horizontal or not horizontal).

1926.1423(e)(1)(ii)

On lattice booms that are not horizontal.

1926.1423(e)(1)(iii)

On horizontal lattice booms where the fall distance is 15 feet or more.

1926.1423(e)(2)

While at a work station on any part of the equipment (including the boom, of any type), except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.

1926.1423(f)

For assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.

1926.1423(g)

Anchorage criteria.

1926.1423(g)(1)

Sections 1926.502(d)(15) and 1926.502(e)(2) apply to equipment covered by this subpart only to the extent delineated in paragraph (g)(2) of this section.

1926.1423(g)(2)

Anchorage for personal fall arrest and positioning device systems.

1926.1423(g)(2)(i)

Personal fall arrest systems must be anchored to any apparently substantial part of the equipment unless a competent person, from a visual

Image 129

inspection, without an engineering analysis, would conclude that the criteria in § 1926.502(d)(15) would not be met.

1926.1423(g)(2)(ii)

Positioning device systems must be anchored to any apparently substantial part of the equipment unless a competent person, from a visual inspection, without an engineering analysis, would conclude that the criteria in § 1926.502(e)(2) would not be met.

1926.1423(g)(2)(iii)

Attachable anchor devices (portable anchor devices that are attached to the equipment) must meet the anchorage criteria in § 1926.502(d)(15) for personal fall arrest systems and § 1926.502(e)(2) for positioning device systems.

1926.1423(g)(3)

Anchorage for fall restraint systems. Fall restraint systems must be anchored to any part of the equipment that is capable of withstanding twice the maximum load that an employee may impose on it during reasonably anticipated conditions of use.

1926.1423(h)

Tower cranes.

1926.1423(h)(1)

For work other than erecting, climbing, and dismantling, the employer must provide and ensure the use of

fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 6 feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.

1926.1423(h)(2)

For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level.

1926.1423(i)

[Reserved.]

1926.1423(j)

Anchoring to the load line. A personal fall arrest system is permitted to be anchored to the crane/derrick's hook (or other part of the load line) where all of the following requirements are met:

1926.1423(j)(1)

A qualified person has determined that the set-up and rated capacity of the crane/derrick (including the hook, load line and rigging) meets or exceeds the requirements in § 1926.502(d)(15).

1926.1423(j)(2)

The equipment operator must be at the work site and informed that the equipment is being used for this purpose.

1926.1423(j)(3)

No load is suspended from the load line when the personal fall arrest system is anchored to the crane/derrick's hook (or other part of the load

Image 130

line).

1926.1423(k)

Training. The employer must train each employee who may be exposed to fall hazards while on, or hoisted by, equipment covered by this subpart on all of the following:

1926.1423(k)(1)

the requirements in this subpart that address fall protection.

1926.1423(k)(2)

the applicable requirements in § § 1926.500 and 1926.502.

Image 131

Ref 9 Fall Protection Stds Search Exercise

Course 3110 Fall Protection Standards Search Exercise

- 1 -

1. Per 1910.66 and 1926.502, personal fall arrest systems shall, when stopping a fall, limit the maximum arresting force on the body to ____ pounds when used with a body belt; and ____ pounds with a full body harness.

- A. 900 / 1800
- B. 1800 / 900
- C. 2000 / 4000
- D. 1.5 Gs / 3 Gs

2. Manhole covers, when located in a vehicular aisle, shall be designated to carry at least ____ times the vehicle's rear axle load:

- A. 2
- B. 3
- C. 4
- D. 5

3. Safety nets must be tested by dropping a ____ pound bag of sand from a height of 25 feet above the net:

- A. 200
- B. 400
- C. 900

D. 1800

4. What force could a worker expect when wearing a safety belt with a 6 foot lanyard? (Assume polyester lanyard, without an energy absorber, 20 lb. worker; +/- 6 foot free fall)

- A. 900-2400 pounds
- B. 3500-4200 pounds
- C. 6000-7000 pounds
- D. 10,000-12,000 pounds

Bonus: Is it the "fall" or the "sudden stop" that causes the injuries to the body?

5. When a 200 pound test load is applied downward to a rope wire guardrail, the top rail can not deflect below what height?

- A. No deflection allowed
- B. 39 inches
- C. 42 inches
- D. 36 inches

6. Wire rope guardrails must have vertical supports every ____ feet in construction.

- A. 6
- B. 8
- C. 10
- D. Not required to have supports.

Image 132

Course 3110 Fall Protection Standards Search Exercise

- 2 -

7. Wall openings must be guarded at ____ feet in construction and ____ feet in industry.

- A. 4,4
- B. 4,6
- C. 6,4
- D. 6,6

8. A connector (ironworker) is connecting a beam while exposed to an exterior fall of 28 feet to the ground below. What OSHA standard section applies?

- A. 1926.28(a)
- B. 1926.105(a)
- C. 1926.750(b)
- D. None. Connectors are exempt from fall protection.

9. Wood guardrails must have vertical supports every ____ feet in construction?

- A. 6
- B. 8
- C. 10
- D. Not required to have supports.

10. Floor openings must be guarded or covered at ____ feet in construction:

- A. At all times
- B. 4
- C. 6
- D. 10

11. No employee shall be permitted to place or tie reinforcing steel more than ____ feet above any adjacent work surface unless other fall protection is provided.

- A. 4
- B. 6
- C. 10
- D. 25

Bonus: How high are you allowed to free climb?

Construction: _____

General Industry _____

12. A scaffold erector is erecting a 30 foot high scaffold, but is not tied off to the steel trusses above the scaffold, what OSHA standard applies:

- A. 1926.28(a)
 - B. 1926.105(a)
 - C. 1926.502(b)(15)
 - D. 1926.451(g)(2)
-

Image 133

Course 3110 Fall Protection Standards Search Exercise

- 3 -

13. Carpenters are installing 4'x8' sheets of plywood onto roof trusses in order to make a roof deck which will have a pitch of 8/12; their ground to eave fall height is 20 feet and their only fall protection is a 2"x6" slide guard; what standard are they in violation of?

- A. 1926.28(a)
- B. 1926.501(b)
- C. 1926.451(u)
- D. None

14. A roofer is nailing roofing shingles onto the 4'x8' wood sheeting in order to make a finished roof which will have a pitch of 6/12; his ground to eave fall is 20 feet. No fall protection or fall prevention is provided; He is in violation of what

standard?

- A. 1926.28(a)
- B. 1926.501(b)
- C. 1926.451(u)
- D. None

15. The fall protection requirements of Subpart – M do not apply to the following situations: (Choose all that apply)

- A. Precast concrete erection

- B. residential construction
- C. erection or dismantling of scaffolding
- D. steel erection
- E. low pitched roofs
- F. open sided floors
- G. open sided stairs
- H. leading edge work
- I. utility pole work

16. An employee on a walking/working surface shall be protected from falling through holes (including skylights) more than 6 feet above lower levels by personal fall arrest systems, _____, or guardrail systems erected around such holes.

- A. Flagging
- B. Covers
- C. Warning Signs
- D. A safety monitor

17. Guardrail systems shall be capable of withstanding, without failure, a force of at least _____ pounds applied within two inches of the top edge, in any outward or downward direction, at any point along the top edge.

- A. 200
- B. 100
- C. 150
- D. 75

Image 134

Course 3110 Fall Protection Standards Search Exercise

- 4 -

18. If wire rope is used for top rails, it shall be flagged at not more than _____ foot intervals with high-visibility materials.

- A. 2
- B. 6

C. 4

D. 8

19. The maximum size of each safety net mesh opening shall not exceed _____ square inches.

A. 7"x5" or 35

B. 4"x4" or 16

C. 6"x6" or 36

D. 9" x 4" or 48

20. As of January 1, 1998, _____ are not acceptable as part of a personal fall arrest system.

A. Shock absorbers

B. Dee rings

C. Body belts and non-locking snaphooks

D. Harnesses

21. Lanyards and vertical lifelines shall have a minimum breakage strength of _____ pounds.

A. 4000

B. 6000

C. 5000

D. 7000

Bonus: How is the arresting force controlled when using a positioning device?

22. Positioning devices shall be rigged such that an employee cannot free fall more than _____ feet.

A. 2

B. 6

C. 4

D. 8

Bonus: How is the arresting force controlled when using a positioning device?

Image 135

Course 3110 Fall Protection Standards Search Exercise

- 5 -

23. Warning lines in roof work shall be erected around all sides of the roof work area where there is greater than a 6 foot fall. When mechanical equipment is not being used, the warning line shall be erected not less than ____ feet from the roof edge.

- A. 2
- B. 4
- C. 6
- D. 8

24. Warning lines shall be ____ high.

- A. 30" to 40"
- B. 34" to 39"
- C. 25" to 30"
- D. 40" to 48"

25. In a control access zone, the control line shall extend along the entire length of the unprotected or leading edge and shall be approximately ____ to the unprotected or leading edge.

- A. Adjacent
- B. Close
- C. Perpendicular
- D. Parallel

26. When controlled access zones are used, the employer shall designate a _____ to monitor the safety of other employees.

- A. Safety Director
- B. "The NEW Guy"
- C. Competent Person
- D. Worker with safety knowledge

27. The safety monitor shall remain close enough to employees to communicate _____.

- A. Orally
- B. By bullhorn
- C. By signals
- D. By radio

28. The option of a fall protection plan is available only to employees engaged in _____ who can demonstrate that it is infeasible or it creates a greater hazard to use conventional fall protection systems.

- A. Leading edge work
- B. Residential construction work
- C. Precast Concrete erection work
- D. All of the above

Image 136

Course 3110 Fall Protection Standards Search Exercise

- 6 -

29. The fall protection plan shall identify each location where conventional fall protection systems cannot be used; These locations shall then be classified as _____.

- A. Restricted areas
- B. Danger Areas
- C. Controlled Access areas

D. No smoking areas

30. Under OSHA 1926.503 (of Subpart M), the employer is required to provide _____ for each employee who might be exposed to fall hazards.

- A. A horizontal lifeline
- B. Certified and documented training
- C. A safety belt

D. Worker's Compensation Insurance

31. Fall protection retraining is required when there is a indication that _____.

- A. An employee has not retained requisite knowledge, understanding and skills needed to use PFAS equipment.
- B. There are changes in the types of the fall protection systems used.
- C. There are changes in the workplace
- D. All of the above

32. The maximum allowed free fall distance is _____ while using a personal fall arrest systems:

- A. 6 feet
- B. 2 feet
- C. 8 feet
- D. 12 feet

Image 137

Ref 10 fall_protection General Industry

QUICK CARD

TM

Fall Protection in

General Industry

Falls are among the most common causes of serious work-related injuries and deaths. Employers must take measures in their workplaces to prevent employees from falling off overhead platforms, elevated work stations or into holes in the floor and walls.

To prevent employees from being injured from falls, employers must:

- Guard every floor hole into which a worker can accidentally walk by use of a railing and toeboard or a floor hole cover.
- Provide a guardrail and toeboard around every open-sided platform, floor or runway that is 4 feet or higher off the ground or next level.
- Regardless of height, if a worker can fall into or onto dangerous machines or equipment (such as a vat of acid or a conveyor belt), employers must provide guardrails and toeboards to prevent workers from falling and getting injured.
- Other means of fall protection that may be required on certain jobs include safety harness and line, safety nets, stair railings and handrails.

OSHA requires employers to:

- Provide working conditions that are free of known dangers.
- Keep floors in work areas in a clean and sanitary condition.
- Select and provide required personal protective equipment

at no cost to workers.

- Train workers about job hazards in a language that they can understand.

You have a right to a safe workplace.

If you have questions about workplace safety and health, call OSHA at 1-800-321-6742.

It's confidential.

We can help!

Image 138

OSHA 3257-12-10R

Image 139

Ref 11 How to Protect Workers from Falls

How to Protect Workers from Falls

There are a number of ways employers can protect workers from falls, including through the use of conventional means such as guardrail systems, safety net systems and personal fall protection systems, the adoption of safe work practices, and the provision of appropriate training. The use of warning lines, designated areas, control zones and similar systems are permitted by OSHA in some situations and can provide protection by limiting the number of workers exposed. Whether conducting a hazard assessment or developing a comprehensive fall protection plan, thinking about fall hazards before the work begins will help the employer to manage fall hazards and focus attention on prevention efforts. If personal fall protection systems are used, particular attention should be given to identifying attachment points and to ensuring that employees know how to properly use and inspect the equipment. The following references aid in recognizing and evaluating fall protection hazards in the workplace.

Reference Materials

- [Prevention Videos \(v-Tools\): Construction Hazards](#). OSHA, (2011).

