

Rather, under the final rule, an entity is a material supplier if: (a) its only obligations for work on the contract or project are the delivery of materials, articles, supplies, or equipment, which may include pickup of the same in addition to, but not exclusive of, delivery, and which may also include activities incidental to such delivery and pickup; and (b) its facility or facilities that manufactures the materials, articles, supplies, or equipment used for the contract or project (1) is not located on, or does not itself constitute, the project or contract's primary or secondary construction site, and (2) either was established before opening of bids on the contract or project, or is not dedicated exclusively, or nearly so, to the performance of the contract or project. All other entities engaged in work on the site of the work are contractors or subcontractors.

The Department has historically recognized that members of survey crews who perform primarily physical and/or manual work while employed by contractors or subcontractors on a DBA or Related Acts covered project on the site of the work immediately prior to or during construction in direct support of construction crews may be laborers or mechanics subject to the Davis-Bacon labor standards. Whether or not a specific survey crew member is covered by these standards is a question of fact, which takes into account the actual duties performed and whether these duties are "manual or physical in nature" including the "use of tools or . . . work of a trade." When considering whether a survey crew member performs primarily physical and/or manual duties, it is appropriate to consider the relative importance of the worker's different duties, including (but not solely) the time spent performing these duties. Thus, survey crew members who spend most of their time on a covered project taking or assisting in taking measurements would likely be deemed laborers or mechanics (provided that they do not meet the tests for exemption as professional, executive, or administrative employees under part 541). If their work meets other required criteria (*i.e.*, it is performed on the site of the work, where required, and immediately prior to or during construction in direct support of construction crews), it would be covered by the Davis-Bacon labor standards.

While state requirements vary, based on the information received from commenters, the Department believes licensed surveyors may in some cases be "learned professionals" and thus excluded from the definition of "laborers or mechanics." However, this conclusion may vary, particularly where state licensing requirements do not customarily require a prolonged course of specialized intellectual instruction. *See Goebel v. Colorado*, No. 93-K-1227, 1999 WL 35141269, at *7 (D. Co. 1999) (concluding at summary judgment that, under state licensing requirements involving a combination of surveying courses and land surveying experience, but no college degree, that surveying did "not require the 'advanced type of knowledge' gained through 'a prolonged course of specialized intellectual instruction and study'" necessary to fall into the category of "learned professionals"). However, other members of survey crews, even if working under the supervision of a licensed surveyor, cannot be excluded from the definition of "laborer or mechanic" on this basis. Unlicensed survey crew members have not completed specialized academic training or demonstrated "substantially the same knowledge level" to state licensing authorities to secure a professional license. *See* 29 CFR 541.301(d). Because they must work under the supervision of a licensed surveyor, rather than independently, on any work requiring a license, they are generally not

“perform[ing] substantially the same work” as licensed surveyors. *See id.* Unlicensed paraprofessionals are generally not considered “learned professionals.”

Covered Transportation includes:

- (A) Transportation that takes place entirely within a location meeting the definition of “site of the work” in this section;
- (B) Transportation of one or more “significant portion(s)” of the building or work between a “secondary construction site” as defined in this section and a “primary construction site” as defined in this section;
- (C) Transportation between an “adjacent or virtually adjacent dedicated support site” as defined in this section and a “primary construction site” or “secondary construction site” as defined in this section;
- (D) “Onsite activities essential or incidental to offsite transportation,” defined as activities conducted by a truck driver or truck driver’s assistant on the site of the work that are essential or incidental to the transportation of materials or supplies to or from the site of the work, such as loading, unloading, or waiting for materials to be loaded or unloaded, but only where the driver or driver’s assistant’s time spent on the site of the work is not *de minimis*; and
- (E) Any transportation and related activities, whether on or off the site of the work, by laborers and mechanics employed in the construction or development of the project under a development statute.

Demolition and/or removal, under any of the following circumstances:

- (A) Where the demolition and/or removal activities themselves constitute construction, alteration, and/or repair of an existing building or work. Examples of such activities include the removal of asbestos, paint, components, systems, or parts from a facility that will not be demolished; as well as contracts for hazardous waste removal, land recycling, or reclamation that involve substantial earth moving, removal of contaminated soil, re-contouring surfaces, and/or habitat restoration.
- (B) Where subsequent construction covered in whole or in part by the labor standards in this part is contemplated at the site of the demolition or removal, either as part of the same contract or as part of a future contract. In determining whether covered construction is contemplated within the meaning of this provision, relevant factors include, but are not limited to, the existence of engineering or architectural plans or surveys of the site; the allocation of, or an application for, Federal funds; contract negotiations or bid solicitations; the stated intent of the relevant government officials; and the disposition of the site after demolition.
- (C) Where otherwise required by statute.

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- (B) Transportation of one or more “significant portion(s)” of the building or work between a “secondary construction site” as defined in this section and a “primary construction site” as defined in this section;
- (C) Transportation between an “adjacent or virtually adjacent dedicated support site” as defined in this section and a “primary construction site” or “secondary construction site” as defined in this section;
- (D) “Onsite activities essential or incidental to offsite transportation,” defined as activities conducted by a truck driver or truck driver’s assistant on the site of the work that are essential or incidental to the transportation of materials or supplies to or from the site of the work, such as loading, unloading, or waiting for materials to be loaded or unloaded, but only where the driver or driver’s assistant’s time spent on the site of the work is not *de minimis*; and
- (E) Any transportation and related activities, whether on or off the site of the work, by laborers and mechanics employed in the construction or development of the project under a development statute.