Intended to assist those in the industry to identify, reduce, and eliminate construction-related hazards. Most of the videos are 2 to 4 minutes long, presented in clear, easily accessible vocabulary, and show common construction worksite activities. There are several related to Falls in Construction, including Floor Openings, Fixed Scaffolds, Bridge Decking, Reroofing and Leading Edge Work.

- [Fall Protection in General Industry](#) [284 KB PDF]

*, 2 pages]. OSHA

QuickCard 3257-12-10R, (2010, December). Provides fall protection hazard prevention methods.

- [Aerial Lift Fall Protection -- Over Water in Shipyards](#) [879 KB PDF

*, 2

pages]. OSHA QuickCard 3452-09-11N, (2011, September).

- Fall Protection Safety Tips Sheets for Employers and Employees. OSHA

and the Independent Electrical Contractors (IEC) Alliance. Two tip sheets, one for employers and one for workers, covering hazards and prevention methods.

Image 140

- [Stairways and Ladders: A Guide to OSHA Rules](#). OSHA Publication 312412R, (2003). Also available as a 278 KB [PDF](#), 15 pages. Informational booklet explaining OSHA requirements as they apply to stairways and ladders, as well as glossary of commonly used terms.

- [OSHA and Lamar Bridgeport Alliance Working to Improve Safety and](#)

[Health of the Outdoor Advertising Industry's Employees](#). OSHA Region 1 Success Stories, (2004, November 30). Describes gains made and lives saved by the alliance, through pooling knowledge and resources on fall protection and safety measures.

- [Fall Protection - Roofing](#). Washington State Video, (2013).

- [Fall Protection - Trusses](#). Washington State Video, (2013).

- [Fall Protection Publications](#). Oregon OSHA. Includes fall protection

publications for the construction industry, for setting and bracing wood trusses and rafters, for setting floor joists, sheathing/decking, and constructing exterior walls, options for specialty contractors, temporary elevated work platforms, and walking working surfaces.

- [Safety Belts, Harnesses, and Lanyards](#). Canadian Center for

Occupational Health and Safety (CCOHS). Tip sheet for cleaning and caring for safety belts/harnesses/lanyards.

- [NIOSH Issues Nationwide Alert on Dangers of Tree Trimming](#). US

Department of Health and Human Services (DHHS), National Institute for Occupational Safety and Health (NIOSH) Publication No. 93-122, (1992, December 7). Explanation of cause for, and coverage of, NIOSH Alert on tree trimming.

- [Preventing Falls and Electrocutions During Tree Trimming](#). US

Department of Health and Human Services (DHHS), National Institute for Occupational Safety and Health (NIOSH) Publication No. 92-106, (1992, August). NIOSH Alert considering case studies of electrocutions and fatal falls of tree trimmers, and discussion of hazard prevention methods.

- [Preventing Worker Deaths and Injuries from Falls Through Skylights and](#)

[Roof Openings](#). US Department of Health and Human Services (DHHS), National Institute for Occupational Safety and Health (NIOSH)

Image 141

Publication No. 90-100, (1989, December). Describes eight deaths resulting from falls that occurred during work around these openings.

Image 142

Ref 12 Scaffolding

Scaffolding

The Bureau of Labor Statistics' Census of Fatal Occupational Injuries (CFOI) reported 54 fatalities occurred in the year 2009 from scaffolds, staging. [More...](#) [143 KB PDF, 5 pages]. In a Bureau of Labor and Statistics (BLS) study, 72% of workers injured in scaffold accidents attributed the accident either to the planking or support giving way, or to the employee slipping or being struck by a falling object. All of these can be controlled by compliance with OSHA standards. [More...](#) [118 KB PDF, 4 pages]

Scaffolding is addressed in specific standards for the general industry, shipyard employment, marine terminals, and longshoring.

OSHA Standards

This section highlights OSHA standards, Regulatory Agenda (a list of actions being taken with regard to OSHA standards), preambles to final rules (background to final rules), and directives (instructions for compliance officers).

Note: Twenty-five states, Puerto Rico and the Virgin Islands have [OSHA-approved State Plans](#) and have adopted their own standards and enforcement policies. For the most part, these States adopt standards that are identical to Federal OSHA. However, some States have adopted different standards applicable to this topic or may have different enforcement policies.

General Industry (29 CFR 1910)

- [1910 Subpart B](#), Adoption and extension of established federal standards ·
- [1910.16](#), Longshoring and marine terminals

- [1910 Subpart D](#), Walking-working surfaces [[related topic page](#)] ·
- [1910.25](#), Portable wood ladders ·
- [1910.25\(d\)\(2\)\(i\)](#) ·
- [1910.28](#), Safety requirements for scaffolding ·
- [1910.29](#), Manually propelled mobile ladder stands and scaffolds (towers)

- [1910 Subpart Q](#), Welding, cutting, and brazing [[related topic page](#)] ·
- [1910.252](#), General requirements ·
- [1910.252\(b\)\(1\)\(i\)](#)

- [1910 Subpart R](#), Special industries ·
- [1910.272](#), Grain handling facilities [[related topic page](#)] ·
- [Appendix A](#), Grain handling facilities

Image 143

Ref 13 Standards and Policy for Non Construction

Standards and Policy for Non-Construction Work

Fall protection, for activities not in the [construction industry](#), is addressed in specific standards for the general industry, shipyard employment, marine terminals and longshoring industry. This section highlights OSHA standards, Federal Registers (rules, proposed rules, and notices), the Regulatory Agenda (a list of actions being taken with regard to OSHA standards), preambles to final rules (background to final rules), directives (instructions for compliance

officers), standard interpretations (official letters of interpretation of the standards), example cases, and national consensus standards related to fall protection. Twenty-five states, Puerto Rico and the Virgin Islands have [OSHA Approved State Plans](#), which are required to be at least as effective as Federal

OSHA. For the most part, these States adopt standards that are identical to Federal OSHA. However, some States have adopted different standards applicable to this topic or may have different enforcement policies. Other federal standards and consensus standards related to fall hazards are included for reference.

OSHA Standards

General Industry ([29 CFR Part 1910](#))

- [1910.23](#), Guarding floor and wall openings and holes
 - [1910.25](#), Portable wood ladders
 - [1910.26](#), Portable metal ladders
 - [1910.27](#), Fixed ladders
 - [1910.28](#), Safety requirements for scaffolding
 - [1910.66](#), Powered platforms for building maintenance
 - [Appendix A](#), Guidelines (Advisory)
 - [Appendix C](#), Personal fall arrest system (Section I - Mandatory; sections II and III - Non-mandatory)
 - [1910.67](#), Vehicle-mounted elevating and rotating work platforms [Aerial lifts]
 - [1910.68](#), Manlifts
-

Image 144

- [1910.132](#), General requirements (Personal Protective Equipment) [[related topic page](#)]
- [1910.268](#), Telecommunications
- [1910.269](#), Electric power generation, transmission, and dist

Message: FW: Reed Act Funds**Case Information:**

Message Type: Exchange
 Message Direction: External, Inbound
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:15 PM
 Item ID: 40861482
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: Reed Act Funds

From DiLisio, Thomas - ETA

Date Wednesday, June
04, 2014 10:54 AM

To Taylor, Kelly [IWD]

Cc Jackson, Michael C - ETA; Scott, John - ETA; Scott, Steven -
ETA; Belmonte, Steffanie - ETA; Bulluck, Corey - ETA; Ake,
John - ETA

 [TEGL03-07.pdf](#) (335 Kb HTML)  [uipl_3997a1.pdf](#) (67 Kb HTML)

Kelly, here is our response to utilizing Reed Act funds for renovations. This is allowable, but there are some items that you have to address, etc. as noted below:

Based on your responses to the questions below, here is some information and requirements to comply with prior to moving forward with renovation and capital improvements.

General Information. The building at 150 Des Moines Street has the following equity percentages: 71.8% DOL and 28.2% State. All the Reed Act equity was amortized which created the DOL grant equity. The building at 1000 East Grand in Des Moines has the following equity: Reed Act 17.7%, DOL 67.4%, State 14.9%. So this building is approximately 85.1% Federal/Reed and 14.9% State.

Capital improvements and renovations are allowable but must be funded as direct charges using various resources; Reed Act, UI/ES, Trade, WIA, and non-federal sources, based on an allowable allocation methodology. If Reed Act funds are used, States can no longer amortize Reed Act funds with grant funds, however they can use a depreciation basis to restore the Reed Act account (IRS deprec. Rules).

UIPL 39-97 allows Reed Act funds to be used to fund renovations & capital improvements, but these must be appropriated by the State legislature specifically for the work to be done, and can only be used to fund the portion of work relating to State Employment Security operations (UI / ES). Reed Act funds CANNOT be used to pay for capital expenditures of space occupied by non-SESA entities, including WIA, Trade, BLS, VETS, OSHA, etc.

Even though there are several other entities in the two buildings, since the amortization of Reed Act equity has been completed and/or stopped, these building can be used by entities that the Governor chooses, however, the daily operations and maintenances costs must be charged and allocated in accordance with the space used by each entity; which you are currently doing.

Approval for capital improvements and renovations is now the complex part. For Reed Act funds, the State has the power to appropriate these funds for use only for the SESA entity (UI/ES). However, the Wagner Peyser regulations at 20 CFR 652.8(d)(2) delegates prior approval for capital expenditures to the State UNLESS DOL chooses to exercise this power after advance notification. This is in the grant agreement.

This language is also noted in the UI grant agreement and Trade agreements. However, in TEGL 03-07 dated August 1, 2007, No. 13 it states, "SWAs need to obtain prior approval from DOL for any capital improvements involving real property with W-P, UIS, or TAA funds. This would also apply to WIA funds.

So, first you must send us a formal request to use DOL grant funds to pay for capital improvements with UIS, ES, TAA, and WIA funds. You must obtain legislative appropriation to utilize Reed Act funds. Reed Act funds can no longer be amortized with DOL grant funds, but you can use a depreciation based method to restore Reed Act funds used for Capital Improvements. You would identify the amount of each funding source to be used and send the request to the Regional Office (attn.: Thomas DiLisio) and the Grant Officer (attn.: Thomas Martin)

The amount of each grant source must be based on the occupancy, so we would also ask that you provide an updated occupancy list by grant program along with your request.

If you have any questions, please feel free to contact me to discuss.

From the grant agreements:

B. Assurance of Administrative Requirements and Allowable Cost Standards.

Exception/Revision (Real Property Acquired with Reed Act Funds)

An exception/revision to this assurance in Chapter 1 (VII.B.1.c) which is no longer applicable is as follows: Section 193(b) of WIA, as amended by section 20610 of Public Law No. 110-5, prohibits the use of UI administrative grant funds to amortize the cost of real property acquired on or after February 15, 2007. However, OMB Circular No. A-87, Appendix B, item 11, still permits Reed Act funds used to acquire buildings (but not land) on or after February 15, 2007 to be replenished using UI or Wagner-Peyser grant funds through "cost recovery through depreciation." Cost recovery through depreciation may also be used for automation equipment acquired with Reed Act funds regardless of the date of purchase.

Exception/Revision (Prior Approval Waiver):

An exception/revision to this assurance in Chapter 1 (VII.B.2.d) is as follows: Notwithstanding the waiver of the requirement of prior approval, the Grantor reserves the right to reimpose the requirement of prior approval by the Grantor, after providing advance notice to the State (Grantee).

From: Taylor, Kelly [IWD] [<mailto:Kelly.Taylor@iwd.iowa.gov>]

Sent: Tuesday, May 27, 2014 8:05 AM

To: Scott, John - ETA

Cc: DiLisio, Thomas - ETA

Subject: RE: Reed Act Funds

John, do the responses I sent you address all of your questions? Since the legislature will not be in session again until next January, we are quite a few months down the road from actually getting approval from them for the remodeling of the buildings. However, we intend to get started now as this project is going to take 2-3 years to accomplish. We will start by using other sources such as some of the Penalty and Interest dollars we have available that are not already obligated for other projects. Those other projects include paying for the cost of actually collecting the penalty and interest. We are trying to avoid using any annual federal funding that supports day to day program operations. The combination of penalty and interest and the old Reed Act dollars, should cover the overwhelming majority of this

endeavor.

Kelly R. Taylor,
Bureau Chief, Financial Management
Iowa Workforce Development
Office: 515-281-4263, Cell: 515-201-0490

From: Taylor, Kelly [IWD]
Sent: Thursday, March 27, 2014 11:24 AM
To: 'Scott, John - ETA'
Cc: DiLisio, Thomas - ETA; Mikkelsen, Paul [IWD]; Wahlert, Teresa [IWD]
Subject: RE: Reed Act Funds

Thanks for getting back to me John. I've put some responses below in red.

Kelly R. Taylor,
Bureau Chief, Financial Management
Iowa Workforce Development
Office: 515-281-4263, Cell: 515-201-0490

From: Scott, John - ETA [<mailto:Scott.John@dol.gov>]
Sent: Wednesday, March 26, 2014 3:55 PM
To: Taylor, Kelly [IWD]
Cc: DiLisio, Thomas - ETA
Subject: RE: Reed Act Funds

Hi Kelly,

I thought Steff had already sent you an email on this. Regardless, you are correct in that she is away from the office right now. I think at this point we have a few questions that we would like to get answers to before we can proceed.

UIPL 39-97 is current and is the appropriate guidance for these funds. The funds can be used for capital improvement projects that support UC, ES, WP operations. The following statement can be found in attachment 1 of the UIPL. The State is required to pass State legislation that would authorize the use of the funds in this manner. We do have some preliminary questions that we would like a response to in order for us to proceed.

1. Please identify the 2 building you are wanting to use the money for? They are the 150 Des Moines Street and 1000 E. Grand buildings in Des Moines. The 150 Des Moines Street office houses our Unemployment Call Center as well as handling Fact Finding for UI and UI Investigation and Recovery. They occupy about 2/3 of that building with the balance occupied by a combination of Wagner Peyser, Trade Act, Workforce Investment Act and state funded positions. It was purchased from our Reed Act dollars years ago. The 1000 E. Grand houses our Unemployment administration, including UI Quality Assurance, UI/IT Services, UI Customer Service, UI Tax Collections, UI Appeals, UI Field Auditors and UI General Administration staff. I'm estimating that to be 1/3 of that building with the rest of the building occupied by every other program we administer (OSHA, Work Comp, Indirect Administration, BLS programs, Other IT Support, etc.). This is before my time here, but I believe this was a federally paid for building at one time and title to which was turned over to the state many years ago as well.
2. What are the capital improvements the money will be used for? To pay for the remodeling and redesign of both buildings. The intent is to prorate out the cost of new carpeting, replacing ceiling tiles, reconfiguring cubicles, painting walls, wiring updates, etc. The Reed Act paying based on the square footage that will be occupied by the UI and Wagner Peyser staff.
3. Do you know what your Reed Act balance is? (have you checked to make sure you have the 1.4M) I have had my staff research this issue and found that the oldest pot of funds we thought were available, are no longer there. That's the 1956 allocation which must have been spent years ago. We have \$734,101.40 in 1957 Reed Act, \$334,555.09 in 1958 Reed Act and \$7,109.64 in 1998 Reed Act that are available. That's a grand total of **\$1,075,766.13**. Sorry for the confusion as the Accountant that was assigned to oversee

these accounts, retired last December after 35 years with the state and not all of his knowledge of these accounts over that many years, could be transferred before he left.

4. Once you know you have that much in Reed Act moneys please let us know from which disbursement would the 1.4M come from? (is it all from the 97 Reed Act \$'s) This is actually a very old pot of Reed Act money that we borrowed from over 20 years ago for asbestos abatement work and over the course of that time, we slowly paid those funds back to the Reed Act account. That particular project being full paid back at this time. It appears to be a 1956-1998 Reed Act allocations (all in one account) and therefore, I was not sure whether it followed the same rules on legislative action required to use the funds. I don't have a problem doing so, but, I just didn't know.
5. You are asking the question whether the funds can be used for WIA, Vets, etc. We would like you to be specific as to who they are and what portion of the funds would be spend on them? Actually, I'm assuming we have to restrict the use of these funds to pay for only costs associated with the square footage occupied by Unemployment and Wagner Peyser staff, including prorated share of common space. I didn't know if any of it could be used for other related programs, such as the USDOL Veterans program staff, USDOL BLS programs, USDOL OSHA, etc. If not, we will deal with that by the use of other non-federal sources and see if we can still get the entire job done.

As a footnote, it's been 20 years since anyone did any major work here and for the most part, we are talking about restoration work when it comes to basic things like carpeting, painting and ceiling tiles. Because of all the remaining asbestos in this building, it will cost some money there from "Controlled Asbestos" to quarantine some of the areas being worked on. **Most importantly, this agency has a third office in Des Moines that houses employment and unemployment staff and serves as our center for walk in customers. We lease that building at a cost of \$404,712 per year. All paid with a combination of state and federal funds. The remodeling efforts at 150 Des Moines St. and 1000 E. Grand will allow us to consolidate our footprint in Des Moines down to only the two buildings that we own and save the state and feds the \$400,000 we are now paying in rent. It is estimated that this remodeling and consolidation of space will pay for itself within 5 years by no longer paying rent.**

"Under the SSA, the primary purpose of Reed Act funds is the payment of "cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration" (Section 903(c)(1), SSA). However, subject to conditions specified in Section 903(c)(2), SSA, a State is permitted, at its discretion, to use Reed Act funds for "the administration of its unemployment compensation law and public employment offices"."

"State employment security agencies (SESAs) include both UC and public employment (ES) offices and, to the extent that they operate State activities provided for only under Title III, SSA, and the Wagner-Peyser Act, will hereafter be called the "employment security program". Reed Act funds may be used to pay the administrative expenses of the employment security program."

Thanks.

John Scott
UI Chief / Chicago
312-596-5507
scott.iohn@dol.gov

From: Taylor, Kelly [IWD] [<mailto:Kelly.Taylor@iwd.iowa.gov>]
Sent: Tuesday, March 25, 2014 2:30 PM
To: Scott, John - ETA
Subject: Reed Act Funds

John, I see that Stephanie is out a couple weeks. Did she happen to mention this email I've attached below? She said

she would check into it and if possible, I really don't want to wait another 2 weeks for a response. Thanks for any help you can provide!

Kelly R. Taylor,
Bureau Chief, Financial Management
Iowa Workforce Development
Office: 515-281-4263, Cell: 515-201-0490

Steffanie, Iowa Workforce Development (IWD) is looking into some major remodeling of the two facilities we have here in Des Moines. Both are buildings we either purchased and or were given ownership of that were previously federally owned. I know that happened years and years ago.....before my time in this agency. Anyway, the buildings have not had simple things like carpeting, ceiling tiles and wall painting for almost 20 years now and the buildings not only look bad inside, but also pose health risks to employees.

What I am trying to determine is whether or not IWD can access the \$1,413,552 we have sitting in the 1956 Reed Act fund. We have used that money in years past for things like asbestos abatement and then slowly repaid that money back to the Reed Act account. Hence, we have this \$1.4 million now sitting there. It appears that from UIPL 39-97 dated 9-12-97, section H, that the funds can be used for capital improvements so long as the benefit is for employment securities purposes. I'm not exactly positive about whether this UIPL has been updated or rescinded in any way, so I thought I'd better check with you to determine if we can use some or all of those funds. In addition, I need clarification about what is meant by the term "employment securities". Does that include both Unemployment and Wagner Peyser functions.....or is it even more broad than that definition. Such as does it included the Workforce Investment Act, OSHA, Veterans' Programs, etc.

Whatever help you can provide would be appreciated!

Kelly R. Taylor,
Bureau Chief, Financial Management
Iowa Workforce Development
Office: 515-281-4263, Cell: 515-201-0490

- [Image 1](#)
 - [Image 2](#)
 - [Image 3](#)
 - [Image 4](#)
 - [Image 5](#)
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Image 1

Image 2

Image 3

Image 4

Image 5

- [Image 1](#)
 - [Image 2](#)
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 - [Image 19](#)
 - [Image 20](#)
 - [Image 21](#)
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Image 1

UIPL 39-97 ATTACHMENT I

THE REED ACT PROVISIONS OF TITLE IX OF THE SOCIAL SECURITY ACT

A. INTRODUCTION

1. Definition - Background. The term "Reed Act" refers to a part of the Employment Security Financing Act of 1954, and is used in honor of Congressman Daniel A. Reed of New York, chairman of the House Ways and Means Committee at the time. This legislation amended Titles IX and XII of the Social Security Act (SSA) and established the basic structure of the Unemployment Trust Fund (UTF). The amendments to Title IX, among other things, provided, under certain conditions, for the transfer of excess funds in the Employment Security Administration Account (ESAA) in the UTF to the individual State accounts in the UTF (Section 903(a)(1), SSA). These transferred funds are commonly referred to as "Reed Act" funds. To date, only three Reed Act distributions--in 1956, 1957, and 1958--totalling \$138 million, have been made to State accounts.

Under the SSA, the primary purpose of Reed Act funds is the payment of "cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration" (Section 903(c)(1), SSA). However, subject to conditions specified in Section 903(c)(2), SSA, a State is permitted, at its discretion, to use Reed Act funds for "the administration of its unemployment compensation law and public employment offices". (See Part E. for exception for use of Reed Act amounts allocated for fiscal years 2000, 2001, and 2002.)

Title III, SSA, governs the use of Federal grant funds for the administration of the unemployment compensation (UC) programs by States. Section 302(a), SSA, addresses the uses of UC granted funds as follows:

The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made.

Image 2

Section 303(a)(8), SSA, requires, as a condition for receiving UC administrative grants, that State laws include provision for:

the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law.

Section 901(c)(1), SSA, authorizes to be made available for expenditure out of the employment security administration account, for each fiscal year-(A) such amounts...astheCongress may deem

appropriate for the purpose of-(i) assisting the States in the administration of their unemployment compensation laws as provided in title III (including administration pursuant to

agreements under any Federal unemployment compensation law).

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C., secs. 49-49n).

State employment security agencies (SESAs) include both UC and public employment (ES) offices and, to the extent that they operate State activities provided for only under Title III, SSA, and the Wagner-Peyser Act, will hereafter be called the "employment security program". Reed Act funds may be used to pay the administrative expenses of the employment security program. (See Part E. for exception for use of Reed Act amounts allocated for fiscal years 2000, 2001, and 2002.)

Initially, Reed Act funds were available for administrative expenses up to 5 years from the date they were first credited to a State's account. Through amendments, the time period for administrative use was later extended to 10, 15, 25, and 35 years, and then eliminated effective October 1, 1991.

2. Relationship to Trust Fund Operations

. Reed Act funds

become a part of a State's unemployment fund, as defined in Section 3306(f) of the Federal Unemployment Tax Act (FUTA), on the date they are transferred to the State's account in the UTF. Such funds retain legal status as a part of the State's unemployment fund and must be accounted for as part of the fund until expended for unemployment compensation or

Image 3

administrative expenses of the State's employment security program. As such, Reed Act funds are subject to the "immediate deposit" and "limited withdrawal" standards (Sections 303(a)(4) and (5), SSA; Sections 3304(a)(3) and (4), FUTA) applicable to all State unemployment fund money.

B. MECHANICS OF A REED ACT DISTRIBUTION

1. Conditions Necessary for Making Transfers

. Whenever the

Secretary of Labor has reason to believe that conditions which are necessary for a Reed Act transfer will occur in the next fiscal year, the Secretary, after consultation with the Secretary of the Treasury, shall report to Congress with a recommendation for appropriate action (Section 902(c), SSA). Section 903(a)(1) provides that a transfer of Reed Act funds will occur if the following conditions exist in the Federal accounts of the UTF at the end of a Federal fiscal year (that is, September 30):

a. The balance of funds in the extended unemployment compensation account (EUCA) and the Federal unemployment account (FUA) have reached their statutory ceilings, and all general revenue advances and related interest to these accounts have been repaid, and

b. There remains in the employment security administration account (ESAA) an amount in excess of the account's statutory ceiling.

The excess amount in the ESAA is then transferred to State accounts in the UTF at the beginning of the following Federal fiscal year, as explained below.

2. Amounts Transferred to State Accounts

. Each State's share

of the amount to be transferred is based on the proportion of wages subject to FUTA attributable to the State during the preceding calendar year to the aggregate amount of wages subject to FUTA during the same year for all States. The exact share for each State is derived by applying its computed ratio or percentage to the total amount to be transferred. (See Part B.3. for exception for calculating State shares with respect to amounts for Federal fiscal years ending in 1999, 2000, and 2001.) The Secretary of Labor determines the amount of each State's share and certifies it to the Secretary of the Treasury. (Section 903(a)(2), SSA.)

Image 4

3. Special Distribution with Respect to Federal Fiscal Years 1999, 2000, and 2001. The Balanced Budget Act of 1997 (BBA) amended Section 903 of the SSA to cap the total amount of Reed Act transfers made with respect to Federal fiscal years ending in 1999, 2000, and 2001 at \$100,000,000 per year. Each State's share of the amount to be transferred will be based on the ratio of the amount of "funds to be allocated to such State for such fiscal year pursuant to the base allocation formula under title III", SSA, to "the total amount of funds to be allocated to all States for such fiscal year pursuant to the base allocation formula under Title III." (Section 903(a)(3), SSA.)

4. Limitations on Transfers

. All States share in a Reed Act

transfer. However, under Section 903(b), SSA, the total amount of a State's share may not be credited to its UTF account in the following two instances:

a. The Secretary of Labor finds that on October 1 of the year in question, a State is not eligible for certification under Section 303, SSA, or

the law of

the State is not approvable under Section 3304, FUTA.

In this instance, the State's share of Reed Act funds is credited to the FUA and held in reserve. If the Secretary of Labor certifies that the State is eligible for certification under Section 303, SSA, and/or that its law is approvable under Section 3304, FUTA, before the end of the fiscal year, the State's Reed Act share is then transferred to its account. However, such delayed credits, although designated for the State, earn interest for the State only from the date credited, because they are not a part of the State's individual account until credited. If certification and/or approval is not received before the end of the fiscal year, the amount that would have been transferred to the

State's account remains in the FUA and becomes unrestricted as to its use as a part of that account.

b. On October 1, a State has an outstanding balance of advances under Title XII, SSA. (See Part C.2.)

The State's Reed Act share is reduced (but not below zero) by the balance of unpaid Title XII advances. The amount of the reduction is transferred to or retained in the FUA and serves to reduce the State's balance of outstanding advances. If the State's

Image 5

Reed Act share has not been reduced to zero, the remaining amount is credited to its UTF account.

C. USE OF REED ACT FUNDS FOR UC BENEFIT PAYMENTS

1. Use under Normal Circumstances. Section 903(c)(1), SSA, imposes no requirements on a State's use of Reed Act funds for benefit payments. For this purpose, funds are withdrawn from the State's UTF account as are any other funds in the account. Logically, a State would first expend other available funds for benefits in order to preserve its Reed Act balance, which can be used for either benefits or, under specified conditions, administrative expenses. Therefore, the Department of Labor (DOL) assumes that as long as the balance of funds in a State's UTF account exceeds its unexpended balance of Reed Act allocations, the total unused Reed Act balance remains within the account. (See Part E. for exceptions for use of amounts allocated for fiscal years 2000, 2001, and 2002.)

2. Use upon Obtaining a Title XII Advance

. Section 1201, SSA,

provides a system of "Title XII" advances to States with temporarily depleted unemployment compensation reserves. One of the requirements for a State to qualify for an advance is that the amount of the advance be determined by considering all other amounts available in the State's unemployment fund for benefit payment. (Section

1201(a)(3)(B), SSA.) This includes, as explained below, unobligated Reed Act funds. Therefore, upon obtaining a Title XII advance, a State's unexpended Reed Act funds become subject to expenditure for benefits without regard to whether they have been appropriated or, except as provided below, obligated for an administrative expense. (See Part E. for exceptions for use of amounts transferred with respect to Federal fiscal years 1999, 2000, and 2001.)

3. Procedures to Set Aside Obligated Amounts

. Amounts validly

obligated, under appropriations made consistently with the Reed Act, are considered to be unavailable for any other purpose, including the payment of benefits upon obtaining a Title XII advance. To assure availability for expenditure when obligations mature, Reed Act funds, which are properly obligated for an administrative expense prior

to obtaining

an advance, may be made unavailable for benefit payment if the State elects to set aside such amounts in a UTF Reed Act "sub-account". This set aside provision does not apply to appropriated funds prior to actual obligation, because an appropriation specifies only the purpose for which funds may be expended and does not create transactions which require a

Image 6

payment of money. Funds residing in a Reed Act sub-account are not considered available for benefits and are not taken into account by DOL or Treasury for Title XII purposes, if properly set aside in such a sub-account. The procedures to set aside obligated amounts are as follows:

a. To establish an initial credit to a sub-account, a State must:

1. Review each current Reed Act obligation under which there is an unexpended balance and validate the:

- Date of enactment of the enabling appropriation (see part D.1.),

- Date and amount of each obligation (see part D.2.), and
- Unexpended balance of each obligation amount;

2. Prepare a letter certifying the amount of unexpended Reed Act obligations as of the end of the month being used to establish the initial credit. This amount must agree with transactions reported on Form ETA 8403, Summary of Financial Transactions - Title

IX Funds ("Reed Act" Money) submitted for the same month. (The total of column III(b) less the total of column IV(a) must equal the amount of unexpended obligations.) As documentation, attach a summary sheet identifying each appropriation under which there is an unexpended obligation amount. For each appropriation, indicate the purpose, dollar amount, enactment date, legislative bill number, and the current total dollar amount obligated.

The letter and attachment should be addressed to:

U.S. Department of Labor
Employment and Training Administration
Attention: TEUFA
200 Constitution Avenue, N.W., Rm C-4512
Washington, D.C. 20210

DOL will then certify the same to U.S. Treasury, subject to review of the State's documentation.

b. To provide for on-going maintenance of the subaccount, a State must:

1. Certify to DOL by letter on a monthly basis all new obligation amounts and all deobligated amounts. The letter must specify the effective date of each

Image 7

obligation or deobligation and identify the corresponding appropriation(s) and/or related obligation(s) by amount and effective date. The letter must be received by the tenth business day of the month following the month in which the transaction occurred and be accompanied by a Form

ETA 8403 for the appropriate month;

2. When requisitioning funds from the State's UTF account, specifically identify withdrawal amounts requested from the Reed Act sub-account;

3. Include all Reed Act sub-account transactions on Form ETA 8403 for the month in which the transaction(s) occur; and

4. Include all Reed Act redeposits and withdrawals on each month's written confirmation letter to Treasury of UTF account activities.

As new obligations are made or as obligations are cancelled, the amounts obligated or deobligated will be certified in a similar manner and credited or deducted from the State's Reed Act sub-account. Withdrawals to pay Reed Act obligations, as specified by State requisitions, will be charged against the Reed Act sub-account.

4. Restoration of Funds Used for Benefits

. Each expenditure of

Reed Act funds, whether for benefits or administrative costs, reduces the amount available for appropriation in accordance with Section 903(c)(2), SSA. Under certain conditions described in Section 903(c)(3), SSA, funds used to pay benefits may be restored to availability for administrative purposes:

- o The Governor of a State must submit a request for restoration of such funds to the Secretary of Labor,
- o Funds to be restored must have been used for benefits,
- o The amount to be restored does not exceed the balance in

the State's UTF account, and

- o The State's unemployment fund must be free of outstanding Title XII advances when the request is made.

a. Determining amount to be restored. States which used Title XII advances must determine the amount of Reed Act funds used for benefits. A "pre-approved" amount of a Title XII advance is designated for a State for a specific month. However, other than the amount set aside in a Reed Act sub-account, U.S. Treasury procedures take into account a State's entire UTF account balance

Image 8

(including Reed Act funds which have not been set aside in a Reed Act sub-account), which must be reduced to zero prior to calculating the actual amount of an advance and transferring it to the State.

- o The balance of Reed Act funds (not set aside in a Reed Act sub-account) in the State's account on the date in the first month any portion of a Title XII advance was actually used is the amount of Reed Act funds used for benefits and eligible for restoration.

- o If, after an initial advance and the resulting expenditure of Reed Act funds for benefits, funds are recovered through amortization (see Part F.) and deposited in a State unemployment fund in any subsequent month as Reed Act redeposits, then such redeposited amounts are also considered to have been used for benefits if the State uses any portion of a Title XII advance during that month. However, if the State does not use any portion of a subsequent advance in a month in which a redeposit is made, the redeposited amount remains in the State's account as Reed Act funds but must be used only to pay benefits while there is an outstanding balance of advances.

Example

: On February 1, 1997, a State has a \$500,000 balance of Reed Act money in its account in the UTF, none of which has been set aside in a Reed Act sub-account. A Title XII advance in the amount of \$5,000,000 has been approved for use by the State during February. On February 9, the balance in the State's account is \$700,000 and the State requests a withdrawal of \$2,000,000. To transfer the State's requisition of \$2,000,000, the U.S. Treasury first deducts the remaining \$700,000 from the State's account (which includes the \$500,000 Reed Act balance), thereby reducing the State's account balance to zero; it then adds to the account \$1,300,000 from the \$5,000,000 Title XII advance for February, which it transfers to the State along with the original \$700,000. At this time, the \$500,000 in Reed Act money is deemed to have been used for benefits.

During March and April, the State redeposits \$100,000 to its UTF account received as amortization payments on a Reed Act financed building. This money is available for obligation for administrative expenses after the State repays all advances, because under Section 903(c)(2), SSA, Reed Act funds may not be obligated while there is an outstanding balance of Title XII advances. If the State does not borrow again and repays all outstanding Title XII advances, the Governor may request restoration of the \$500,000 used for benefits in February 1997. If the State borrows again in

Image 9

April, the \$100,000 would also be used for benefits. Therefore, after all advances are repaid, the Governor may request restoration of the \$500,000 used for benefits in February 1997 and the \$100,000 used for benefits in April 1997.

b. Procedures for restoration of funds.

States desiring restoration of Reed Act funds must prepare and submit:

- o Form ETA 8403, indicating when funds were used for benefits by showing dates (month, year) in column I and the appropriate amounts as negative figures in column II of the report; and
- o A letter from the Governor of the State to the Secretary of Labor (1) stating that the State's unemployment fund is free of Title XII obligations and contains funds at least equal to the amount to be restored, and (2) specifying amounts to be restored pursuant to Section 903(c)(3), SSA.

If the Secretary of Labor determines that:

- o Amounts requested for restoration: (1) were used to pay benefits and (2) do not exceed the amount in the State's UTF account, and
- o All Title XII advances were repaid as of the request date;

then the Secretary will notify the Governor that the restoration is approved. Restoration shall be effective on the first day of the month following the date of the Secretary's notice.

D. USE OF REED ACT FUNDS FOR ADMINISTRATIVE PURPOSES

1. Legal Requirements

. Reed Act funds may be used for

administrative expenses of the employment security program only if a State adheres to the requirements specified in Section 903(c)(2), SSA. (See Part E. for exception for use of amounts allocated for fiscal years 2000, 2001, and 2002.)

The State legislative body must authorize the use of Reed Act money by specific appropriation. The appropriation law: (1) must specify the purpose and the amount of the

Image 10

appropriation, (2) may not authorize obligation of funds after the close of the two-year period which began on the date of enactment of the law, and (3) must limit the amounts which may be obligated to the balance of unobligated Reed Act funds in the State's unemployment fund. Funds must be withdrawn from the State's unemployment fund and expended after the date of enactment and must be accounted for in accordance with standards established by the Secretary of Labor. (See Attachment II, Draft Language for State Laws

in

appropriating Reed Act funds for administrative purposes.)

2. Guidelines for Use

a. Specificity and Limitation Requirements of an Appropriation Act. A State appropriation act authorizing

the use of Reed Act funds must (1) limit the use of funds appropriated exclusively to administrative expenses of the employment security program and (2) specify the purpose for which the funds are appropriated and the amount appropriated for each purpose. For example, the purpose of an appropriation law might be: "To conduct a special, statewide, intensive audit of employer payrolls in the construction industry".

When a State agency is administering other programs in addition to the employment security program (e.g., a disability insurance program), no part of the expenses of administering the other programs may be paid with Reed Act funds. When funds are appropriated for a purpose for which only a part is related to employment security, the appropriation law must specify the employment security share and the amount of Reed Act funds to be used.

Although an appropriation of Reed Act funds may exceed the balance of available Reed Act funds at the time of the appropriation (see part D.2.c.), the appropriation law must specify that the amount which may be obligated at any time may not exceed the balance of Reed Act funds available at the time of obligation

in the State's

unemployment fund.

b. Two-Year Limit for Obligating Funds. The two-year time limit imposed by Section 903(c)(2)(B), SSA, within which Reed Act funds appropriated by State law must be obligated begins on the date of enactment of the appropriation law, not the date as of which funds were transferred to the State's UTF account. The appropriation law must be worded so that it is clear that

Image 11

funds appropriated are not available for obligation after the two-year period. The term, "date of enactment", as used in Section 903(c)(2), SSA, means the date on which an act passed by the State legislature becomes law. The determination of the date when such an act becomes law is

a question for the appropriate State authority. In some instances, State courts have held that the effective date of an act is the date of enactment. However, the substitution of "effective date" for the term "date of enactment" in Reed Act legislation should be avoided, since an interpretation of State law will be required to determine whether the appropriation law meets the requirements of Section 903(c)(2)(B), SSA, if "effective date" is used. The general rule is that the date of enactment is the date on which the act is approved by the Governor of the State. Money is "obligated" and an "obligation" is created when an order is placed, a contract is awarded, or other transactions are entered into which require a current or future payment of money. The use of the term "obligate" instead of "expenditure" in Reed Act appropriations is recommended for consistency with Section 903(c)(2)(B). The use of such terminology also allows greater flexibility in handling Reed Act funds; money obligated before the expiration of the twoyear limit may be expended any time afterward.

c. Appropriation in Anticipation of Future Reed Act

Availability. A State legislature is not prohibited from appropriating Reed Act funds in anticipation of a future availability of Reed Act funds. However, such funds may not be obligated prior to becoming available even though they have been properly appropriated by act, the enactment date of which precedes the date of funds becoming available.

d. ETA Administrative Requirements Not Applicable

. Although

Reed Act funds may be used for an administrative expense of the employment security program, Section 903(c)(2), SSA, does not, as do Sections 303(a) and 303(a)(8), SSA, require that the expenditure be for a purpose or in an amount found necessary for proper and efficient administration by the Secretary of Labor. Further, since Reed Act funds are not grant funds, the administrative requirements related to the use of grant funds at 29 Code of Federal Regulations (CFR) Part 97 and OMB Circular No. A-87 (60 Federal

Register 26484 (May 17, 1995)) with

respect to the expenditure of Wagner-Peyser Act and Title III funds (granted funds) are not applicable to the expenditure of Reed Act funds. Nevertheless, Reed Act funds must be expended consistent with Sections 903(c)(1)

Image 12

and (2), SSA. Further, where Wagner-Peyser and granted funds are to be used to reimburse Reed Act expenditures for certain permissible purposes, DOL prior approval may be required for such use of granted funds. (See part F.)

e. Restrictions on Withdrawal of Funds

. Reed Act funds may

not be withdrawn from a State's unemployment fund for administrative expenses, and expenses may not be incurred until after the enactment date of the appropriation law. In addition, funds may not be withdrawn prior to obligation. The withdrawal of Reed Act funds must adhere to the U.S. Treasury-State Agreement under the Cash Management Improvement Act of 1990 (CMIA).

Funds may be withdrawn only in amounts necessary to pay mature obligations. (Section 303(a)(5), SSA; Section 3304(a)(4), FUTA.) An obligation is mature when payment is due either by reimbursement of expenses or contractual agreement for advance payments. Reed Act funds withdrawn may be mingled with other administrative funds (granted funds) if separate book accounts are maintained by the State agency to identify the balance of Reed Act funds at all times.

3. Use of Reed Act Interest Credits

. Since Section

903(c)(2)(D), SSA, limits the amount which may be obligated for administration to amounts transferred to the State's account, interest credits attributable to the amount of Reed Act funds in the State's UTF account may not be appropriated, obligated, expended, or disbursed for administrative purposes.

4. Investment of Reed Act Funds Not Permissible

. Except as

provided under the CMIA, investment is not one of the purposes for which money withdrawn from a State unemployment fund may be used. Since Reed Act funds are a part of the State's unemployment fund, a State law which permits investment of such funds is inconsistent with Section 303(a)(5), SSA, and Section 3304(a)(4) of FUTA. It was the intent of Congress, as indicated by Section 904, SSA, that money in the UTF may be invested only by the Secretary of Treasury. This intent is effectuated only by assuring that Reed Act moneys remain in the UTF.

E. USE OF REED ACT FUNDS ALLOCATED FOR FISCAL YEARS 2000, 2001, AND 2002

The BBA of 1997 amended paragraph (2) of Section 903(c) of the SSA, by adding the following sentence: "Any amount allocated to

Image 13

a State under this section for fiscal year 2000, 2001, or 2002 may be used by such State only to pay expenses incurred by it for the administration of its unemployment compensation law, and may be so used by it without regard to any of the conditions prescribed in any of the preceding provisions of this paragraph."

Unlike previous Reed Act transfers, States are prohibited from using Reed Act funds allocated for these three years for the payment of UC benefits or the administration of State public employment offices. However, States may, among other uses, use these Reed Act funds for purchasing real property for UC purposes and may amortize these purchases against UC grant funds. (See Parts G. and H.) Additionally, the restrictions applicable to Reed Act funds in Section 903(c)(2), SSA, are not applicable to amounts allocated for fiscal years 2000, 2001, and 2002. This means that the amounts transferred to States for these three years may be used without obtaining an appropriation from the State's legislative body, as discussed in Parts D.1. and D.2., above. States must amend their UC laws to prohibit the use of Reed Act funds allocated for fiscal years 2000, 2001, and 2002 for the payment of UC benefits and may further amend their UC

laws to authorize the use of such funds for UC administrative purposes without a specific appropriation from their State legislatures. (See Attachment II, Draft Language for State

Laws.)

F. USE OF REED ACT FUNDS FOR VOTER REGISTRATION ACTIVITIES

Under the National Voter Registration Act (NVRA) of 1993, States are permitted to designate State UC and ES offices as voter registration agencies. Reed Act funds may be used to pay for the administration of a State's UC law and public employment office. Since, under the SSA, voter registration activities are not necessary for the administration of the State's UC law, Reed Act funds may not be used for those activities. However, since Section 7(a)(3)(B) of the Wagner-Peyser Act authorizes SESAs to use ES grant monies for "developing linkages between services funded under this Act and related Federal or State legislation", if an ES office is designated as a voter registration agency under the NVRA, then voter registration activities of that ES office are legitimate ES administrative expenses chargeable to ES grants. Therefore, Reed Act funds may be used to pay for these voter registration activities.

NOTE: As illustrated in F., the use of Reed Act funds for SESA administrative expenses is permissible for purposes other than those specifically mentioned in this discussion.

Image 14

G. USE OF REED ACT FUNDS TO ACQUIRE REAL PROPERTY

1. Acquisition of Real Property Deemed an Expense of Administration. Reed Act funds may be used to acquire land and to purchase or construct a building for use and occupancy by the State employment security agency consistent with Section 903(c)(2), SSA. This is an expense of employment security administration. The following are special conditions applicable to this use of Reed Act funds:

a. Space

. Since Reed Act funds may be used only for employment security purposes, such funds may be used to pay only for that part of the land and building

space costs which are directly related to employment security purposes, e.g., that part of the cost of a building as is represented by the proportion of the total space occupied and used by the employment security agency for employment security purposes, including the cost of agency functions and other agency programs and activities which jointly benefit Wagner-Peyser Act and unemployment compensation programs.

Reed Act funds may not be used to pay for more land or building space than is needed for employment security purposes. However, funds may be used to purchase or construct a building large enough to provide space for future expansion that reasonably can be anticipated at the time of purchase or construction.

b. Rental of Space

. Extra space which is available through the purchase or construction of a building large enough for reasonable expansion purposes may be leased until the time it is required for agency use. Income from the lease must be deposited in the State's UTF account but may not be credited as Reed Act funds. Income from a lease may not be credited as Reed Act funds because only amounts transferred to the State's account under Section 903(a)(1), SSA, have "Reed Act" status. If the cost of the space is being amortized with grant funds, the income from the lease must be prorated between the State's UTF account and used to reduce the State's grant costs, in accordance with 29 CFR 97.25 and the annual grant agreement.

2. Disposition of Real Property and Subsequent Use of Proceeds

. Real property acquired with Reed Act funds, which has not been amortized with grant funds (see part F.), may be sold

Image 15

or otherwise disposed of without obtaining DOL approval or disposition instructions. When unamortized real property is no longer needed for its originally authorized employment security purpose, States are expected to use good business judgment in disposing of such property. Proceeds from such disposal must be returned to the State's UTF account. The proceeds will be credited as Reed Act funds up to the amount of the original expenditure, because only amounts transferred to the State's account under Section 903(a)(1), SSA, have Reed Act status.

When real property acquired with Reed Act funds and wholly or partially amortized with grant funds is no longer needed for its originally authorized employment security purposes, it must be sold, exchanged for replacement property, or otherwise disposed of as directed by DOL disposition instructions (29 CFR Part 97.31(c)). Example A illustrates the sale of real property which was purchased with both nonFederal funds and Reed Act funds, with a portion of the Reed Act funds having been amortized with DOL grant funds.

Example A

: Thirty-five years ago, \$1 million of Reed Act funds and \$1 million of other non-Federal funds were used to acquire real property at the cost of \$2 million for employment security purposes. Over the years, seventy percent (70%) of the Reed Act funds were amortized with DOL grant funds. Today, the real property is being sold for \$6 million. The distribution of the respective equities is based on the following computations:

Share of Each Fund Source Based on Adjusted Contributions to

Cost:

Other Funds ($\$2,000,000 - \$1,000,000 = 50\%$)

less $\$1,000,000$)

DOL Grant Funds ($70\% \times \$ 700,000 = 35\%$)

$\$1,000,000$)

Reed Act Funds ($\$1,000,000 - \$ 300,000 = 15\%$)

less $\$700,000$)

Total Cost $\$2,000,000$

100%

Equity in Property by Fund Source:

Other Funds equity (50% x \$6,000,000) \$3,000,000

DOL equity (35% x \$6,000,000) \$2,100,000

Reed Act equity (15% x \$6,000,000) \$ 900,000

Total Sale Proceeds \$6,000,000

(29 CFR 97.31(c)(2).)

Image 16

See Part F.1. for an explanation of how DOL (Federal) equity was created in the property.

a. Replacement. A State may use proceeds from the sale of real property as an offset to the purchase price of a replacement property. In a replacement transaction, it is not necessary to make another appropriation of Reed Act funds to obtain the replacement property if the use of such funds conforms in all respects to the original appropriation authorizing the acquisition of the disposed property and is permissible under State law. In the interpretation of State Reed Act appropriations, the State is the final arbiter of its State law. Such transactions may not result in a new obligation of Reed Act funds. If the property being replaced is worth more than the replacement, the excess cash proceeds received or equivalent cash shall be handled as in Part 2.b.

b. Use of Cash Proceeds

. The Reed Act share of cash

proceeds received from the sale or other disposition of real property must immediately be deposited in the State's account in the UTF (Section 303(a)(4), SSA, and Section 3304(a)(3), FUTA). Similarly, any portion of the Reed Act proceeds from a disposition that is not used for replacement property must be immediately deposited in the State's UTF account. However, only proceeds equivalent to the original cost of the property may be credited to the State's

account as Reed Act funds. Earnings or profit resulting from real estate transactions may not be credited as Reed Act funds because only amounts transferred to a State as provided in Section 903(a)(1), SSA, have "Reed Act" status. The remainder of cash proceeds, if any, must be used for the payment of unemployment benefits or other expenditures consistent with the withdrawal standard. Failure to immediately deposit the applicable proceeds into the UTF may be cause for the Secretary of Labor to commence conformity/compliance proceedings and to assess interest on the amount outstanding. Example B illustrates the proper distribution of the Reed Act share of sales proceeds in Example A.

Example B

:

Distribution of Reed Act Share of Sales Proceeds:

Reed Act contribution to acquisition cost \$1,000,000

Image 17

Less: Adjusted grant funds contribution
to (amortization of) acquisition cost \$ 700,000
Adjusted Reed Act Contribution \$ 300,000

Reed Act equity in sales proceeds \$ 900,000

Less: Adjusted Reed Act contribution \$ 300,000
(credited to UTF as Reed Act funds)
Balance of Reed Act equity \$ 600,000

(credited to UTF for payment of
unemployment compensation and other
expenditures consistent with the withdrawal standard)

H. REIMBURSEMENT OF REED ACT EXPENDITURES FROM GRANTED FUNDS

1. Extent of Reimbursement

. UI and ES grant funds may be used

to reimburse the State's Reed Act expenditures to the extent that the costs meet the requirements for use of funds authorized by the Wagner-Peyser Act and Title III. (29 CFR Part 97; OMB Circular No. A-87.) To date, reimbursement through amortization arrangements has been authorized for:

- o the cost of obtaining land and constructing or purchasing a building for employment security purposes (real property),

- o capital improvements to State-owned office buildings, to the extent such buildings are used for employment security purposes, and

- o the acquisition of automatic data processing (ADP) installations.

Reed Act funds expended for the above purposes may be amortized with grant funds because these expenditures meet the administrative requirements related to the use of grant funds at 29 CFR Part 97 and OMB Circular No. A-87 with respect to the expenditure of Wagner-Peyser Act and Title III funds.

The amortization of Reed Act expenditures for the acquisition of real property and capital improvements with grant funds creates Federal equity. "Federal equity" means the Federal government owns a share of the fair market value of real property. Therefore, when the property ceases to be used for employment security purposes, DOL recaptures the Federal equity. The value of the Federal equity is based on

Image 18

the adjusted contribution of UI and ES grant funds to the acquisition cost of the property and any capital improvements that materially increase the value or useful life of real property.

2. Deposit and "Reappropriation" of Reimbursed Reed Act

Funds. Grant funds used to reimburse a State for Reed Act expenditures must be deposited immediately to the State's UTF account (Section 303(a)(4), SSA; Section 3304(a)(3), FUTA), and credited to Reed Act funds used in the project.

Where a reimbursement relates to a particular project within an appropriation involving two or more years of Reed Act allocations, the reimbursement is applied first to the earliest Reed Act allocation used in the project and thereafter to the next earliest in consecutive order. Reimbursed funds may be "reappropriated" by the State legislature for other Reed Act administrative purposes.

I. UNEMPLOYMENT TRUST FUND (UTF) TRANSACTIONS

1. Withdrawal of Reed Act Funds

. U.S. Treasury

requirements and procedures for withdrawal of Reed Act funds from a State's UTF account for payment of benefits and administrative expenses are the same as for regular benefit funds through Treasury's on-line requisition system. To withdraw Reed Act funds which have not been "set aside" in a Reed Act sub-account, the State must include the amount being withdrawn in the total requisition for regular benefits. There is a specific line on the electronic requisition screen for withdrawal of Reed Act funds which have been "set aside" in a Reed Act sub-account. The total amount of administrative Reed Act funds being withdrawn and the account and location for its deposit must be noted in the "special instructions" section of the screen.

2. Deposit of Reed Act Fund Reimbursements

. As noted in

part F.2., grant funds used to reimburse Reed Act expenditures must be returned immediately to the State's UTF account. The following are procedures for deposit of such reimbursements:

- o The State agency must prepare a voucher against the administrative fund account in the amount of the reimbursement to be made.

- o The "payee designation" must be the State employment security agency, or whatever designation is appropriate to permit deposit to the clearing account.

Image 19

o After deposit to the clearing account, the reimbursement must be included in the next transfer of funds from the clearing account to the State's UTF account.

The same procedures for depositing reimbursement amounts will be used for returning any Reed Act funds which have been withdrawn for an administrative purpose but not used. (See part D.2.e.)

J. ACCOUNTING FOR REED ACT FUNDS

1. Accounting Records

. Each State agency will maintain an accounting system with respect to Reed Act funds which will provide information for required DOL reports. The accounting records will contain:

a. Date and amount of each allocation or transfer of Reed Act funds to the State's UTF account, identified by fiscal year and totalled.

b. Date and amount of each expenditure of Reed Act funds for benefits and the fiscal year in which the funds charged with such expenditure were transferred to the State's account.

c. For each appropriation of Reed Act funds for costs of administration:

o Date of enactment of the appropriation law;

o Amount appropriated by the appropriation law;

o Date and amount of each obligation and expenditure of Reed Act funds with respect to each project authorized by the appropriation law and the Reed Act funds against which each obligation is charged;

o Date and amount of each withdrawal from the UTF account with respect to each project authorized by the appropriation law;

o Date and amount of each return (and credit) to the UTF

account of withdrawals not expended;

o Date and amount of all receipts from the sale or other disposition of an employment security building financed with Reed Act funds or the lease of space therein;

Image 20

o Date and amount of each reimbursement of Reed Act funds by way of amortization with grant funds with respect to each project authorized by the appropriation law; the crediting of each reimbursement to the UTF account, and the balance which remains to be reimbursed (or amortized); and

o Total of funds obligated pursuant to each appropriation, the total unobligated balance of each appropriation, and total charges against Reed Act funds.

d. Control totals for each transaction recorded for each appropriation in c. above.

e. Each entry in the records must be supported by appropriate documentation, and reference to such documentation must be made in the records.

2. Approval of Vouchers

. Each obligation and voucher for

expenditure of Reed Act funds appropriated for expenses of employment security administration must be approved by the administrative head of the State agency or a duly authorized agent. All such documents or certified duplicates or copies thereof will be filed in the administrative office of the State agency.

K. REED ACT FUNDS REPORTING REQUIREMENTS

All transactions involving Reed Act funds must be reported on Form ETA 8403, Summary of Financial Transactions - Title IX

Funds ("Reed Act" Money) in accordance with instructions in ET Handbook No. 401, Section III, Chapter 2. Redeposits to and withdrawals from the UTF account are also reported on lines 14

and 41, respectively, of Form ETA 2112, UI Financial

Transaction Summary. Instructions for Form ETA 2112 are contained in ET Handbook No. 401, Section II, Chapter 1.

Image 21

L. OMB APPROVALS

Reporting requirements for Form ETA 8403, Summary of Financial Transactions - Title IX Funds ("Reed Act" Money) and Form ETA 2112, UI Financial Transaction Summary are approved by the Office of Management and Budget (OMB) under OMB Approval No. 1205-0154 (expiration date: February 28, 2000). OMB Approval is being sought for procedures to request restoration of Reed Act funds used for benefits (part C.5.b.) and procedures to establish and provide on-going maintenance to a Reed Act "subaccount" (part C.4.). When approval is received for these collections, notification will be issued. NOTE: States are not required to respond to these collections of information unless a currently valid OMB approval number is in effect.

Message: RE: Position

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:42 PM
Item ID: 40861979
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Position**

From Dishman, Wendy [DIA] **Date** Tuesday, April 08, 2014 5:25 PM
To Adams, Lori [IWD]
Cc Wahlert, Teresa [IWD]

 [DIA-IWD-PJ DRAF MOU.doc](#) (98 Kb HTML)  [image001.jpg](#) (3 Kb HTML)

Lori,
I apologize for the delay and appreciate your frustration.

Bev Zylstra thinks that PJ should be included in the existing DHS-DIA MOU. She does not think we can do a separate MOU. I intended on discussing this with DHS at our monthly DHS/DIA management meeting in Feb. and March but the meetings were cancelled due to legislative session conflicts.

Just to get the ball rolling, I have attached a DRAFT MOU for you to review and consider in the event that we can enter into a separate MOU (please note this is my draft based on other MOU's and has not officially been approved by DIA Administration). Please let me know your thoughts on the attached MOU and I will schedule a separate meeting with DHS to discuss this issue.

In the meantime, Leah is continuing to work PJ case referrals and is actively working with Heidi to address some policy challenges they've ran across.

Again, I apologize for the delay.

Sincerely,

Wendy Dishman, J.D.
Administrator, Investigations Division
DIA

From: Adams, Lori [IWD]
Sent: Sunday, April 06, 2014 3:30 PM

To: Dishman, Wendy [DIA]
Cc: Wahlert, Teresa [IWD]
Subject: RE: Position

Where are we with our MOU? This is my last note on the topic.

From: Dishman, Wendy [DIA]
Sent: Monday, December 23, 2013 4:08 PM
To: Adams, Lori [IWD]
Subject: RE: Position

Lori, here is the cost and breakdown:

Salary - \$70,574
 FICA & IPERS - \$11,701
 Benefits - \$13,979
Total - \$96,254

Again, this is the high end but we prefer to use "up to \$96,254.00" in the agreements to avoid any issues.

I am going to have Nick O. send me a template MOU to begin with. Bev Zylstra, our Deputy Director, handles all MOU's but I'll get the ball rolling.

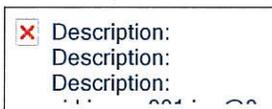
Thank you!
 Wendy

From: Adams, Lori [IWD]
Sent: Monday, December 23, 2013 3:35 PM
To: Wicks, Heidi [IWD]; Wahlert, Teresa [IWD]; Anderson, Leah [DIA]; Crook, Don [DIA]; Dishman, Wendy [DIA]
Subject: Position

Everyone – I have met with Kelly Taylor in IWD financial management. He is confident that we have adequate PROMISE JOBS funds to pay for the Investigator 3 position in Wendy's shop. Just let me know what the fully-loaded salary will be. We'll need to finish up that MOU, but I think we can move ahead. We also talked about FY15, and have some ideas about that as well if DHS isn't willing to increase our allocation, or the legislature doesn't provide funding.

Lori Adams, CPM

Division Administrator/Workforce Services
 Iowa Workforce Development
 1000 East Grand Avenue
 Des Moines, IA 50319
 Phone: (515) 281-9322
 Cell: (515) 418-5058
 Email: lori.adams@iwd.iowa.gov



Please consider the environment before printing this e-mail.

- [\[Investigation Services Expectations of IWD/PJ \]](#)
- [\[Investigation Services Expectations of DIA\]](#)
- [\[3.5 Upon receipt of a referral from IWD/PJ and IWD/PJ designees, conduct investigations involving IWD/PJ administered public assistance programs in a timely, efficient, thorough, and legal manner.\]](#)
- [\[3.6 DIA will provide investigation findings to IWD/PJ in a timely and objective report.\]](#)
- [\[3.7 Participate in IWD/PJ administrative appeal hearings involving DIA investigations when requested.\]](#)
- [\[3.8 Provide materials/information involving IWD/PJ administered public assistance programs to IWD/PJ for review and approval prior to being released.\]](#)
 - [\[Attn: , _____ \]](#)
 - [\[Attn: _____ \]](#)

MEMORANDUM OF AGREEMENT

BETWEEN

IOWA WORKFORCE DEVELOPMENT

PROMISE JOBS PROGRAM AND

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

INVESTIGATIONS DIVISION

This Agreement is made by and between Iowa Workforce Development Promise Jobs Program (IWD/PJ) and Iowa Department of Inspections and Appeals Investigations Division (DIA) pursuant to the authority conferred by Iowa Code chapters 28E, 135, 147 and 10A.

SECTION 1. IDENTITY OF THE PARTIES

1.1 The Iowa Workforce Development Promise Jobs Program (IWD/PJ) is the contracted state agency authorized to provide Promise Jobs services. PROMISE JOBS is the federally funded program as established under Title IV-A of the Social Security Act, Iowa Code Chapter 239B, and 441 Iowa Administrative Code, Chapters 41 and 93. The IWD/PJ's address is 1000 East Grand Ave., Des Moines, Iowa 50319.

2. The Iowa Department of Inspections and Appeals Investigations Division (DIA) is the duly authorized state agency authorized by Iowa Code chapter 10A to conduct various audits and investigations relative to the state supplementary assistance program, the state medical assistance program, the food stamp program, the family investment program and any other state or federal assistance program and collections relative to the liquidation of overpayment debts owed to DHS. The DIA's address is Lucas State Office Building, Des Moines, Iowa 50319.

SECTION 2. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to establish a mutual

framework governing the respective organizational relationships, responsibilities, and activities between IWD/PJ and DIA. This agreement is primarily for utilization of contract resources for investigations relative to the administration of the PROMISE JOBS program, or "Promoting Independence and Self Sufficiency through Employment"

Program which is Iowa's welfare reform program designed to assist Family Investment Program (FIP) recipients to become self-sufficient. Both parties share a common goal of obtaining and maintaining integrity and accountability in the administration of the Promise Jobs Program to ensure appropriate and

efficient use of available public resources.

SECTION 3. SCOPE OF SERVICES/PARTIES' RESPONSIBILITIES

Investigation Services Expectations of IWD/PJ

1. Refer complaints about alleged program violations to DIA.
2. Furnish DIA access to sources of information DIA deems necessary to meet its responsibilities under this Agreement.
3. Provide DIA technical assistance, as necessary, related to Promise Jobs policy and administrative rules.
4. Notify DIA promptly if changes to IWD/PJ's statutory authority or administrative rules impact the complaint investigation process.

A. Investigation Services Expectations of DIA

- B. **3.5** Upon receipt of a referral from IWD/PJ and IWD/PJ designees, conduct investigations involving IWD/PJ administered public assistance programs in a timely, efficient, thorough, and legal manner.
- C. **3.6** DIA will provide investigation findings to IWD/PJ in a timely and objective report.
- D. **3.7** Participate in IWD/PJ administrative appeal hearings involving DIA investigations when requested.
- E. **3.8** Provide materials/information involving IWD/PJ administered public assistance programs to IWD/PJ for review and approval prior to being released.

SECTION 4. DURATION

The term of this Agreement shall begin May 1, 2014 and end April 31, 2015, unless terminated earlier in accordance with the Termination section of this Agreement. The Agreement may be renewed for up to five years in increments of one year periods. IWD/PJ and DIA shall meet at least sixty (60) days prior to the end of the fiscal year to determine renewal and any modifications to the Agreement, including but not limited to, funding.

SECTION 5. COMPENSATION

It is the intent of IWD/PJ to fully fund DIA's cost of providing services under this

Agreement. IWD/PJ agrees to provide funding for one full time investigator (1 FTE) up to \$97,000 per fiscal year. DIA shall submit itemized invoices to IWD/PJ to reflect actual expenses by the thirtieth of the month following the end of each quarter. IWD/PJ shall reimburse DIA within 30 days of receipt of an invoice. If IWD/PJ denies any part of the invoice, IWD/PJ shall provide DIA with a detail reason for the denial and give DIA the opportunity to provide further justification.

Because this Agreement has a possible total duration of six (6) years, the parties agree that IWD/PJ funding levels will be reviewed annually. At that time, the funding levels shall be adjusted based on agreement of both parties and the levels of funding available to IWD/PJ for the purposes and objectives of this Agreement.

SECTION 6. RECORDS AND CONFIDENTIALITY

All investigative reports, written notes, and materials prepared by DIA during the course of an investigation conducted under this Agreement are the property of IWD/PJ.

DIA shall maintain the confidentiality of all investigative information as required by law and shall implement and maintain procedures for safeguarding confidential information. In the event of a breach of this provision, IWD/PJ may immediately terminate this Agreement.

SECTION 7. TERMINATION

7.1 Termination upon Notice. Either party may terminate this Agreement, without penalty or incurring of further obligation, upon sixty days written notice. DIA shall be entitled to compensation for services or goods provided prior to and including the termination date.

2. **Termination Due to Lack of Funds or Change in Law.** Either party shall have the right to terminate this Agreement without penalty as a result of any of the following by giving sixty days written notice to the other party.

7.2.1 The legislature or governor fail to appropriate funds sufficient or fees are insufficient to allow either party to operate as required and to fulfill its obligations under this Agreement;

7.2.2 The de-appropriation, non-appropriation, or non-allocation of funds or fees by any entity.

7.2.3 Withdrawal of either party's authorization to conduct its business or a material alteration in the programs IWD/PJ administers; or

7.2.4 Modification of either party's duties.

IWD/PJ agrees to make reasonable efforts to secure funding in an effort to pay DIA under the terms of this Agreement. If any appropriation or fees to cover the costs of this Agreement becomes available within sixty days subsequent to termination under this clause, IWD/PJ agrees to re-enter the Agreement with DIA under the same terms as the original Agreement.

7.3 Upon Expiration or Termination of this Agreement. DIA shall:

7.3.1 Deliver to IWD/PJ within twenty (20) working days after such expiration or

termination all data, records, information and any other items which belong to IWD/PJ;

2. Comply with IWD/PJ's instructions for the timely transfer of active files and work being performed by DIA under this Agreement to IWD/PJ;
3. Protect and preserve property in the possession of DIA in which IWD/PJ has an interest;
4. Stop work under this Agreement on the date specified in any notice of termination provided by IWD/PJ;
5. Submit to IWD/PJ reconciliations substantiating all charges for work performed by DIA prior to the effective date of expiration or termination;
6. Cooperate in good faith with IWD/PJ, its employees and agents during the transition period between the notification of termination and the substitution of any replacement.

7.4 Delay or Impossibility of Performance. Neither IWD/PJ nor DIA shall be considered to be in default under this Agreement if performance is delayed or made impossible by an act of God, flood, fire, strike or similar events. In each such case the delay or impossibility must be beyond the control and without the fault or negligence of the delaying party.

SECTION 8. AGREEMENT ADMINISTRATION.

1. **Compliance with Laws and Regulations.** DIA, its employees and agents, shall comply

with all applicable state and federal laws, rules, ordinances, regulations, orders and executive orders. The parties to this Agreement declare that they have complied with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement.

2. **Cumulative Rights.** The various rights, powers, options, elections and remedies of either party provided in this Agreement, shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, or shall in any way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged.

3. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

4. **Use of Third Parties.** DIA shall not use third parties to meet the obligations under this

Agreement.

5. **Third Party Beneficiaries/No Separate Legal Entity.** There are no third party beneficiaries to this Agreement, except the signatories to this Agreement and no separate legal or administrative entity is created by this Agreement.

6. **Not a Joint Venture.** Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind of agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent entity contracting for services and acting toward the mutual benefits expected to be derived here from. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement. If DIA is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default of such activities and obligations.

8.7 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party.

8. **Additional Provisions.** The parties agree that if an Addendum, Attachment or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

8.10 Express Warranties. DIA expressly warrants, within the standards of care used within the industry, all aspects of the goods and services provided or used by it in the performance of this Agreement.

8.11 Headings or Captions. The paragraph headings or captions used in this Agreement are for identification purposes only and do not limit or construe the contents of the paragraphs.

8.12 Integration. This Agreement represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement.

8.13 Supersedes Former Contracts or Agreements. This Agreement supersedes all prior Contracts or Agreements between IWD/PJ and DIA for services and products provided in connection with this Agreement.

8.14 Counterparts. The parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

8.15 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of IWD/PJ and DIA, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be

construed as affecting any subsequent right to require performance with respect thereto or to claim a breach with respect thereto.

8.16 No Authority to Bind. No party, unless otherwise specifically provided for herein,

has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

8.17 Obligations Beyond Agreement Term. This Agreement shall remain in full force

and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. All obligations of IWD/PJ and DIA incurred or existing under this Agreement as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Agreement, except as expressly provided herein.

8.18 Notices. Notices under this Agreement shall be in writing and delivered to the

representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail, return receipt requested, with postage prepaid thereon, or by recognized overnight delivery service such as Federal Express or UPS:

If to: **Iowa Department of Workforce Development, Promise Jobs:**

Attn: , _____

Address: Iowa Workforce Development

1000 East Grand Ave.

Des Moines, IA 50319

If to: **Iowa Department of Inspections and Appeals:**

Attn: _____

Address: Iowa Department of Inspections and Appeals

321 E. 12th Street

Des Moines, IA 50319

8.19 Further Assurances and Corrective Instruments. The parties agree that they

will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

8.20 Compliance With Equal Employment and Affirmative Action Provisions. Both

parties shall comply with the provisions of federal, state and local laws, rules and executive orders to ensure that no employee or applicant for employment is discriminated against because of race, religion, color, age, sex, national origin, or disability. Either party, if requested, shall provide state or federal agencies with appropriate reports as required to ensure compliance with equal opportunity laws and regulations. Both parties shall ensure that all personnel assigned, as a result of this agreement, comply with the provisions of this clause.

SECTION 9. EXECUTION

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have cause their duly authorized representatives to execute this Agreement.

State of Iowa, Department of Workforce Development

By: _____ Date: _____

Printed name: Teresa Wahlert

Title: Director, Department of Workforce Development

State of Iowa, Department of Inspections and Appeals

By: _____ Date: _____

Printed name: Rodney A. Roberts

Title: Director, Department of Inspections and Appeals

[Preview is not available (conversion excluded for this file type).]

Message: Job Opportunities at Aetna/Iowa**Case Information:**

Message Type: Exchange
 Message Direction: External, Inbound
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:57 PM
 Item ID: 40862409
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ Job Opportunities at Aetna/Iowa

From Diversity/Inclusion Careers **Date** Friday, March 21, 2014 10:23 AM
To Adams, Lori [IWD]
Cc

 (3 Kb HTML)  (32 Kb HTML)



Dear Lori,

Aetna is a federal contractor and desires priority referrals of veterans. Our company is committed to developing partnerships with state and local service organizations supporting veterans and individuals with disabilities seeking employment. A list of our offices within your state is attached.

We have a richly diverse workforce comprised of some of the best and brightest employees in the health insurance industry. Our positions are as diverse as our employees and include traditional "health insurance industry roles" such as underwriting, claims processing and customer service, as well as roles in areas such as nursing, pharmacy, marketing, human resources, and communications.

Why Aetna?

Our company has some of the best employment related policies and programs that support the military, veterans, disabled veterans, the National Guard and Reserve and their families. These include leave and pay policies that go beyond the legal requirements, an employee resource group for veterans and philanthropic activities.

In addition, as one of the nation's leading diversified health care benefits companies, we offer a competitive benefits package to our employees. From medical plans and wellness programs, tuition reimbursement to life insurance and retirement resources, a wide range of options is available to help veterans achieve optimal health, career development and financial well-being.

Where to find Aetna's Job Postings:

Our open positions are delivered to your agency through Direct Employer's VETCentral program/Direct Employers Association. This program provides daily updates of our job postings in the local area. If you have any questions about the delivery of the job listings to your agency, please contact us at the number listed below.

Our open positions also are posted on Aetna's career webpage. By visiting Aetna's career website, your agency and veterans can search for open positions in over 100 offices across the country as well as telework opportunities. We have job opportunities ranging from professional careers to college internships and co-op programs.

As part of our effort to connect with veterans, we ask that veterans use a special microsite link (see below) that will take them to a targeted site for our veteran recruiting. This site provides information relevant to veterans and includes a military cross walk translator tool to search Aetna jobs against Military titles. Veterans can conduct searches of all job openings at Aetna both by job and by location.

<http://aetna-veterans.jobs/>

How to Contact us:

We welcome any questions you have. We also would welcome any suggestions you have for creating meaningful relationships with your agency that would further support the employment of veterans and/or individuals with disabilities. In addition, any questions about information set-forth in the job postings at any location or to provide priority referrals of veterans from your agency at any of our hiring locations, please contact Estaer Nguyen at 860-273-6826 or by email at DiversityCareers@aetna.com.

From time to time Aetna also uses individuals employed by temporary staffing agencies for temporary work at Aetna. We use Volt Consulting Group to coordinate the provision of the individuals. If you would like more information about employment opportunities at temporary staffing agencies which provide individuals to Aetna, please contact Annette Soslak, Program Manager at Volt Consulting Group at 860-273-1485.

In addition, if a client is a disabled veteran or has a disability, and needs assistance in accessing or using Aetna's career webpage due to the disability, they can call Aetna's HR Contact Center at 1-800-238-6247 to speak with a specialist about an accommodation.

Regards,

Loren Jenkins – Diversity Recruiting Lead

Aetna is an equal opportunity and affirmative action employer. All qualified applicants will receive consideration for employment without regard to race/ethnicity, color, gender, disability, veteran status, national origin, citizenship, religion, age, sexual orientation, gender identity, marital or family status or genetic information and will not be discriminated against based on those characteristics. We take affirmative action to recruit, select, develop and retain women, people of color, individuals with disabilities and veterans.

This e-mail may contain confidential or privileged information. If you think you have received this e-mail in error, please advise the sender by reply e-mail and then delete this e-mail immediately. Thank you. Aetna

[Preview is not available (conversion excluded for this file type).]

Aetna Office Locations and Contact Information

For questions about information listed in Aetna job postings or priority referral of veterans, please contact Estaer Nguyen at 860-273-6826 or by email at DiversityCareers@aetna.com.

AETNA IOWA OFFICES

4320 NW 114th St

Urbandale

IA

For questions about employment opportunities at temporary staffing agencies that Aetna uses, please contact Annette Suslak, Program Manager at Volt Consulting Group, at 860-273-1485.

Message: RE: Uncashed benefit payment check?**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:49 PM
 Item ID: 40862202
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Uncashed benefit payment check?

From Donner, Lynette [IWD] **Date** Wednesday, March 12, 2014 11:24 AM
To Ruby, Evelyn [IWD]; Eklund, David [IWD]
Cc

 **image001.jpg** (3 Kb HTML)

Thank you!

From: Ruby, Evelyn [IWD]
Sent: Wednesday, March 12, 2014 10:41 AM
To: Eklund, David [IWD]
Cc: Donner, Lynette [IWD]
Subject: RE: Uncashed benefit payment check?

The uncashed/outdated warrant has been received, reissued, and applied to the overpayment....reducing the amount of the overpayment to zero. Two 159 Special Warrants have been ordered....one in the amount of \$46 for the 2012 Iowa Income Tax Offset (which occurred in 2013), and one in the amount of \$7 for the ITAX Transfer Fee. The warrants will be mailed to the claimant when they are received next week. The hold on the 2013 year Iowa Tax Refund has been released, and an ANDS 008 decision, informing the claimant of this release, has been issued (REF 06). I have also called and left a message for the claimant, keeping her informed of the status.

Evelyn Ruby
 Workforce Advisor
 Benefits Bureau
 Iowa Workforce Development
 515-242-0436

From: Eklund, David [IWD]
Sent: Friday, February 28, 2014 9:44 AM

To: Ruby, Evelyn [IWD]
Subject: FW: Uncashed benefit payment check?

From: Donner, Lynette [IWD]
Sent: Friday, February 28, 2014 9:13 AM
To: Eklund, David [IWD]
Subject: RE: Uncashed benefit payment check?

The copy of the warrant she provided was State of Iowa Warrant No. 30670983, dated 9/15/11, in the amount of \$1,005.00.

I am attaching a copy of her appeal with the copy of the warrant. I'm not trying to talk her out of participating in her requested hearing, but if there are things that you think would help her in resolving the matter short of a hearing, I'm fine with you contacting her.

From: Eklund, David [IWD]
Sent: Friday, February 28, 2014 7:59 AM
To: West, Ryan [IWD]; Donner, Lynette [IWD]
Subject: RE: Uncashed benefit payment check?

If you have a copy of the warrant we can start the process of verifying that it was not cashed. We will need the actual warrant to void the OP. We can call the claimant and request the warrant be mailed in if you would like.
Dave

From: West, Ryan [IWD]
Sent: Friday, February 28, 2014 7:16 AM
To: Donner, Lynette [IWD]
Cc: Eklund, David [IWD]
Subject: RE: Uncashed benefit payment check?

Dave would be the expert on this one.

Ryan West
Regional Operations Manager
Phone (515) 725-3732
Fax (515) 281-9321

 Description:
titlegraphic

From: Donner, Lynette [IWD]
Sent: Thursday, February 27, 2014 8:48 PM
To: West, Ryan [IWD]
Subject: Uncashed benefit payment check?

I have an income tax offset appeal hearing set for 3/11/14 for CL Cortes, xxx-xx-7759. The original balance of her OP from her 08/07/11 claim year was \$1,005.00. Her appeal is seeking relief on the basis that she never cashed the benefit payment check. She enclosed a copy of a State of Iowa Warrant No. 30670983, dated 9/15/11, in the amount of \$1,005.00. I'm assuming even though the check would have become void the monies essentially are being held in trust for her by the State Treasurer's office. Can you refer me to someone who could verify that the check was never cashed, and who could maybe provide some suggestions as to what the CL might be able to do to actually get the monies returned to the unemployment fund?

[Preview is not available (conversion excluded for this file type).]

Message: RE: Overpayment inquiry?

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:37 PM
Item ID: 40861855
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Overpayment inquiry?

From Donner, Lynette [IWD] **Date** Monday, March 31, 2014 2:24 PM
To Eklund, David [IWD]
Cc

 [image001.jpg](#) (3 Kb HTML)

Thanks!

From: Eklund, David [IWD]
Sent: Monday, March 31, 2014 2:16 PM
To: West, Ryan [IWD]
Cc: Donner, Lynette [IWD]
Subject: RE: Overpayment inquiry?

Lynette,

Ms. Cook as not paid a cent towards her \$312.00 OP with IWD since it was established in September 2009.

What she provided as "proof" was her Iowa State Income Tax payment agreement for her State Tax liability. 3 equal installments.

All payments to us are written to: Iowa Workforce Development. Our endorsement stamp likewise says "Iowa Workforce Development"

Dave

From: West, Ryan [IWD]
Sent: Monday, March 31, 2014 1:54 PM
To: Eklund, David [IWD]
Cc: Donner, Lynette [IWD]
Subject: FW: Overpayment inquiry?

Ryan West
Regional Operations Manager

Phone (515) 725-3732

Fax (515) 281-9321

 Description:
titlegraphic

From: Donner, Lynette [IWD]

Sent: Monday, March 31, 2014 11:58 AM

To: West, Ryan [IWD]

Subject: Overpayment inquiry?

Have a hearing coming up on 4/14 on an income tax offset for CL Kimberly Cook, xxx-xx-8503. She does not dispute there was an OP, but is appealing claiming she had repaid the OP.

She enclosed a print out of some internet payment to the dept of revenue, I have attached a scan of that, showing some payment of \$111.25 on 6/15/12. She asserts that the remainder was paid by check in July 2012 and that she will provide proof of that, but have not received anything further yet.

Curious though, the internet print out is showing a starting balance of \$330.30 and total payments of \$333.75, and her UI OP was only ever \$312. Is there some way of learning whether there was some other state debt that her payment in 2012 might have gone against? I do note that there was another OP statement sent to her on 11/1/12 which still showed the \$312.00 balance due.

[Preview is not available (conversion excluded for this file type).]

Message: Joyia Carder, 3700

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:58 PM
Item ID: 40862484
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **Joyia Carder, 3700**

From Dugan, Boyd [IWD] **Date** Tuesday, March 25, 2014 2:12 PM
To Saddoris, Michelle [IWD]
Cc Eklund, David [IWD]

 [image001.jpg](#) (17 Kb HTML)

She would like to receive bills again for her overpayment. I corrected her address.

Boyd Dugan

 Description: Description:
Description: Iowa Workforce
Development - Smart. Results.

515-725-3773

Boyd.dugan@iwd.iowa.gov

[Preview is not available (conversion excluded for this file type).]

Message: Trade Adjustment Assistance Determinations for Monday, May 5, 2014 - Report**Case Information:**

Message Type: Exchange
 Message Direction: External, Inbound
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:22 PM
 Item ID: 40861662
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **Trade Adjustment Assistance Determinations for Monday, May 5, 2014 - Report**

From Edelen, Charlotte - ETA

Date
 Wednesday,
 May 07, 2014
 11:10 AM

To Bachner, Brigitte; Lara, Gerardo - ETA; O'Brien, Holly - ETA; Fitzgerald, Edmund - OPA; Zuckerman, Lois - SOL; Baker, Julie S - ETA; Bulluck, Corey - ETA; Davis, Kenisha - ETA; Green, Cynthia - ETA; Hart, Brian - ETA; Hines, Consuelo - ETA; Lehman, Melissa - ETA; Osarhiemen, Joanne - ETA; Williams-Raysor, Rosemary - ETA; Schloesser, Betsy - ETA; Skinner, Richard - ETA; Theberge, Timothy - ETA; Toops, Michael E - ETA; AL - Conja Merritt; AL - Harriett Craig; AR - Arkansas Petition E-Mail Address; AR - Echoles O'Neal; AR - Jay Bassett; AR - John Berry; AR - Shelly C. Thompson; AZ - Susan Standen; CA - Linda Eden; CO - David Barbour; CO - Jerry Smith ; CO - Melissa Pratt; CT - Andrew Subiono; CT - Janice Albert; CT - Joseph Criscuolo; CT - Lois Campanelli; CT - Susan Fracasso; DE - Carolyn Nasser; DE - Raymond Grzybowski; FL - Carol Booth; FL - Katina Williams; FL - Kenton Buggs; FL - Mershal Noble; FL - Tammy Brennan; GA - Renola Wicks; GA - Stephanie Quinones; HI - Authur Barba; HI - Maricar R. Pilotin-Freitas; IA - Ben Phillips; Shepherd, Deborah [IWD]; Anderson, Lindsay [IWD]; IA - Patrick Meuleman; IA - Paulette Givens; ID - Jennifer Hemly; ID - Joel Dixon; ID - Julia Browning; ID - Rico Barrera; ID - Tami Livesy; ID - Vicki Parkinson; IL - Dwayne Anderson; IL - Erik Hack; IL - James Cannon; IL - Janet Rosentreter; IL - John Ferry; IL - Susan Boggs; IN - TAA Petition Group; KS - Anita Stamps; KS - Phyllis Gish; KY - Brandon S. Inman; KY - Chastity Dexter; KY - Cheri Montgomery; KY - Franklin McGowan; MA - Beth Goguen; MD - Dianne Guy; MD - Mary Miller; MD - Sandra Tooloes; MD - Scott Wallace; MD - Susan Kaliush; ME - Debra Reitchel ; ME - Judy Peletier; MI - Gustavo Diaz; MI - Jimelle Howard; MI - Patty Vanaman; MI - Tammy Flynn; MN - Anthony Alongi; MN - Debra Schlekewy; MO - David Fisher; MO - Myra Huhmann; MO - Pat Wise; MO - Randy Cottrell; MO-Deborah Painter ; MS - Nikita Booker; MT - Elaine Eidum ; MT - Gary Wright ; MT - Joe Rangitsch; MT - Kathy Yankoff; NC - Dianna Rivera; NC - Grover Houck; NC - John Ogie; NC - Mark Vincent; NC - Monique Allen; NC - Thomas Palmer ; ND - Elaine Wentz; NE - Jan Sovereign; NE - Mike Hays; NE - Seth Fager; NE - Shannon Davis; NE - Shannon Okray; NJ - Margaret Mollo ; NJ - Soraya Gardner; NM - Felicia Santistevan ; NV - Karlene Johnson; NV - Kitty G. Clark; Poirier, Amanda - ETA; NY - Brigitte Bachner; NY - Deborah Maciariello; NY - Lori Mahan; NY - Susan Serviss; OH - Janet Reichert; OH - Sara Hall Phillips; OH - Trade Team; OK - Donna Duke; OK - Sandy Slaven; OK - Tammy Wood; OR - Karen Humelbaugh; OR - Laura E.

Lausmann; OR - Laura J. Roberts; OR - Oregon State; OR - Ricque Smith; OR - Shelly L. Zander; OR - Vann C. Keo; PA - Pennsylvania Petition E-Mail Address; RI - Connie Parks; RI - Kim-Sout Heng; RI - Maria Dawson; SC - South Carolina Group; SD - Bill McEntaffer; SD - Bill Molseed; TX - John Pfeifer; TX - Sharon Kubes; TX - Texas Petition E-Mail Address; UT - Alexia Murphy; UT - Dawn Lay ; UT - Jeremy Rich; UT - Rachael Stewart; UT - Sean Headden; VA - Anna Wright; VA - Cliff Pierce ; VA - Fannie Grant; VT - Andrea M. Hussey ; WA - Bob Hughes; WA - Rob Mills; WA - Sue Keltner; WI - Gary Burtch; WI - Gerald Kluge; WI - John Dipko ; WI - Peter J. Schmitz; WI - Richard Jones ; WI - Tracy Aide; WV - Deborah Meredith; WV - Elaine O. Huskins; WV - Joanne R. Stone; WV - Martha L. Craig-Hinchman; WV - Maureen M. Persons; WV - Tom Landon; WY - Amy Houck; WY - Marva Humpal

Cc Tyler, Norris - ETA

 [Certifications 05-05-2014.docx](#) (18 Kb HTML)  [Denials 05-05-2014.docx](#) (15 Kb HTML)  [83309.doc](#) (47 Kb HTML)
 [85012.doc](#) (36 Kb HTML)  [85077.doc](#) (45 Kb HTML)  [85173.doc](#) (38 Kb HTML)  [85179.doc](#) (28 Kb HTML)

Attached are TAA determinations dated for Friday, May 2, 2014

- [\[Heading 1\]](#)
 - [\[29 TAA CertificationsFriday, May ...\]](#)

29 TAA Certifications

Friday, May 2, 2014

TAW	Suff	Company Name	City	State	Inst Date	Determ Date	Determ Code	Petitioner	Product - P or Service - S	Est. No. Workers
83,309		Southern California Edison	Irwindale	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	4383
83,309	A	Southern California Edison	Rosemead	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	353
83,309	B	Southern California Edison	Irvine	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	114
83,309	C	Southern California Edison	Alhambra	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	101
83,309	D	Southern California Edison	Rancho Cucamonga	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	96
83,309	E	Southern California Edison	Fullerton	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	73
83,309	F	Southern California Edison	San Clemente	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	26
83,309	G	Southern California Edison	Pomona	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	25
83,309	H	Southern California Edison	La Palma	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	14
83,309	I	Southern California Edison	Westminster	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	9
83,309	J	Southern California Edison	Norwalk	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	5
83,309	K	Southern California Edison	San Dimas	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	2
83,309	L	Southern California Edison	Compton	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	4

83,309	M	Southern California Edison	Rialto	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	12
83,309	N	Southern California Edison	Fontana	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	3
83,309	O	Southern California Edison	Long Beach	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	3
83,309	P	Southern California Edison	Ontario	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	1
83,309	Q	Southern California Edison	Thousand Oaks	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	1
83,309	R	Southern California Edison	Big Creek	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	1
83,309	S	Southern California Edison	Bishop	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	2
83,309	T	Southern California Edison	Hesperia	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	2
83,309	U	Southern California Edison	Bakersfield	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	1
83,309	V	Southern California Edison	Romoland	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	1
83,309	W	Southern California Edison	Cathedral City	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	1
83,309	X	Southern California Edison	Santa Clarita	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	1
83,309	Y	Southern California Edison	Tulare	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	3
83,309	Z	Southern California Edison	Ventura	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	8
83,309	AA	Southern California Edison	Victorville	CA	12/19/13	5/2/14	C2	Workers	S: IT Services	1
83,309	BB	Southern California Edison	Boulder City	NV	12/19/13	5/2/14	C2	Workers	S: IT Services	1

- [\[Heading 1\]](#)
 - [\[3 TAA DenialsFriday, May 2, 2014 \]](#)

3 TAA Denials

Friday, May 2, 2014

TAW	Suff	Company Name	City	State	Inst Date	Determ Date	Determ Code	Petitioner	Product - P or Service - S	Est. No. Workers
85,012		SANYO Solar (USA) LLC	Carson	CA	1/13/14	5/2/14	D	State/One-Stop	P: Silicon Ingots	0
85,077		Caterpillar, Inc.	Pulaski	VA	2/19/14	5/2/14	D	Union	P: Underground Mining Equipment	256
85,173		Xerox State and Local Solutions, Inc.	Waite Park	MN	3/25/14	5/2/14	D	Workers	S: Electronic Benefit & Payment Distribution Services	14

DEPARTMENT OF LABOR

Employment and Training Administration

TA-W-83,309

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